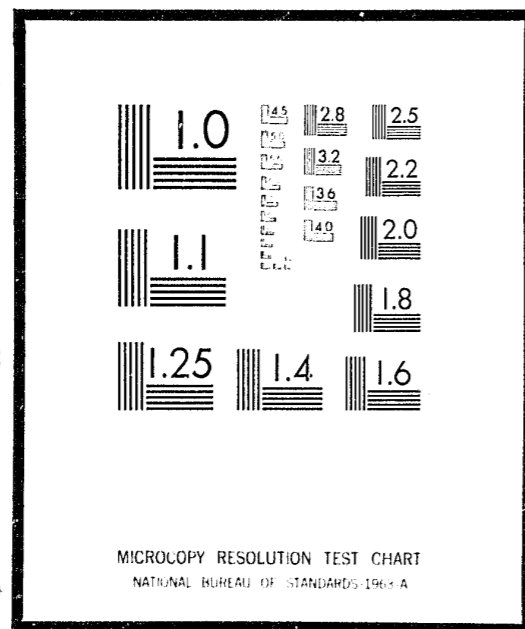


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U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

11/12/76
Date filmed

DRUG DIVERSION

PENAL CODE SECTION 1000: THE PROCESS AND THE PEOPLE

19593
LOANS - EVALUATION

An Evaluation Prepared by the
Office of the Santa Clara County Drug Abuse Program Coordinator
April, 1975

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DRUG DIVERSION

PENAL CODE SECTION 1000: THE PROCESS AND THE PEOPLE

An Evaluation of Court Diversion for
First Time Drug Defendants in Santa
Clara County

Prepared by the
Office of the Santa Clara County Drug Abuse Program Coordinator
April 1975

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SECTION I

INTRODUCTION

INTRODUCTION

The misuse of psychoactive substances and the resulting damage to human physical and mental health is considered to be one of this nation's major health and social problems.

In as much as the possession, use, and sale of nearly all the common drugs of abuse are activities rigidly regulated by a variety of local, state, and federal laws, the drug problem has traditionally been the concern of the criminal justice system. There were and are larger, centralized facilities, such as CRC in California which engaged in treatment and rehabilitation for those persons entering the criminal justice system with strong drug dependencies. However, the experience of the last five years has led to major changes in attitude toward the problems of drugs and the drug abuser. During these years, the ability of the medical community to successfully treat and rehabilitate the drug dependent person has steadily increased. This help has come in numerous ways with widely differing treatment philosophies, some drug free, others that substitute a less harmful chemical for the addicting drug.

This change in approach was precipitated in part by the great upsurge, almost a quantum leap, in the use and abuse of drugs such as LSD, amphetamines, barbiturates, heroin and marijuana. The American public became alarmed when it was realized that these drugs were no longer the pastimes of "dope fiends" and ghetto youth, but their abuse had spread to Midtown, USA.

At the same time alcohol abuse, a health problem of long standing, extended its reach to younger, previously non-user segments of society. But what was particularly alarming, was the rapid rise in the rate of heroin addiction of white, middle class youth. Also there has lately been an increase of persons with mental health problems that have been self-medicating their condition with a combination of drugs, usually alcohol and barbiturates. This poly drug abuser or soft core junkie is but one more twist in the many varieties of addiction.

Because of the magnitude of the problem beyond the bounds of the ability of law enforcement and the criminal justice system to cope with the drug user, there has been a shift in approach to the problem. Beginning with free clinics in places such as the Haight Ashbury, treatment programs have blossomed throughout the country. According to figures from the Special Action Office for Drug Abuse Prevention (SAODAP), there are currently 160,000 persons in treatment programs involving 30,000 drug abuse workers. The perception that drug abuse, the actual dependence or self-destructive behavior on the part of the person, is a medical problem rather than a criminal activity is gaining greater credibility.

The current feeling, expressed most strongly at the national policy level, is that the proper role of law enforcement is to reduce the illicit supply of drugs. The individual drug-dependent person is seen less and less as a target of police activity, but rather he is the responsibility of the treatment community.

Dr. Robert DuPont, the Director of SAODAP and the National Institute on Drug Abuse (NIDA), looks at the relationship between the resources of the health care community and law enforcement as a working partnership. In the Spring 1974 issue of Drug Enforcement, (a publication of the Drug Enforcement Administration), Dr. DuPont called this partnership the "vital link".

In an address to the Drug Abuse 1974 Conference held during the Spring at the University of California Medical School in San Francisco, Dr. DuPont stated "Law enforcement and treatment officials throughout most of the country, and certainly at higher levels, now readily embrace a partnership based on this division of responsibility and on a growing sense of interdependence. Neither is likely to succeed alone."

While it is true that the energies of law enforcement have been shifted away from apprehending and prosecuting the individual user and are now directed towards the drug dealer, and in particular, persons and organizations involved in manufacturing and or selling large quantities of illicit drugs, the reality is that laws which prohibit the possession of small quantities of the common drugs of abuse are still on the books and being enforced.

There have been unsuccessful attempts in California, both in legislature and by citizens' initiative, to decriminalize the possession of small quantities of marijuana. While the use of this drug is becoming more common with each passing year, the climate has not seemed ripe for complete decriminalization. However, the State government felt obliged to respond in some manner.

The response came in the form of the Drug Offender Diversion Statute, Section 1000 of the California Penal Code. The law was a part of Senate Bill 714, the comprehensive drug abuse legislation of 1972, which provided several million dollars for drug abuse treatment, prevention, and education in the various counties.

Since the bill was enacted with an urgency clause it became effective immediately upon being signed by the Governor. In early 1973, each county was faced with the necessity of hastily implementing a new law which presented wide latitude for differing interpretations. Each county, faced with different problems of size and circumstance fashioned their implementation to respond to their own situation.

That the law was being interpreted and implemented differently among the various counties became apparent at a statewide conference held in late March, 1974, to examine and assess the first year under P.C. 1000 pre-trial diversion. At this conference were probation officers, district attorneys, public defenders, judges,

county drug abuse coordinators, and members of the treatment and prevention community. Also present were top level administrators from various state agencies involved since its inception with P.C. 1000 Diversion. The importance of the conference was heightened by the fact that Section 1000 has written into it a self-destruct clause which will automatically remove the law from the books in January 1975 unless it is renewed.

Naturally much of the discussion focused the problems of administering the law which produced many suggestions for changes if the law is renewed. However, the initial stages of the conference focused on the legislative intent behind the enactment of this particular statute.

By way of introduction to legislative intent, the Governor's State of the State address on April 27, 1972, contained the following statement: "We should not continue to clog our criminal justice system nor saddle our young with a criminal record if there is a legitimate alternative."

To offer further clarification of the intent of the law, Mr. Richard K. Turner, former Assistant Legal Affairs Secretary to Governor Reagan, and a key person in originating this new law, stated in October 1973: "To the best of my knowledge, based upon my experience in the development of this legislation, the intent of the legislation, and the drafters of the legislation, was to provide an alternative disposition other than services customarily offered by the probation departments for rehabilitation of first time offenders of laws relating to the use of narcotics. The question that we intended the courts to pose was, what disposition would help the first time offenders the most? The objective was to correct the revolving door problem, of offenders of the narcotics laws returning to court time and again and not receiving the kind of post-sentence disposition which might break into the cycle and provide some sort of individualized program more likely to change the offender's behavior."

During his keynote address at the opening of the Diversion Conference, Mr. Turner shed further light on intent and the circumstances surrounding the drafting of P.C. 1000 as the "legitimate alternative" suggested by the Governor. He stated that the Reagan Administration was not in a position to advocate decriminalization. Nor was it certain that it would be a viable alternative in the near future. Pre-Trial Diversion from court to a class or program of education, treatment, or rehabilitation was decided upon as the best response to the growing problem. It was in keeping with other parts of the Governor's overall legislative package and more importantly appeared to offer the first time offender a real break in not having a conviction on his record for an action perhaps committed with very little thought as to what the consequences might be.

Mr. Turner indicated in his speech that, strangely, very little opposition was encountered to the inclusion of this novel concept modifying the penal code. Since the proposed law had been conceived out of frustration since previous efforts had failed to yield satisfactory results, it was felt that P.C. 1000 would meet with strong opposition. It was sent for review to

prominent law enforcement officials and the District Attorneys' lobbying association; however, no negative response was obtained. It was then passed and signed into law.

Following the passage of P.C. 1000, without a clear cut statement of intent, Mr. Turner's office and the Attorney General were besieged with questions from the various counties as to what the law was intended to accomplish and how best to implement it. Judging from the tone of Mr. Turner's statement in October 1973, some ten months after enactment, it was obvious that at the outset the intent was less than crystal clear. During his keynote address Mr. Turner pointed out that the law was deliberately written in an open-ended manner to allow the various counties the leeway to create their own unique applications of P.C. 1000. He stated that it was the hope that by creatively using P.C. 1000, the criminal justice system could now begin to provide more individualized care for the first time offender and experimenter with drugs.

The Attorney General has argued that another purpose of P.C. 1000 is to unclog court dockets by reducing substantially the number of drug possession trials. The statements from that office indicate that this purpose is felt to be co-equal with that of eliminating a conviction for first time offenders and offering education, treatment or rehabilitation.

In any event, it is certain that at the time of inception and certainly during implementation by the individual counties the manifold intent of the law could not be defined precisely. This is a very important factor to consider in any evaluation of the operation and results of this statute.

It is for this reason that such extensive background was given to the implementation of the law. It is essential that the evaluator, or the general public for that matter, understand the climate and conditions out of which court diversion for first time drug offenders was conceived and passed into law. It is important since the same attitudes on the part of lawmakers and members of the criminal justice system which led to a law of this nature being designed and implemented, may very well influence the day to day operation and processing of cases under P.C. 1000. Since each county does have considerable leeway in its implementation, these matters of attitude and opinion about illicit drugs and the drug abuser become very important.

While Diversion under P.C. 1000 would at first seem to apply to only a small segment of the population, it has wider ranging implications. The whole concept of pre-trial diversion is unique and with P.C. 1000 we are seeing an experiment, that if it works successfully enough may be applied to a wider variety of offenses. It is for this reason that an evaluation of P.C. 1000 is very timely and exciting.

While it is possible to determine generally the purpose in enacting the P.C. 1000, a specific statement of intent has come only after the law has been in effect for nearly a year. (It is felt that the Drug Diversion Conference was

the forum where that intent was defined). In-so-far as P.C. 1000 is interpreted and practiced differently in the various counties, we need to examine in detail the operation of this new law in our own Santa Clara County. Initial investigations have demonstrated that each participating agency that participates in P.C. 1000 is only aware of the details of the involvement of their own agency. No one is as of yet aware of the characteristics and details of the whole process from the initial investigation for eligibility to the final dismissal of the charges. The process must be documented as a whole. Within that view of the whole will be special data needs to help answer specific questions regarding such things as cost-effectiveness or, for example, how decisions are made as to what program a particular divertee is assigned. These will be spelled out in detail below.

Secondly, since the conference generated communication among persons from different parts of the state who are engaged in evaluating the operation of P.C. 1000 in their respective counties, it is our purpose to provide data and information that will be useful at a statewide level.

Any evaluation of this type will be used not only within the county where it was conducted, but can be used by other counties for comparison with their own diversion programs. The Drug Abuse Coordinator's office has already received numerous requests from other counties throughout the State that have either completed their own evaluations or are in the process of examining the workings of P.C. 1000 within their own counties.

This evaluation has been several months in planning. Thanks to communication begun at the conference, we were able to draw upon earlier evaluation efforts in other counties to help suggest useful strategies and valuable hints about what to examine. An effort has been made to include in this evaluation features which were seen to be missing in evaluations conducted or to-be-conducted elsewhere. One such feature will be an in-depth interviewing process of over 50 divertees to gain their impressions and suggestions for the future.

By examining the evaluation plans from other counties in California, the evaluation team decided to focus the Santa Clara evaluation on the human elements of the diversion process. In our initial investigations we were struck by the almost universal lack of awareness on the part of the divertee as to the series of events which he was experiencing. It was felt that this lack of awareness could be traced to the functioning of the diversion process within each agency. Given a desired outcome of reducing future involvement by the divertee in the criminal justice system for drug violations, we feel that a lack of awareness on the part of the divertee as to the exact nature of his diversion and the other alternatives which may be open to him is a crucial issue in this evaluation.

Also, from examining other evaluations, we have seen that the typical profile of a divertee is fairly uniform throughout the state. Therefore, we feel it unnecessary to construct an elaborate scientific paradigm to examine psychological change as a result of diversion. This may follow at a later date when a suitable instrument can be designed to truly evaluate the functioning of the

community programs. At present we feel it much more valuable to provide a different type of data about P.C. 1000 Diversion than is currently available in other evaluations throughout the state.

In examining this evaluation, we recommend that the reader ask of himself a series of questions concerning the intent of this law and its actual day to day operation. Eventually there will be made a series of recommendations for change, both internally within the county and for the legislature in its future considerations. At present P.C. 1000 has been extended, without changes, for another two years. At first it appeared that P.C. 1000 would undergo extensive modifications prior to its expiration and subsequent renewal. But none of the proposed modifications (either to tighten up the law or relax certain provisions and install safeguards against potential abuse) could garner enough support to be signed into law. The result was that A.B. 3096 was modified to simply extend the diversion law for another two years. It was recently signed into law by the governor.

As indicated by Mr. Richard Turner and later by Mr. Ken Budman the SONDA diversion consultant, the language of the law is vague enough as to allow extensive local interpretation. Mr. Budman indicated that he hoped that local jurisdictions would use this leeway to construct innovative and creative responses to the problems that P.C. 1000 was designed to ameliorate. It is the hope of this evaluation team that the data which forms this evaluation will point the way towards beginning some kind of inter-agency communication so that the process of P.C. 1000 in our county will truly serve those persons who find themselves involved for the first time with the criminal justice system on drug violation charges. At present, our data indicates a striking lack of communication among those agencies charged with the responsibility to implement P.C. 1000. From reading the material, it is apparent that each agency functions in its role with very little liaison with the other agencies which also deal with the diverttee. Such compartmentalization can only hurt the diversion process.

The questions which should serve as a guide to reading this document deal with crucial issues in diversion. They are as follows:

1. What is the intent of the diversion statute? It is stated by various state agencies and spokesmen for the legislature that P.C. 1000 is intended to give first time offenders a "second chance" so that they will not be burdened with a criminal conviction for a single act of indiscretion done without proper awareness of the consequences. However, in light of diverttee's experiences and the actual functioning of the process from beginning to end, is this actually taking place? In the Orange County evaluation it was mentioned that the goal of causing the diverttee to cease his involvement with illicit drugs may not be realistic since many diverttees indicated that they still use such drugs as marijuana and alcohol.

Another stated goal of the Diversion Law is to unclog the court dockets by reducing the number of drug possession trials. But is this goal compatible

with the first? Can we seek economy and efficiency and still fulfill the primary goal of providing better services to the first time offender? The question should be asked that might not a concern for efficiency might carry over into the mechanical processing of diverttees which will prevent an accurate assessment of their needs and a sincere attempt to meet those needs.

We have seen in our interviews with diverttees that in many cases the primary problem is not one of drug abuse. Rather the typical diverttee is at a point in his life where he or she is searching out a meaningful direction in life and has turned to experimentation with drugs to aid in that search. It is questionable that the content of most drug diversion classes and programs respond to that need for direction. Most classes are educational in nature and deal with drug information and the dangers of drug abuse.

Perhaps concern can be focused at the point of the Probation Department's investigation as to the suitability of the potential diverttee for diversion. There may be a need for a more elaborate action plan tailored to the needs of the individual diverttee. This is a question which the reader can ask as he examines that section.

2. Another crucial issue is that of eligibility. Given the intent of the law, what is the population which should be eligible for P.C. 1000 Diversion? If the intent is redefined or broadened to do more than just provide a "second chance" for first time offenders, does the population of potential diverttees change? What about multiple diversion? That is an issue as yet unresolved. As the law is written, multiple diversion can occur. But in order to answer that question the true intent of the law must be clearly defined. It is one purpose of that evaluation to help in that definition.

3. Another important question is that of the criminal record of the person who has successfully completed diversion. It is stated that the purpose of the law is to give a "second chance." But is this really happening. Upon successful completion of P.C. 1000 Diversion, the judge drops the charges against the defendant, but written into that person's C.I.I. record is a statement to the effect that: "..... has completed drug diversion pursuant to Penal Code Section 1000." Is this not tantamount to having a record? To many employers this may be equivalent to an admission of guilt. Also there is considerable disagreement among law enforcement officials as to when the defendant's record should be "sealed" or "expunged". Some say five years after completion of diversion, some say three years, and others argue for immediate action. In view of the intent to not saddle the youthful offender with a record, and in view of the need at that time in his life to possibly attend school or obtain a meaningful work situation, might not the C.I.I. record become an obstacle in reaching those goals which the diverttee has set for himself?

4. Another key issue not directly connected with the formal P.C. 1000 process but which directly impacts on the functioning of diversion is the arrest and booking process. Currently all drug possession arrests are booked as felonies

and involve all the same procedures as if the defendant were being booked for some violent crime. In our interviews with divertees we have noted how, time and time again, this humiliating process has had a very detrimental effect on how the divertee responds at all subsequent stages of the process. Perhaps an alternative to felony bookings could be designed and implemented at some later date. But the reader should be aware that this arrest and booking has a profound impact on the diversion process.

5. The question of arrest and booking leads into another similar issue which is that of legal proceedings prior to diversion. There is controversy over the issue of whether or not a divertee and his counsel can first file such motions for suppression of evidence or search and seizure motions prior to opting for diversion. The feelings of the agencies on this matter are well documented in the text.

Overall this evaluation is a document designed to suggest many questions concerning the operation of Drug Offender Diversion. It is not a definitive statement about all matters regarding the functioning of P.C. 1000. As was stated above, there is a definite need for communication among those responsible for implementing this law. Our evaluation is designed to provide the basis for that essential communication.

SECTION II

OVERVIEW OF THE P.C. 1000 DIVERSION PROCESS

Narrative

Flow Chart

Santa Clara County Delayed Booking System
for Minor Drug Offenses: "Police Release"

OVERVIEW OF THE P.C. 1000 DIVERSION PROCESS

First Week

The initial event in what may eventually be a P.C. 1000 diversion is an arrest, either on view or probable cause. Following the usual process the next step would be booking; however, in Santa Clara County the law enforcement agencies have adopted a "police release" program (see details attached to this section). The program allows the field officer to exercise the option in minor drug possession violations of issuing a citation to appear at the police station or Sheriff's Department for booking. The booking, when it occurs later, is a streamlined version. At that time the defendant is released O.R. and given a date to appear for arraignment. From the time of the issuance of the notice of violation (citation) the individual is given seven days to report for booking.

Second Week

Following booking, the police agency responsible for the arrest forwards the notice of violation and a record of the evidence to the District Attorney. That agency then reviews the matter and makes a decision as to whether or not a complaint will be filed or whether other action will be taken.

Under Penal Code Section 1000 (a), a defendant must meet four statutory criteria in order to be eligible for diversion. The Deputy DA, reviewing the police report of the arrest, can determine immediately if the defendant meets two of the four criteria: Section 1000 (a) (2) (The offense charged did not involve a crime of violence or threatened violence) and Section 1000 (a) (3) (There is no evidence of a violation relating to narcotics other than a violation of the sections listed in Section 1000 a) If these initial criteria are met, the police report and the Eligibility Check list used by the DA's office are sent to the DA's diversion clerk. It is their function, then, to send to C.I.I. for the defendant's criminal history record so that the other criteria may be checked.

When the "rap sheet" of the potential diverttee arrives it is reviewed to determine if the person meets the remaining criteria of Section 1000 (a) (1) (The defendant has no prior conviction for any offense involving narcotics or restricted dangerous drugs) and Section 1000 (a) (4) (The defendant has no record of probation or parole violations).

Once eligibility is determined, a notice indicating such is filed with the court and noted in the defendant's file.

Third Week

During the time that the eligibility screening is taking place, the regular criminal court process is initiated and continues until interrupted by the notice of eligibility. Charges are filed by the DA and the defendant appears

for arraignment on a date two weeks from the date of booking.

If upon arraignment the notice of eligibility is in the defendant's court record the judge will explain diversion to the defendant and direct the potential divertee to report directly to the Adult Probation Department for an interview. This interview is for the purpose of determining if the person is suitable to be diverted and if there is sufficient motivation present to benefit from a program of education, treatment, or rehabilitation. According to court records, approximately 27% are referred to the APD for screening at arraignment.

However, if the defendant's notice of eligibility is not in his record at the time of arraignment or if the Judge feels that the defendant should have counsel prior to making any decisions about the entry of a plea, the case is set for a pre-trial hearing. The time between arraignment and pre-trial is routinely six weeks.

Fourth Week

If the defendant is one of the 27% that is referred from arraignment, he reports to the Adult Probation Department for a suitability interview with one of the officers from the Drug Diversion Unit. The defendant spends one to two hours being questioned about the arrest report (or citation), his prior experience with drugs, his work and educational history, his family background, and other related information (a summary of the screening procedure is included in the A.P.D. section of this report).

If during the interview, the probation officer determines the defendant to be a suitable candidate for diversion, he will help the potential divertee to choose a diversion program which best fits his needs and ability to pay. If none of the programs appear to be acceptable as a result of time conflicts with employment, school, etc., or because of other special circumstances, the officer may recommend that the individual remain with the APD for counseling or other assistance.

Finally, if the defendant is willing to participate in a program, and if he is acceptable to the staff of that program, the Probation Department will make a positive recommendation to the Court. This occurs two weeks subsequent to the defendant's appearance for arraignment at what is called the Diversion Hearing. This is on a separate calendar for all P.C. 1000 matters which is heard along with the Probation/sentencing calendar.

However, the Probation Department does not necessarily make a positive recommendation. It may occur that the initial information about the defendant's statutory eligibility may have been incorrect and he now fails to meet one of the four criteria. It is also possible that a defendant may not appear to be sufficiently motivated in the eyes of the Probation Department to benefit from diversion. Other reasons for a non-suitable recommendation includes an administrative decision to disqualify all candidates that have been previously diverted under P.C. 1000 and to recommend the normal court process for defendants who are discovered to have substantial involvement with illicit

drugs either use or trafficking.

Whatever the recommendation of the Probation Department, it is the court that makes the final decision to divert or not divert as per P.C. 1000. As the concurrence of the District Attorney is no longer necessary, the court studies the recommendation of the Adult Probation Department and then makes a decision. Currently, the APD recommendation is nearly always followed. In cases where it is not followed, it is usually an instance where the judge wished to divert and the APD does not.

When the formal offer of diversion is made at the hearing, the defendant has the choice of accepting or rejecting it, the only alternatives being a court trial or a guilty plea for the commission of the offense (s) listed in the complaint.

If the waiver of time has not yet been signed at this time, it is finalized along with all of the other diversion papers. The judge informs the defendant of the requirements of diversion and of the need to cooperate with the Adult Probation Department and the community program to which he is being diverted.

The hearing is in most cases a formality, as very few drug defendants ever reject diversion at this point in the process (less than 5%). When the court grants diversion, it is according to the time framework specified in the law: from six to twenty-four months. In Santa Clara County nearly all divertees are terminated after the six month minimum if they have successfully completed their required program.

Ninth Week

Those defendants that were not certified as eligible by the date of their arraignment and were subsequently given a date for a pre-trial conference, are now six weeks later appearing in court. In most cases eligibility has been determined by this time and the judge will refer the potential divertee to the Adult Probation Department for the screening that was described above.

Eleventh Week

Those defendants who were referred to the APD from the pre-trial conference are scheduled to appear during this week for their Diversion Hearing as described above.

For some defendants the time required to be formally diverted extends beyond eleven weeks due to the fact that for persons who have a prior record with CII (though not necessarily drug-related) eligibility often is difficult to determine. This is because there is sometimes an incomplete posting of dispositions of arrests which may have occurred in several counties over a period of several years. When a disposition does not accompany an arrest on the

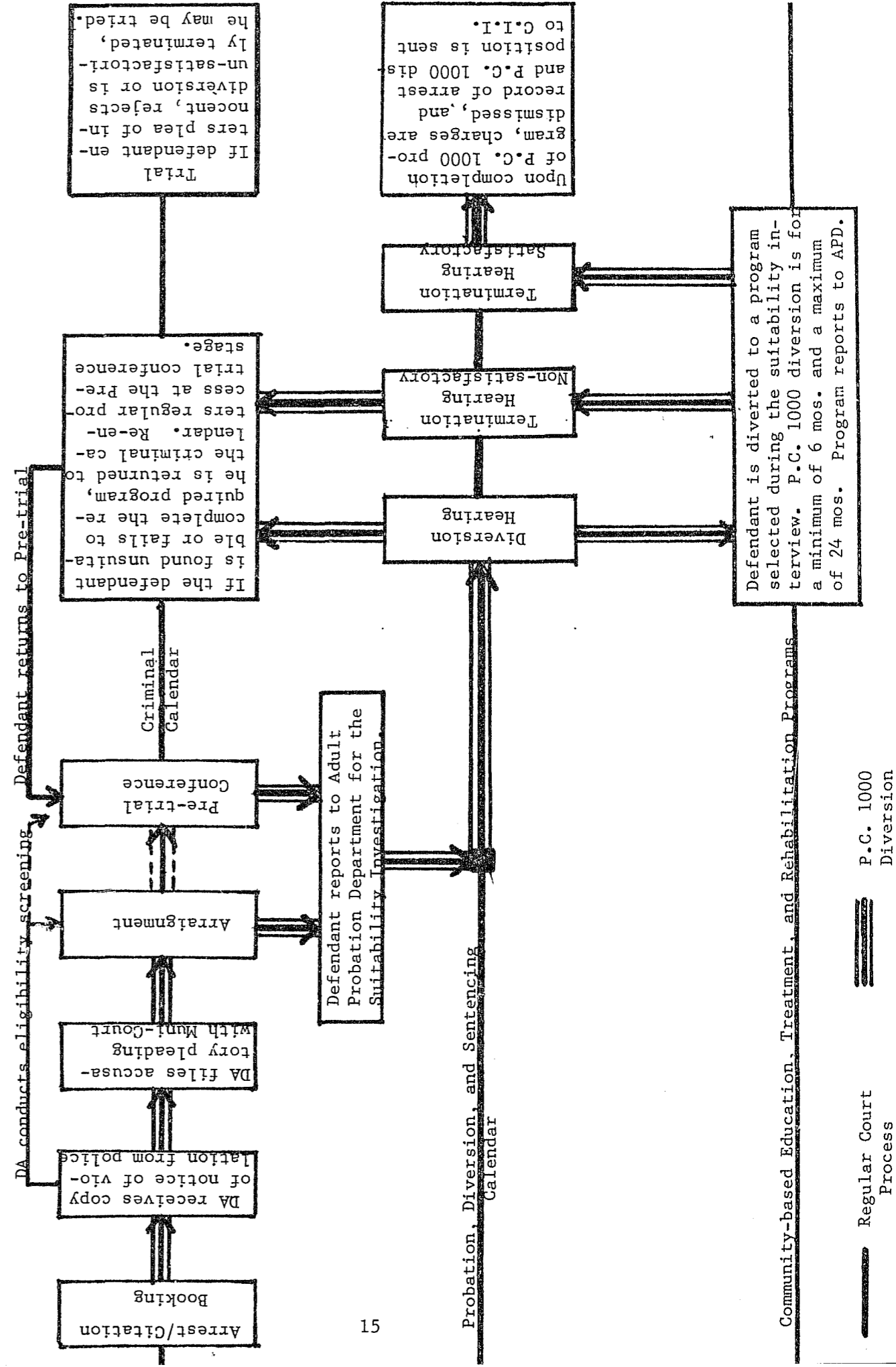
CII record, the diversion clerk in the DA's office must make a formal request by mail to the particular court or courts in question to determine the nature of the disposition.

This considerably lengthens the diversion process for these individuals. The case is usually continued at the pre-trial conference stage with each successive continuance being for a period of two weeks.

Beyond Eleven Weeks

Once a defendant is diverted and begins to attend his assigned program his progress is monitored by the Adult Probation Department. Following the completion of his program, the divertee may be required to report to the Probation Department until the term of his diversion has ended. At that time the probation officer who has been assigned to that person's case, files a report with the court indicating that the individual has satisfactorily fulfilled the requirements of his diversion. The judge then takes the necessary action to have the charges dismissed. As far as records are concerned, all appropriate agencies including CII, are notified that the defendant has completed drug diversion pursuant to P.C. 1000.

P.C. 1000 Diversion Processing




memorandum

2424
Gene Heiguelin

County of Santa Clara
California

Louis P. Borgna, District Attorney

February 11, 1975

	TO	FROM
	COURT CLERKS	ROBERT L. WEBB
	SUBJECT	DATE
NOTICE OF VIOLATION PROGRAM FOR MINOR		FEBRUARY 11, 1975
DRUG OFFENDERS		

Attached for your information is a letter which has been sent to each Municipal Court Judge summarizing procedures involved in the Notice of Violation program for minor drug offenders sponsored by the Law Enforcement Executive Council.

Please note the particular problem mentioned in Paragraph Two which may require some liaison between your office and law enforcement agencies in those cases where the defendant fails to appear for arraignment. The problem is similar to cases where a defendant is released from jail by the Sheriff under P.C. Sec. 849(b) before arraignment and the police agencies must therefore be notified of the non-appearance in order to seek an arrest warrant.

I am hopeful that the program should create no other problems as far as your office is concerned, although there may be some increase in the number of complaints filed in these cases.

RLW:td
Attachment

Dear Judge _____:

Law enforcement agencies in Santa Clara County are inaugurating a new program in the coming weeks to provide an alternative to jail in cases involving possession of small amounts of marijuana, amphetamines, and barbiturates which are normally eligible for diversion under Penal Code Sec. 1000. The program will involve no changes in current court procedures, except that defendants will appear for arraignment voluntarily, and provision therefore should be made by the court for a formal release on own recognizance to assure subsequent appearances as provided in Penal Code Sec. 1318.

In addition, to provide for occasional cases where the defendant fails to appear voluntarily for arraignment, it will be necessary for the complaining police agency and the court clerk to arrange that notification of non-appearance be given to the police agency, similar to the procedure now followed where the defendant fails to appear after release on Penal Code Sec. 849(b). The police agency then will follow normal procedures in seeking an arrest warrant supported by a declaration.

Under the program initiated by the Law Enforcement Executive Council of Santa Clara County, a peace officer making an arrest for possession of small amounts of controlled substances may, in his discretion, and based upon criteria established by the police agencies, release the suspect in the field, if he agrees to appear voluntarily for booking and court appearance. The written agreement is made upon the attached Notice of Violation form, which is not intended to be a citation and has no legal effect. Upon appearance for booking, the defendant will be given a date and time for arraignment not less than fourteen days after the date of booking. Thereafter the police agency will follow normal procedures in seeking a criminal complaint from the District Attorney and, where appropriate, complaint and diversion papers will be prepared and filed with the court. Accompanying each such complaint will be the canary copy of the Notice of Violation, which will identify these cases for the court, notify the clerk of the time set for arraignment, and provide informal notice to the court of the need for an order for release on own recognizance. In exceptional cases where further investigation discloses a prior felony offense involving controlled substances, or other unusual situations, a felony




complaint may be filed after a field release had occurred under this program, which may suggest the need for the fixing of an appropriate felony bail.

The plan is designed to avoid the anomaly of citations for offenses which are technical felonies. It is hoped that the program will, for eligible defendants, avoid custody; for the Sheriff, avoid the expense of in-custody booking; and for police agencies, increase available manpower in the field by reducing hours heretofore spent in transportation and booking of suspects normally prosecuted for misdemeanors and eligible for diversion.

Yours very truly,

ROBERT L. WEBB
Assistant District Attorney

RLW:td
Attachment
cc: Court Clerk

 San Jose Police Department GENERAL ORDER Manual Revision	To:	Date of Issue	Effective Date & Time	No.
	All Divisions	February 27, 1975	0001 March 1, 1975	9-75
Subject			Manual Sections:	
DRUG RELEASE PROGRAM			Added	Amended
			1/0-4305.5	Revised
Originated by	Reviewed by Staff	Processed by	Approved by	
Lt. Bertotti	Date COP 2/26/75	Officer Geppert	R. B. Murphy	

BACKGROUND AND PURPOSE

The present policy of our Department requires booking all drug violators, even though the majority are released on their own recognizance and eventually diverted from the Judicial System. Thus, offenders possessing minor quantities of controlled substances are released before the officer has an opportunity to complete his reports. Approximately 1 to 1½ hours, including transportation, is required to complete the booking process for each case. The drug release program will allow the officer to process the violator in the field, saving valuable patrol time. Community attitude is that first time drug violators should be processed differently than traffickers or repeaters.

ORDER

(VOLUME I)

PART V - CITATION AND COMPLAINT FORM

4305.5. Use of "Notice of Violation" Form for Selected Drug Violations. The following procedure will be followed in handling adult and juvenile drug violators.

a. Adults arrested for possession of controlled substances should be considered for the drug release program under the following criteria:

- (1) Proper identification.
- (2) No prior felony or drug arrests. (Local file check by field officer)
- (3) No additional felony charges.
- (4) Established residence within Santa Clara County or adjoining counties.
- (5) Currently employed or attending school.

b. The following quantities and types of controlled substances qualify for the drug release program:

- (1) Marijuana: 1 ounce or less (1 ounce is approximately 1 lid.)
- (2) Barbiturates: 30 or less capsules/tablets (Seconal, Phenobarbital, reds, downers, etc.)
- (3) Amphetamines: 30 or less capsules/tablets (benzedrine, Dexedrine, whites, bennies or uppers)
- (4) Any combination of two of the above, for example: one lid of marijuana and 30 or less amphetamine tablets, one lid of marijuana and 30 or less barbiturate capsules, or 30 or less amphetamine tablets and 30 or less barbiturate capsules.

c. Eligible Misdemeanor Drug Violators

(1) Violators in possession of paraphernalia used for smoking marijuana (11364 H&S) or visiting a place where narcotics or marijuana is used (11365 H&S), will be issued a criminal citation.

(a) If the violator is charged with possession and either 11364 or 11365 H&S, the Notice of Violation will be completed.

(2) Adults possessing any other controlled substances or derivatives of the above are not eligible for the drug release program.

(3) Adults under the influence of heroin or any other controlled substance are not eligible for the drug release program.

d. If the drug violator qualifies for the drug release program, a notice of violation will be completed for each offender. (See attached copy) The white copy will be given to the offender and the yellow and pink copies deposited in the box located in the report writing room. Signing the notice is not an admission of guilt, but a promise to appear within seven days for photographs and fingerprinting. The violator must appear on any non-holiday weekday at PAB Records and I.D. for processing. If the violator refuses to sign the notice, the normal booking process will be followed. An offense report and evidence envelope will be completed and processed as before. The Narcotics Detail will attempt to obtain criminal complaints on all cases processed under the new procedure.

e. Juveniles in possession of the above mentioned quantities and meeting the same criteria, will be issued a Juvenile Citation, (J.C.R.): A parent or guardian will be notified and, when possible, the Juvenile will be released to the parent. When unable to contact a parent or guardian, the Juvenile will be processed through Juvenile Hall.

(1) Juveniles under the influence of any controlled substance, except heroin, may be issued a Juvenile Citation, but must be released to a parent or guardian, after a release is obtained from Valley Medical Center.

(2) During normal business hours, file checks will be made through the Juvenile Division and the Narcotics Unit for prior felony or drug arrests.

f. The attached example form will be supplied by the Sheriff's department, and distributed at the Information Counter in the same manner as other citation forms.

RB Murphy
ROBERT B. MURPHY
Chief of Police

NOTICE OF VIOLATION NO. - 75-0000

DATE	TIME	DAY OF WEEK	CASE NUMBER
1-30-75	1400	THURS	75-0000
NAME (FIRST, MIDDLE, LAST)			
FRANK ALLEN SMITH			
RESIDENCE ADDRESS			
1565 E SANTA CLARA #257 975-0000			
BUSINESS ADDRESS			
205 W. FIRST ST. SANTA CLARA 277-4000			
DRIVER LICENSE NUMBER		SOC. SEC. NUMBER	
W123456		001-01-0001	
SEX	HAIR	EYES	HEIGHT
M	BRN	BRN	6-2
WEIGHT	HAIR	YEAR	STATE
190	30	11-1-35	CA.
VEHICLE LICENSE NUMBER		VEHICLE MAKE	
ABC001		CAD	
VEHICLE YEAR		VEHICLE BODY STYLE	
74		2DR	
LOCATION OF VIOLATION			
FIRST & SANTA CLARA ST.			

SECTION NO.	CODE	CONTROLLED SUBSTANCE	QUANTITY
11357	H&S	SUS. MARIJUANA	1 LID
11377	H&S	SUS. AMPHETAMINES	5 TABS
VIOLATOR'S NAME			
MARY JANE SMITH CIT# 1802			

ISSUING OFFICER	SERIAL NO.
A. BROWN	1234
POLICE AGENCY	
SAN JOSE P.D.	
WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR ON ANY NON-HOLIDAY WEEKDAY WITHIN 7 DAYS, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE LOCATION LISTED BELOW:	
X SIGNATURE <i>Frank A. Smith</i>	
<input checked="" type="checkbox"/> SAN JOSE POLICE DEPT., 701 W. MISSION STREET, SAN JOSE, CALIF. 95110 <input type="checkbox"/> SANTA CLARA COUNTY SHERIFFS OFFICE, 855 NO. SAN PEDRO, SAN JOSE, CALIF. 95110 <input type="checkbox"/> OTHER _____	

YOUR APPEARANCE IS REQUIRED, FAILURE TO APPEAR WILL CAUSE A WARRANT TO BE ISSUED FOR YOUR ARREST.
THIS IS A NOTICE OF VIOLATION, NOT A CRIMINAL CITATION. SIGNING THIS NOTICE IS A PROMISE TO APPEAR AT THE DESIGNATED LOCATION, WITHIN 7 DAYS.
THIS IS AN ALTERNATIVE TO INCARCERATION.
WHEN YOU APPEAR AT THE LOCATION DESIGNATED, YOU WILL BE PHOTOGRAPHED, FINGERPRINTED, AND INFORMED OF THE DATE AND TIME OF YOUR REQUIRED COURT APPEARANCE.

(DO NOT WRITE BELOW THIS LINE)

COURT APPEARANCE		
DATE:	TIME:	LOCATION:
CASE NUMBER:		

DISTRIBUTION: CANARY - COURT COPY WHITE - VIOLATOR'S COPY PINK - OFFICER'S COPY

VIOLATOR'S COPY

SECTION III

THE CRIMINAL JUSTICE AGENCIES:
THEIR ROLE AND FUNCTION IN COURT DIVERSION

The District Attorney

The Public Defender

The Courts

The Adult Probation Department

THE CRIMINAL JUSTICE AGENCIES: THEIR ROLE AND
FUNCTION IN COURT DIVERSION

Given the assignment to evaluate the operation of P.C. 1000, a plan was formulated. This plan included a detailed inquiry into the role and function of each participating agency as one component of the evaluation. The evaluation team began some initial research into the content of the diversion law and the related works and recommendations dealing with P.C. 1000. They then determined which county criminal justice agencies should be included in the evaluation. The final list included the District Attorney, the Public Defender, the Courts, and the Adult Probation Department. It was felt that it would not be possible to include the various police agencies involved or the personnel at the County's jails due to limitations of time, funding, and staff size. And, as it is, the actual process under P.C. 1000 does not formally begin until the DA gets the case.

Once the list of agencies to be included was complete, the staff spent an average of three days researching the operation of diversion within each agency to aid in drafting questions for the personnel to be interviewed in each organization. All such information was then incorporated with the list of topics to be covered in all agencies. These topics are:

1. Quantitative and qualitative differences within each agency in its disposition of non-divertees and divertees. The focus in this area was on differences in time, procedures, and cost between diverted cases and other cases comparable to diversion.
2. The actual operation of diversion within each agency. Questions in this area dealt with the step-by-step procedure through the agency.
3. Change in agency procedure generated by diversion. Specifically, each agency was asked to recount the history of diversion's initial implementation and to provide some information about the background of personnel assigned to diversion (in those agencies where certain personnel had been assigned primarily to diversion.)
4. Knowledge of and contact with other agencies involved in the diversion process. Included in the questions on this area were questions about the agency's knowledge of the range, scope, and content of the diversion programs available to defendants, and other questions about interaction, routine or otherwise, with other agencies.
5. In light of existing recommendations for modification of the present diversion law, each agency's personnel were asked to comment on the following areas:
 - complete expungement of the defendant's record upon successful completion of diversion;
 - retention of the six-month minimum period of diversion or other preferable minimum periods;

--- the role of the Adult Probation Department's report in subsequent hearings;

--- the issue of the District Attorney's concurrence in the court's decision to divert;

--- the defendant's right to diversion after raising a C.P.C.S. 1538.5 motion to suppress evidence;

6. Each agency was asked what it regarded as the main purpose or goal of the diversion law as it is presently implemented.

Two sets of questions were prepared from the list of topics above for each agency. The first set was used in an initial interview with the administrators of each agency who were responsible for diversion. The team presented the questions to the administrators in the context of a discussion about the operation of diversion within that agency. In those agencies that keep records of the number of diversion cases handled, the administrators were asked to provide all statistics relevant to diversion.

The responses to the questions and the additional comments made in the course of these meetings gave the team a better understanding of the make-up of each agency, and helped in the formulation of the second set of questions. The second set, prepared in questionnaire form, was distributed to those individuals within the various agencies responsible for the daily field-level implementation of diversion.

After the questionnaires were returned, the team then attempted to set up additional interviews with as many of those responding to the questionnaire as time would allow. The follow-up interviews served two main purposes: first, it became possible for each staff member to clarify and explain his or her response to a given question. Secondly, the follow-up interview allowed the team a great degree of flexibility in discussing issues and proposals that were outside the scope of the questionnaires.

The evaluation team was able to do follow-up interviews with all agencies except with the members of the Bench. During the summer months when the Criminal Justice Agency data was being gathered, the evaluation team was informed by the Municipal Courts Administrator that we would be prohibited from contacting the judges directly. The questionnaires for the members of the Bench were distributed in June of 1974. We obtained a 50% response with the large majority of the questionnaires being received back in this office in January of 1975. By that time the evaluation was much too far along to be subjected to redesign and to conduct a set of interviews with the judges. The current Muni Court Administrator has indicated that in any future evaluation that we would be welcome to interview any or all of the judges.

It must be noted that the following series of interviews and tabulated questionnaires from various agencies listed was accomplished in a manner somewhat different from P.C. 1000 evaluations in other localities. We felt a definite need to probe into the attitudes and day-to-day practices of those persons in each agency who are responsible for processing P.C. 1000 divertees. We feel that the statements made by these people in

responsible positions sheds considerable light on the character and conduct of the P.C. 1000 process in Santa Clara County. While a subjective, interview-oriented process evaluation can never be a substitute for the depth and comprehensiveness of a rigorous, quantitative examination of the outcomes of the process, the evaluation team felt that such technical documents often miss the human factor which seems so influential in P.C. 1000. We might have emulated earlier evaluations, but we really did not have the expertise to duplicate their data in this County. Consequently we decided to do a first-rate people-centered evaluation. This was prompted for the most part from conversations with irate, confused, and turned-off divertees who had experienced the P.C. 1000 process in a negative way. All of the "hard data" in the world can be produced to show what a great program P.C. 1000 might be in the State of California, but if the final product feels manipulated and tricked then perhaps a different kind of examination of the process is called for. We hope that we have made a step in the right direction in providing that different viewpoint.

NOTE: The questionnaires used to gather the agency data are included in a separate section entitled: "AGENCY QUESTIONNAIRES" which is located immediately following this section on the CJ Agencies. In some cases it may be necessary to refer to the questionnaires themselves to understand the responses to the questions.

The DISTRICT ATTORNEY

The District Attorney Interview (6/20/74 - 9:30 a.m.)
Results of the District Attorney Questionnaire
Diversion Forms Used by the District Attorney
(Found in Appendices I-III)

Those District Attorneys responsible for conducting P.C. 1000 Diversion were present at the group interview. In many cases the precise author of a given statement cannot be remembered by the writers, but no statement by anyone in the group was ever contradicted by any other member so that it is a safe assumption that the speaker spoke for all the District Attorneys present. At the outset the DAs stressed that from the first months of the diversion law's existence, the Santa Clara County DA's Office has been in full compliance with the intent of the law.

The way a case is recommended for diversion is standardized in the DA's Office. First, one of the deputy DAs fills out an eligibility checklist (See Appendix, P.) in which he is able to check "yes" or "no" immediately on whether the offense charged involved a crime of violence or threatened violence and on whether the offense is one of the statutorily-specified divertible offenses. The DA's Office stressed that they follow the letter of the law in diverting only those offenses listed in the statute, even in cases where they feel the purpose of the statute may not be fulfilled by diverting or failing to divert a particular case.

After the deputy has checked two of the four categories, he refers the checklist to one of the DA's diversion unit members (most of whom were present at this interview). The unit member then runs a C.I.I. record check on possible prior narcotics convictions and prior probation or parole violations. This process takes two to three days, so that the actual eligibility determination is never made until at least several days after the case comes to the attention of the DA's Office. The DAs emphasized over and over again that "if they (the defendants) meet the criteria, they are diverted." The DAs feel an obligation to consent to diversion in every qualified case even if they don't agree that diversion is proper in a given situation. As an example, it was pointed out that he didn't believe possession of heroin should be divertible, but he had consented to diversion in such cases on several occasions, although he had personal reservations about this "full compliance" with P.C. 1000.

When asked for a finer definition of one of the statutory criteria, that there be no evidence of a threat of violence involved in the offense charged, the DAs included such evidence as "physically resisting arrest" and possession of a deadly weapon as being sufficient indices to disqualify a person from diversion. The DAs drew this distinction: if the gun the person possessed was unloaded and in the trunk of the car, i.e. physically removed from the defendant, the offense would be divertible if it met the other three criteria. Whereas if the gun was on the seat of the car next to the defendant, even if he made no effort to pick it up and threaten the police officer with it, such an offense would not be divertible in the DAs' interpretation.

If the person meets all the eligibility requirements, the recommendation is

made that he be diverted and the offer of diversion is made, generally at the time of arraignment. Appendix II shows the specific wording of the DA's notice of concurrence and the manner in which the defendant must formally consent to diversion. This notice of DA's concurrence and defendant's consent is filed with the court (as is Appendix I Referral to the Adult Probation Department) at the arraignment stage, after which the divertee is turned over to the A.P.D. for a determination of whether he is sufficiently motivated to benefit from one of the diversion community programs. The DAs commented that the concurrence sheet is essentially meaningless in light of the recent On Tai Ho decision of the California Supreme Court. But they emphasized that concurrence had never been a problem in Santa Clara County insofar as raising judge-DA conflicts over diversion, since the DA's Office has uniformly concurred in every case that meets the four strict eligibility requirements.

The DAs' collective opinion was that certain offenses should have been included in the law that inexplicably were not: specifically, being drunk in public, driving while intoxicated, cultivation of marijuana plants for personal use, and possession of a hypodermic needle and other paraphernalia. They strongly felt that possession of heroin and possession of chemicals for the manufacture of methamphetamines should be deleted from the list of divertibles.

On the issue of how the DAs charge drug offenses, the DAs informed us that this aspect is discretionary within the DA's Office. Their policy on marijuana possession is to reduce it from felony status to a misdemeanor pursuant to section 17 of the Penal Code only in cases where the quantity seized is less than an ounce, and the quantity appears to be only for personal use. (The DAs defined the current street meaning of "a lid" as equalling 3/4 oz.) Besides the quantity limit, the DAs look at the person's overall record and specifically check to see that the individual has no evidence of sale of narcotics in his background. The DAs stated that they made a charging reduction one time only, and any subsequent drug offense would be charged as a felony not subject to misdemeanor reduction.

In terms of the impact of diversion on the DA's Office's time expenditure and budget, at the municipal court level there has been more paperwork involved and more work at the pre-complaint stage (the record checks, for instance). There have been fewer preliminary hearings though, such as 1538.5 hearings on motions to suppress evidence. At the Superior Court level there has definitely been less work involved since fewer jury trials have been necessary. The District Attorney who is assigned to Superior Court and who has been working with narcotics cases for the last twelve years, commented that in the past two years he can only recall one possession case that went all the way to trial. As far as Superior Court is concerned, however, there may be "some savings but not a substantial savings" in DA time since a DA may have to wait around in the courtroom for an hour or more for his diversion case to come up on calendar, though the actual proceeding may take only 5-10 minutes.

In terms of budgetary allocations, there has been no new hiring in the DA's Office as a result of diversion, and in fact one DA position in Superior Court

has been cut from this year's budget. The DAs felt they needed funding for a clerk's position to process the increased paperwork involved in diversion filings. All the diversion unit members (who number six) are senior staff DAs who were simply shifted from other positions in the department at the inception of the law.

We asked about the procedure involved in the DA's Office re-entrance into the diversion process after a defendant has been terminated for failure to cooperate in a treatment program. The DAs responded that any DA could take over the prosecution by checking on the records maintained on the case from the time of the diversion offer. The same DA who reviewed the defendant's record at the initial stage does not necessarily pick up the case again post-termination. The DAs commented that any defendant who wanted to contest his termination should be able to do so only after being convicted; the termination issue would then be an issue on appeal. They cited the Sledge decision as authority for this position that no pre-trial writ of mandate would be allowed in contesting termination.

In soliciting opinions of the DAs on various aspects of the statute, several criticisms of the law came to light:

1. The diversion programs mix the innocent and the "hardened criminals" together in the same programs. There is no way for the DA's Office to use its discretion to weed out the "criminal types" since there is not enough leeway written into the eligibility criteria. The DA's "job is consistency" in applying the law and that is how they have applied it, albeit reluctantly in several possession cases where more serious drugs are involved.
2. Multiple diversions are occurring more often now in Santa Clara County since a person technically could meet the eligibility requirements two times and thus be diverted twice. This loophole would be closed in any subsequent diversion legislation.
3. The DA repeated his reservations about the utility of the treatment programs themselves, and other DAs seemed to concur with him. To his knowledge, none of the programs are effective in discouraging drug abuse. In essence, he sees the legislators as having "put the cart before the horse" in that no treatment exists for drug abuse, yet the whole point of the diversion law is to promote rehabilitation and treatment, a goal which the legislators saw the criminal justice system as having failed to accomplish. Various comments of the DAs on the treatment programs were:

--- "What do they teach?"

--- "If you're going to have treatment, you need more monitoring of the programs." The District Attorney mentioned at this point one particular instance where a diversion program was providing information divertees which the DA did not feel

was appropriate to a diversion program. Through the DA's action, referrals to this program ceased and the program was discontinued. This occurred in the absence of any hearing.

--- "The programs or the County should be measuring recidivism rates - are these people who complete the programs simply getting re-arrested later on, or have the programs had any success in breaking the 'criminal lifestyle'?" (It should be noted here that our evaluation effort was criticized by several of the DAs at the conclusion of our interview with them on the grounds that we were not intending to include a study of possible recidivism among divertees of the first year of the program. Without this aspect to our evaluation, the DAs felt, our effort was merely duplicating the statewide study of the statute, which the DAs believed was a waste of time and money. We attempted to explain that ours was a county-wide detailed evaluation for use mainly within the County, but apparently we had little success in convincing the DAs of the value of such an evaluation.)

The DA did acknowledge that by fostering such a variety of community-based programs, the diversion law might itself come up with a worthwhile treatment program that can show concrete results in terms of breaking the pattern of continued or escalating drug use. But too often, he said, diversion operates as "a coverup for a problem," the problem being one of drug abuse among the middle and upper class young. Diversion simply offers these offenders an easy out for first offenses, with no guarantee that subsequent drug abuse and criminal activity won't continue.

4. The DAs took a strong position against record sealing or expungement upon successful completion of diversion. They stated that "diversion is a big enough benefit as it is" without adding complete expungement of record to the concept. When queried about whether the purpose of the law is fulfilled without complete expungement (to protect first-time offenders from the stigma of arrest and conviction), the DAs stated emphatically that no potential employers have access to C.I.I. to check on a person's record; C.I.I. is only available to law enforcement agencies in the state and county governmental units. This view of the availability of C.I.I. information to the public is in direct contradiction to the information we have received from various probation officers who have called for complete record expungement. In addition, as various Public Defenders have pointed out in our survey of that agency, it is the arrest record that harms a person more than the fact of having been convicted, because many employment applications simply ask the question: "Have you ever been arrested for a criminal offense? Please explain." Thus, any divertree would have to admit to the arrest having taken place, so that being saved from admitting a conviction is of less value than one might expect from initial review of the statute.

On the whole, for all their criticisms of the diversion law, the DAs would not come out and say they would prefer that the statute expire on December 31.

The DAs did leave us with the impression that diversion is a very good deal for most defendants, perhaps a better deal than they would prefer to see happen. The DAs left no doubt that they regard most drug offenders as basically criminals, and they would undoubtedly prefer that a punitive-correctional approach be used in dealing with what they see as criminal, antisocial activity.

RESULTS OF DA'S OFFICE

QUESTIONNAIRE

This report is based on responses received from six out of the seven District Attorneys who are responsible for diversion and its implementation in the DA's Office. While it is quite probable that other attorneys on the District Attorney's Office staff handle diversion cases, it was maintained that the only attorneys who "knew about diversion" were those actually in the diversion unit. All of the DAs who responded agreed on the mechanics of diversion and gave almost identical responses as to how the law is administered in their office. It is therefore the opinion-soliciting questions that deserve more attention for the purposes of this evaluation. To gain a fair perspective of the DAs' collective view of diversion, it might be best to allow the agency's attitude to come through in the statements of its responding staff:

Question: What conflicts are there (if any) with regard to a defendant's eligibility for diversion between the bench and the District Attorney's Office?

Answers: "None, except in the few instances where the bench has attempted to violate the law and divert peddlers or others ineligible for diversion under P.C. 1000."

"In as much as the District Attorney consents in all cases where defendant is eligible, no conflict except where bench attempts to circumvent the law by diverting ineligible defendants. These few occasions have normally been resolved by a voluntary sua sponte order by the court setting aside diversion proceedings."

Question: What contacts, both routine and unscheduled, does the District Attorney's Office have with the deputies in the Adult Probation Department's Drug Diversion Unit?

Answers: "None . . . functions are entirely different and separate. The DA's function is legal and evidentiary. The Adult Probation Dept.'s function is discretionary as to whether defendant would benefit from programs available to diversion."

"The Adult Probation Department will contact this office if they have a particular problem regarding diversion. We often meet informally in court."

Question: What are the goals of P.C. 1000 in your opinion as it currently operates in this County? Please list them (if there are more than one) in decreasing order of importance.

Answers: "The function of the DA is to effectively comply with the letter and spirit of P.C. 1000. The legislature passed P.C. 1000 and is responsible for its goals. Some believe the goals are to divert users of drugs and narcotics from the criminal system and

to treat their narcotic and drug abuse problems as medical problems. Others feel P.C. 1000 has for practical purposes abolished virtually all narcotics laws in California and the ability to enforce them. Others feel P.C. 1000 was passed by the legislature when it became apparent that the children of middle and upper social classes began to be arrested for narcotics violations."

"The goal should be to motivate drug abusers to change life style insofar as drugs are concerned. The goal of the District Attorney is to conform fully to the requirements of P.C. 1000 and applicable case law."

"Goals are those expressed by legislature at time of enactment of diversion program." This is a "legislative matter."

"I view my position as enforcing P.C. 1000. I do not have enough information to make a value judgment as to the goals of P.C. 1000 or whether or not those goals are being met."

"This question is more appropriately directed to the legislature."

"No opinion."

Question: Does diversion promote more respect for the legal system than the trial-conviction-suspended sentence or fine alternative in cases involving first-time offenders?

Answers: "Yes, among people who are involved in narcotics use and traffic and believe narcotics laws should be abolished. No, among people who note the dismal failure after the expenditure of over \$1,000,000 in diversion type programs in New York state which have ultimately resulted in a totally out-of-control narcotics situation where a major percentage of one generation of Americans has become permanently hooked on hard narcotics."

"The ostensible purpose of the criminal justice system is deterrence, punishment, and rehabilitation. Respect for a legal system shows only as it fulfills its purpose. There is nothing I am aware of that diversion does to create "respect" that cannot be accomplished by similar programs within the criminal justice system."

"I do not think so."

"I do not have enough information to answer this question."
(Note: this response came from an individual who stated earlier in the questionnaire that he had handled 620 diversion cases in 1973, and 120 to date in 1974.)

"I feel only a diverteer can answer this question."

"No opinion."

Question: If diversion were to remain an alternative in drug offense cases, what changes would you recommend in it? What additional topics should have been covered in this questionnaire?

Answers: "Diversion should be eliminated for hard narcotics. It is questionable if anyone ever overcame a hard narcotic habit through a diversion program. It might continue for Marijuana and most dangerous drugs provided a small quantity indicating use only was the criterion for eligibility."

"Programs should be made to prove their effectiveness by hard statistics. Programs which teach people to evade arrest rather than cease the use of drugs do not fulfill the purpose of the program, but merely skew the statistics by reducing the number of arrests and cast doubt on the validity of the statistics generated during the past year and one-half of the program insofar as they are based on arrest data. I am not aware of any effective program which deters the use of marijuana and dangerous drugs by abusers. Changes in the law have already been recommended to the Attorney General and the State Dept. of Health and are being incorporated in pending legislation."

"No changes."

"Only the present changes recommended to the legislature regarding the types of offenses to be included in P.C. 1000."

"Any proposed changes are a matter for the State Legislature."

DRUG AND NARCOTICS DIVERSION CHECK LIST

D.A. File No. _____

Defendant _____ Charge(s) _____

I, have reviewed the appropriate records and have determined:

- (1) Does the defendant have a prior conviction for any offense involving narcotics or restricted dangerous drugs? Yes Attorney _____ No Date _____
- (2) Did the offense charged involve a crime of violence or threatened violence? Yes Attorney _____ No Date _____
- (3) Is there evidence of a violation relating to narcotics or restricted dangerous drugs other than Sections 11500, 11530, 11555, 11556, 11910, 11990, 11350, 11357, 11364, 11365, 11377, 11383 of the Health and Safety Code? Yes Attorney _____ No Date _____
- (4) Does the defendant have a record of probation or parole violations? Yes Attorney _____ No Date _____

The defendant is is not eligible for referral to a diversion program.

Deputy District Attorney

Date

Remarks:

Deputy District Attorney

Date

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 vs. Plaintiff,)
)
 Defendant.)

COURT CASE NO. _____
 NOTICE OF CONCURRENCE FOR
 DIVERSION PURSUANT TO CHAPTER
 2.5 OF THE PENAL CODE
 CONSENT AND WAIVER OF TIME

TO THE DEFENDANT AND HIS ATTORNEY:

NOTICE OF CONCURRENCE FOR DIVERSION

The District Attorney hereby notifies you and each of you that he concurs, in the event that the court determines that the defendant be diverted and referred for education, treatment or rehabilitation as provided under Section 1000.2 of the Penal Code; unless there is no program for education, treatment or rehabilitation which the court finds would benefit the defendant.

Consent by the District Attorney is entered solely for the purpose of permitting the court to exercise its discretion, after consideration of the Adult Probation Department's report, to determine if the defendant should be diverted and referred for education, treatment or rehabilitation. Said consent is not intended to be considered by the court as a recommendation that this defendant be diverted.

Said notice is limited to and relates only to counts of Complaint No. _____ now on file in the above court alleging violation(s) of Section(s) _____ of the California Health and Safety Code by the defendant.

LOUIS P. BERGNA, District Attorney
County of Santa Clara
State of California

By: _____
Deputy District Attorney Date

CONSENT AND WAIVER OF TIME

I do consent to further proceedings under Section 1000.2 of the Penal Code, and _____ waive my right to a speedy public trial, which I understand to do/do not be within sixty days of the filing of an Information or Indictment in Superior Court or, on a misdemeanor offense within thirty days of arraignment if in custody or within forty-five days of arraignment if out of custody.

I understand that the period during which further criminal proceedings against me may be diverted shall be no less than six months nor longer than two years, and that in the event I am arrested and convicted of any criminal offense during the period of diversion, or in the event that I do not perform successfully in the education or treatment program during the period of diversion, then the case for which I have been diverted shall be referred to the court for arraignment and disposition as if I had not been diverted.

Executed this _____ day of _____, 19____.

3302

Signature of Defendant

CJIC NO. _____
D.A. File No. _____

IN THE MUNICIPAL COURT FOR THE _____ JUDICIAL DISTRICT

COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff,)
vs)
Defendant.)

COURT CASE NO. _____

NOTICE OF ELIGIBILITY FOR
REFERRAL PURSUANT TO CHAPTER
2.5 OF THE PENAL CODE

REFERRAL TO ADULT
PROBATION DEPARTMENT

ACKNOWLEDGMENT AND WAIVER OF TIME

TO THE DEFENDANT AND HIS ATTORNEY:

NOTICE OF ELIGIBILITY FOR REFERRAL

The District Attorney hereby notifies you and each of you that he has reviewed his files and official records of the Department of Justice of the State of California and is satisfied that the defendant is a person who meets the requirements of paragraphs (1) through (4) of Section 1000(a) of the Penal Code of the State of California.

Said notice is limited to and relates only to counts of Complaint No. _____ now on file in the above court alleging violation(s) of Section(s) _____ of the California Health and Safety Code by the defendant.

REFERRAL FOR NARCOTIC OR DRUG DIVERSION

The above-named defendant is hereby referred to the Adult Probation Department of the County of Santa Clara for report, recommendation, and court hearing as to the suitability of the defendant for diversion to a narcotic or drug education, treatment, or rehabilitation program.

LOUIS P. BERGNA, District Attorney
County of Santa Clara
State of California

By: _____ Date _____
Deputy District Attorney

ACKNOWLEDGMENT AND WAIVER OF TIME

I have this date been personally served with the above notice. I do consent to referral under Section 1000.1(a) of the Penal Code, and _____ waive my right to a speedy public trial, which I understand to be within sixty days of the filing of an Information or Indictment in Superior Court or, on a misdemeanor offense within thirty days of arraignment if in custody or within forty-five days of arraignment if out of custody.

Executed this _____ day of _____, 19____.

SIGNATURE OF DEFENDANT

SIGNATURE OF DEFENDANT'S ATTORNEY

CJIC NO. _____
D.A. File No. _____

3301

INTERVIEW WITH THE SANTA CLARA COUNTY

PUBLIC DEFENDER'S OFFICE, JUNE 20, 1974 4-5:30 p.m.

THE PUBLIC DEFENDER

Public Defender Interview
Interview with Public Defender Staff Member
Results of the Public Defender's Questionnaire

The Public Defender's Office has established no guidelines for the handling of diversion cases. Each attorney in that office is allowed to handle the case as best he sees fit: he and the client actually make the choice of whether or not to accept diversion if and when it is offered. The Public Defender's Office does not have the resources necessary to conduct an independent investigation into the client's background to determine if the client is eligible for diversion; instead, the attorneys must rely on what they are told by the clients themselves.

Currently, the Public Defender thought that the most common practice among the attorneys comprising the staff of the Public Defender's Office was to recommend that a client choose diversion whenever a guilty plea appeared in the ordinary alternative. Conversely, if a "not guilty" plea appears correct, then the Public Defender does not recommend diversion, and the case goes to trial. Since the overall concern of the defense attorney throughout this process is to get the best settlement that is possible for his client, the choice of taking the case to trial is a difficult one, for once a 1538.5 motion has been made (this is apparently one of the most common motions in drug cases), the District Attorney's Office will not offer diversion to the client.

The Public Defender's Office has not set up a diversion unit to parallel the unit in the District Attorney's Office for the simple reason that they could not afford it, while the D.A.'s Office was able to afford it. In addition, the D.A.'s Office has a larger staff than does the Public Defenders', the ratio being about two District Attorneys to one Public Defender, while the ratio of cases is about four cases for the D.A.'s Office to three cases in the Public Defender's. The Public Defender's Office has not been able to get additional funds to expand its services.

The cost of diversion to the Public Defender's Office must, as we have found in other cases, be dealt with in terms of qualitative statements, and not in terms of quantitative data. However, here are some indications of what diversion has done to the Public Defender's budget.

- a. The caseload of the Public Defender in Municipal Court has increased, due to the increased number of misdemeanor filings.
- b. From the standpoint of attorney time per case, there does not appear to have been any savings generated by diversion. The amount of time involved in interviewing the client who is eligible for diversion is no different than the amount involved in the ordinary pre-diversion drug case. The amount of court time involved in a diversion case is the same as for the cases where the client would have been advised to plead guilty.

In the opposite situation, where the client has been advised not to plead guilty, the case must go to trial in the regular manner so that there is no savings here as a result of diversion.

- c. All of the above does not rule out the possibility of savings in terms of trial time and expense at the Superior Court level. Three members of the Public Defender's staff have been switched from Superior Court trails to Municipal Court, which indicates that although there might be some savings for the court, there are none for the Public Defender's Office, if we assume that the same number of attorneys receiving the same salaries as they did before are still devoting the same amount of time to their clients (or to a larger number of clients.)
- d. The ultimate conclusion reached by the Public Defender were no theoretical savings from diversion.
- e. It was suggested that diversion had generated a shift in police attitudes which might account for an increased workload for the Public Defender's Office: before diversion, many police officers were hesitant to bust people with small quantities of marijuana. The practice of many officers was to deal with the situation in the field by confiscating the contraband and giving the parties involved a lecture. Now, with the alternative of diversion, it was thought that this procedure was less common, since it is now possible to do essentially the same thing (i.e., reprimand without accompanying the reprimand with a truly criminal sanction through the system.

Here are some figures from the Public Defender's Office; that office first became involved with diversion cases in May of 1973:

Month	Total Cases Settled Without Trial *	Diverted	Percentage of Total**
May, 1973	586	16	2.73
June	523	33	6.31
July	579	26	4.50
Aug.	677	95	14.03
Sept.	511	33	6.45
Oct.	650	46	7.08
Nov.	562	26	4.63
Dec.	501	24	4.79
Jan., 1974	808	35	4.33
Feb.	645	37	5.74
March	634	35	5.55
April	770	31	7.38
TOTAL	8205	483	6.01

*Includes both felonies and misdemeanors
 **Accurate to .01. (nearest hundredth)

In fiscal 1973, there were 149 jury trials on misdemeanor cases.

To date in fiscal 1974, there have been 133 jury trials on misdemeanors to date. Extrapolating that figure to cover the entire twelve-month period, there would be a total of 145 jury trials for the period ending June 30, 1974. (There is no consideration in this estimate of variations in the number of jury trials by month). This would indicate a reduction of 4 trials (3% of the caseload in jury trials has been reduced).

In the same period, the misdemeanor intake for the Public Defender's Office is as follows:

7005 Misdemeanor defendants in 1972-73

7809 Misdemeanor defendants in the first eleven months of 1973-74.

(Breakdown of the above figure by month shows:)

July 1973	= 605
Aug	= 549
Sept.	= 541
Oct.	= 637
Nov.	= 715
Dec.	= 672
Jan. 1974	= 949
Feb.	= 662
Mar.	= 813
April	= 909
May	= 757

As of the first of June 1974, the misdemeanor intake, according to the above figures, was already up 10% over the preceding year; by extrapolating again, we can estimate roughly that the total intake will be up 20% over the preceding year. Therefore, diversion may have had an impact in reducing the number of jury trials (which would mean a reduction in court time) due to the fact that there is a decrease in the number of jury trials and not a corresponding rise.

On the Superior Court level, it was indicated that very little diversion took place. The figures indicating the number of defendants who were diverted after the preliminary examination in the Municipal Court show the following:

Calendar 1974

May = 2 diverted at preliminary hearing
 April = 0
 March = 0
 Feb. = 0
 Jan. = 2

Calendar 1973

Dec. = 1
 Nov. = 1
 Oct. = 4
 Sept. = 3
 Aug. = 2
 July = 8
 June = 3
 May = 1

(the only month for which we have figures on the total number of preliminary hearings is May of 1974, in which there were 144 prelims.)

There has been a 19% decrease overall in felonies in fiscal 1973-74, but it was the opinion of both the Public Defender's Office and his assistant, that this was not an indication of a declining overall crime rate, but rather of a shift in the District Attorney's attitudes insofar as filing is concerned which may have been generated by diversion. Police practices in the same period may have also changed, as there is an overall total increase in felonies and misdemeanors.

The question of increased services in the Public Defender's Office is not a new one, and the Public Defender had very definitive opinions on this topic. In 1969, the Public Defender's Office instituted a program of increased social services under the auspices of an LEAA grant; this program operated for approximately one year, and the evaluation is attached to this report. The experience of the Public Defender's Office with the program was quite favorable, and there is a strong desire currently in that office to start up a new program comparable to it.

Insofar as diversion is concerned, it was the position of the Public Defender that this type of service capability within the Public Defender's Office would be beneficial in two ways: first, the Public Defender has the early contact with the defendant and the concern for him that would allow such a program to give the defendant the most help. The American Bar Association is of the opinion that this is the sort of function for which the Public Defender's Office is tailor-made. Secondly, where the defendant does not meet statutory criteria of the diversion law, he still might be diverted, if there were an opportunity to perform a search of available services and place him before trial. In cases handled by private attorneys where the defendant is possible in need of psychiatric care or non-penal treatment of a problem, the defense attorney often gets the defendant into a counseling program or to a psychiatrist before he appears in the court for sentencing, and this indication of the defendant's cooperation and intent to reform often results in a reduced sentence.

This counseling service would not be a function of the attorneys in the Public Defender's Office. Instead, social workers would be added to the staff to deal with the cases that would benefit from the services. Yet another benefit of this type of service would be that the social worker would provide the continuity that is often not available to clients of the Public Defender's Office, as the attorneys often change assignments and cannot follow a case through from start to finish; we would hypothesize that this continuity might lead to a reduction of attorney time devoted to client interviews and familiarization with a case.

The District Attorney's Office has not been in favor of the addition of services to the Public Defender's Office, and has argued to the Board of Supervisors that this would be a usurpation of the functions of the Probation Department. However, the Public Defender's Office counters this argument by indicating that there is a basic conflict within the Probation Department's role that limits its service to its clients; at the same time, it has a responsibility to society as a whole. There are also time problems in the Probation

Department, especially in terms of the amount of time that the Probation Department has available to them between conviction of the defendant and the presentation of their investigative report. Referring back to the points made earlier by the American Bar Association, we can see that these conflicts would not exist in the Public Defender's Office.

INTERVIEW WITH STAFF OF THE SANTA CLARA COUNTY PUBLIC DEFENDER'S OFFICE

Tuesday, June 11, 1974, 9a.m.

The PD's staff provided a generally positive view of the diversion law from the standpoint of a defense attorney attempting to secure the best possible deal for his client. His strongest criticism of the law is that a defense counsel cannot first attempt to make a 1538.5 motion to suppress evidence, lose on that motion, and then go on to opt for diversion with the assent of his client. Instead, the client must choose diversion at a relatively early stage in the proceedings against him, namely, the pre-trial conference. Staff indicated that it is usually at this pre-trial conference stage that the diversion offer is first made to the defendant by the District Attorney.

Staff saw their role as Public Defender as one of explaining and clarifying the ramifications of accepting diversion to the client and then allowing the client to decide for himself whether diversion will dispose of the case. Mueller does not detail the risks of going on to trial to clients unless a particular client asks for such information. Staff did indicate that judges and juries locally are not well disposed to convict many individuals for mere possession of marijuana, even in some cases where the evidence against the defendant seems overwhelming. However, the PD does not, in light of this knowledge, counsel clients against the diversion route, since in his words, it is "hard to pass up diversion" which is a certain non-conviction, whereas a trial result could go either way. The PD did point out that while the diversion offer is usually made at pre-trial stage, there is nothing in the law that requires an offer and acceptance by the divertee at such an early stage. Nothing in P.C. 1000 precludes diversion from occurring as late as the sentencing stage, although this is not the way the law has been implemented. Usually the DA makes his offer once and says that he will not make it again, and it is up to the defendant to make his decision early in the proceedings.

Staff did not have any statistics on what percentage of the total caseload of the Public Defender's Office were diversion cases, nor did he have information on the average cost to the Public Defender's Office to defend a diversion case. He did believe that P.C. 1000 has reduced court costs and time on court calendars, and thought the cost of defending a diversion case would be less than going to trial since with diversion a Public Defender essentially makes one or two appearances on behalf of a client - at arraignment and at pre-trial conference. The PD recommended that we get any statistical information we need from CJIC since records on that matter are not maintained at the Public Defender's Office.

Staff's opinion on the general purpose of P.C. 1000 is that from the D.A.'s point of view, the purpose of the law is to clear court calendars, while from defense attorneys' viewpoint, the aim is to relieve first-time offenders from the stigma of criminal conviction. Staff was not aware that a defendant who successfully completes a diversion program still has a C.I.I. record

stating "Completed diversion under P.C. 1000". Upon learning of the existence of this record, he recommended complete expungement of any reference to the defendant's having completed diversion in order to fulfill the main purpose of the law as he sees it.

Once the P.D. has reached a diversion agreement on behalf of a client at the pre-trial conference, the P.D. effectively bows out of the proceedings. Staff was not at all familiar with the rehabilitative aspects of diversion though he was aware that some diversion treatment programs provide job training and counseling or training for high school equivalency tests (G.E.D.), both of which he strongly approved. Specifically, Staff had some knowledge of Project Intercept and seemed to think it a worthwhile program. The PD's Staff mentioned that the Chief Public Defender has a great interest in expanding the rehabilitative facilities within the P.D.'s Office, and probably has greater knowledge of the content and structure of various diversion treatment programs.

With regard to the roles played by other agencies involved in the diversion process, Staff commented that the D.A.'s Office has been "very good about complying with the mandate of the diversion law". On the whole, Staff believes, both judges and D.A.s have become more lenient regarding first-time drug offenders as a direct outgrowth of the existence of the diversion law. In Staff's observation, the D.A.'s Office almost always treats possession of marijuana as a misdemeanor rather than a felony. From the standpoint of the defense attorney, diversion is a benefit too in that a defendant once arrested and diverted technically has not been convicted. Thus, on a "second offense" of the same type (drug-related), the defendant is not subject to the more severe penalties ordinarily meted out to, for instance, second offense marijuana users. The second offender may not be eligible again for the diversion route, but his possible conviction would still be his first one, leaving him subject to the same lighter penalties he would have suffered the first time around had he not opted for diversion.

Staff favored expanding the categories of divertible offenses to include those basically equivalent to the new listed offenses. He had not been aware that the offense "Possession of chemicals for the manufacture of methamphetamine" was now included in the divertible list, and had not run across any actual cases in which a defendant was diverted for that offense. He favored deleting 11383 from inclusion as a divertible category.

On the issue of possible termination of a client's diversion through subsequent arrest or failure to cooperate, Staff favored limiting termination only to cases of subsequent drug-related arrests. As mentioned, the defense attorney's advocacy for his client ceases when the client agrees to diversion and is turned over to the probation department for investigation into his background. It is usually only for reasons of lack of motivation or failure to cooperate leading to termination that the P.D. ever has any further contact with the defendant at the post-termination stage. At that point the P.D.

prepares the case for trial as if the defendant never had gone through an aborted attempt at diversion, The P.D.'s Staff has encountered very few instances of clients' termination after once agreeing to diversion.

In summary, Staff recommends a continuation of the diversion statute with some major modifications:

- a) Defendant should be allowed to contest an illegal search and seizure before being forced to opt for diversion.
- b) Defendant's records should be totally expunged upon successful completion of diversion.
- c) Termination of diversion should occur only upon arrest for a second drug-related offense.

While he does not profess to have concrete knowledge of the value of any of the existing treatment programs, Staff definitely favored a treatment-rehabilitative approach to the problem of drug abuse over a punitive-correctional one. This to him is one of the main benefits of P.C. 1000, at least until the time has come politically for decriminalizing some drug possession offenses.

RESULTS OF THE PUBLIC

DEFENDER'S OFFICE

QUESTIONNAIRE

These responses represent the views of approximately a dozen PDs out of the total number of 35 attorneys surveyed. We selected both the most thought-provoking responses and the ones of PDs who had handled the greatest number of diversion cases since the inception of the law. All of the quoted responses are those of individuals who have handled at least 50 diversion cases in either 1973 or 1974 to date.

Some questions on the survey received almost identical responses, and these answers have not been quoted here. For instance, all attorneys gave an estimate of 90-95% to the query: "How many clients of those you have handled have opted for diversion?" The universal reasons for clients otherwise eligible for diversion choosing not to be diverted were: desire to relocate to another area, and reluctance to be tied down to a program for as long as two years or as little as six months.

Some of the more interesting opinions solicited were:

Question: To what extent have you been informed about the programs to which your clients have been diverted? Please list all the programs that you know about.

Answers: "Not at all."

"Very little information."

"None."

"We usually find out what happened on the program if client fails on it and is brought back into the penal system."

"Very little."

"None - I refer to A.P.D. and let them handle it."

"None."

"I have had very little information regarding what the procedures and programs in diversion are."

"Talked with the head of one of the diversion programs about what is available."

"I am generally not informed, unless my client has been referred to a program prior to his diversion hearing."

"No formal information given - I only hear from clients." (This response was from a Legal Aide in the Public Defender's Office)

Question: Does a Public Defender need any special knowledge concerning the problems related to drug use/abuse to deal with defendants who are divertible? Would such information aid in the disposition of diversion cases?

Answers: "I really don't think so, though I think I do have that special knowledge referred to based on my experience here."

"Yes. This knowledge is necessary in all public defender attorneys handling criminal cases. The question of recidivism for the client and the proposed disposition should always be kept in mind."

"No." "No."

"I think we tend to view the program as a defense tool to shield the client from punishment. We should have more information as to the positive aspects of the program. The information would aid in the disposition if the program would assure the DA that the defendant would not engage in activity again."

"Not in my opinion." "Perhaps."

"I don't think so. I am not interested in solving drug problems; I am interested in minimizing legal problems." The information would aid in the disposition "in some cases, when the question of suitability arises. But it never has in any of my cases if defendant meets minimum requirements and is willing."

"Yes - probably would help. More important would be for the Probation Department to begin to demonstrate some understanding of the program."

"Yes, especially re addictive drugs, particularly problems of withdrawal, mental state at that time, typical causes, etc."

"It doesn't seem so. Our clients are almost all interested in the best disposition of their case, as opposed to drug education. But for those that are, the probation dept. representative is better equipped to explain the programs offered."

"Yes." "Yes."

"Generally, no. This is because, in my experience, whether or not a client is diverted does not depend on the nature or extent of his drug usage." The information would aid in the disposition

"possibly, but such information may be only academic. Judges usually decide on client's "motivation" or "attitude"."

"At this time we have no involvement in which program the defendant goes into; as a result, "special knowledge" does not seem necessary. It would be if we had a hand in the diversion itself." (This response was from a Legal Aide).

Question: Does diversion generate any savings:

- a. For the Public Defender's Office?
- b. In terms of court costs (as opposed to court time)?

Answers: a "Yes: saves time and therefore money by eliminating motions, trials, etc. - also saves time in terms of client contact in that I always advise clients to take diversion rather than litigating search and seizure and/or guilt."

b "I'm sure it does though I can't conceive of court costs in any other way than as a function of court time and volume."

a "Some savings because case is taken out of the courtroom"

b "If the candidate completes the diversion program, savings in court costs would be considerable. Overall, savings should be substantial."

a "Yes - 19% fewer felonies failed."

b "I don't know."

a "Less investigation, legal research, and court time is needed on a diversion case."

a "Yes, saves numerous court appearances and time preparing motions and trials."

b "Yes."

a "Yes because small marijuana amounts are more likely to go to trial."

a "Those expenses involved in handling a case through jury trial (more cases for attorney and investigator, telephone expenses, witness expenses, lie detector tests, costs of experts for trial, etc.)"

Smaller and shorter cases means new attorneys don't have to be hired."

b"Drug cases often involve more than one client. Thus they could lead to "conflict" attorneys being appointed if there was no diversion. Costs of jurors when a trial is necessary. Cost of interpreter because usually the regular court interpreter can't take her full day with a trial. Traveling costs of prosecution witnesses for trial sometimes have to be paid."

a and b "Yes, less work in areas of 1538.5s and jury trials."

a "Yes - procedure for diversion generally more routine and requires less specialized action. For example, motion to suppress usually won't be calendared if Defendant is to be diverted."

Question: What is your understanding of the judges' role in the diversion process? Do judges appear to have a knowledge of the programs to which they assign divertees?

Answers: "I don't think they do."

"Judges' role is to stop people from further involvement with drugs and drug violations by diverting into various programs."

"No they don't appear to have knowledge of the programs."

"No. Judge should take active role re eligibility."

"I have no personal knowledge of this area."

"Judge is final arbiter of client's divertibility; some do, some don't."

"Yes."

"Pass final judgement on eligibility. No."

"It appears as a rubber stamp of APO recommendations; I doubt that the court has any knowledge as to particular programs."

"To make the final decision as to whether all the statutory qualifications for diversion are met and find out whether the person wishes to enter the program."

"...They don't have much knowledge of programs."

"I don't know how much judges know about the programs, because the nature of the programs or nature of client's drug problem is rarely the determining factor according to judges."

Question: Does diversion serve the ends of justice?

- One of the goals of the diversion concept was to keep first-time drug offenders from getting a criminal record. However, the defendant who successfully completes diversion still has a record stating that he has been diverted. Does this work against defendants? Could it work against them in the future?
- Should there be automatic expungement of all records of a defendant's completion of diversion and, if so, when?
- By opting for diversion, the defense is precluded from such techniques as a 1538.5 motion. Does this allow the District Attorney to use diversion as a "dumping ground" for the cases which might not succeed at trial?

Answers:

a.	b.	c.
Yes - until we get a really effective law expunging and sealing arrest records this will be so.	Immediately.	Not really - the defendant is no better off for having a rap sheet which reflects a diversion dismissal, than he is for having a rap sheet which reflects a dismissal or acquittal for any other reason.
Yes - an arrest is equivalent to a conviction as far as many people are concerned. If the record is available to employers, credit inquiries into it will probably be held against defendant.	Yes - upon completion of diversion program. Yes, on completion of program	Yes!!!! DA policy is to deny diversion if you seek and lose 1538.5 motion. This is probably true but since defendant is not exposed to possible jail even in the case of a "shaky" case it is a plus for defendant if the record could be expunged.
I think the record clearance is farcical.	Yes	Yes
Yes.	Yes - upon successful completion of the diversion program	This is still an issue in the appellate courts. Yes.

<p>Yes, because corporations, credit companies, etc. have some means of access to clients' records. Further, the question often asked relates to <u>arrest</u> rather than conviction. If records were expunged or, at least, arrests "849b-ed", then client need not admit prior arrest.</p>	<p>Yes - at successful termination</p>	<p>To some extent, though not extensively.</p>	<p>Of course it can - this is the whole problem for persons with "records". There is confusion in the public mind about what it means and a tendency to lump arrestees with convicted persons.</p>	<p>Yes-upon successful completion of diversion</p>	<p>Yes - although the net result, as far as a record goes, seems to be the same whether there is a diversion, dismissal, or acquittal.</p>
<p>A drug arrest with a dispositional entry of "diverted" may very well be interpreted as a conviction in many individuals' minds. At completion of the program, the person's record of arrest and diversion should be expunged. Most of our clients need a clear record now when trying to begin their adult life, not in five years after they have failed because "diverted" was misinterpreted by employers and schools.</p>		<p>It certainly does allow the DA's Office to file cases which they might not otherwise file. They know that almost always diversion will be taken rather than risking loss at 1538.5 motions. But even though it could happen, I haven't noticed a change since the diversion program has begun.</p>	<p>"I feel the law is too narrowly drawn in that it excludes exactly those people who could most benefit from the programs. It should allow diversion for persons with no <u>felony</u> convictions for drugs (provided they have not been previously diverted) and include charges of H&S 11358 (cultivation), and should not exclude people with minor probation violations. It seems the law as now constituted is heavily weighted in favor of middle-class kids, i.e. the sons and daughters of the legislators."</p> <p>"Diversion is successful because most of the people diverted, since they are basically first-time offenders, wouldn't re-offend in any event."</p>		
<p>Yes, and here is an area where there really should be expungement of records.</p>	<p>As soon as completion occurs.</p>	<p>Yes. But I don't believe he makes that decision consciously. The procedure at a DA's Office is for the deputy to "issue", then the diversion deputy to OK decision.</p>			
<p>Certainly having "diversion" on your "record" is not desirable, but it is better than a conviction. Many judges (not all) will treat a person on his second arrest (when diverted on first) as a first time offender. Having completed diversion can be a plus factor in future court cases, showing amenability, etc.</p>	<p>Yes, if purpose of Diversion law is to be served. When? At the successful completion of diversion.</p>	<p>Possibly, but DA rarely if ever gets involved in case thoroughly enough at diversion stage to make this a realistic problem.</p>			

THE IMPACT OF P.C. 1000 DIVERSION ON THE FUNCTIONING
OF THE
SAN JOSE MUNICIPAL COURT

The Courts

The Impact of P.C. 1000 Diversion on the functioning
of the San Jose Municipal Court

Results of the Municipal Court Judges' Questionnaire

This portion of the section on the role of Courts in the P.C. 1000 process is a collection of data derived from several sources: interviews, Court records, time spent observing the various court hearings at which the defendant appears to become a divertee. Understanding the P.C. 1000 process as it flows through the San Jose Municipal Court was a not-so-rapid lifting of the veil of darkness. The San Jose-Milpitas Judicial District of this County's Municipal Court system handles over 50% of the total P.C. 1000-eligible cases (1525 throughout the County in 1974) in its eleven active criminal departments.

Our data gathering process for the section on the Courts began in June of 1974, but it was not until early in 1975, that the remaining member of the evaluation team gained a clear understanding of even the mechanics of the Judiciary's portion of the process. The original intention of the evaluation was to gather very sophisticated data about how P.C. 1000 had effected such commonly looked-at variables as the number of trials pre and post P.C. 1000, had Court costs risen or declined, how had the workload shifted in the Court's system, how had the clerks office been affected by the increased paperwork involved in processing a P.C. 1000 cases vs. a Section 17 filing on an H.S. 11357. But we did not know what we were up against. Until one actually sits through all of the various appearances which are a part of being diverted, the task of documenting the process cannot be appreciated. Therefore we have not been able to deliver the data which we originally intended. The ability to do so is present at this point; however, the evaluation has nearly outlived its usefulness and must be released without the originally sought data.

However, if one takes the entire process through the CJ system into account when examining the information presented in this section, certain trends will be noted. The Court is the forum whereby the actors in the process fulfill their various statutory roles. It is, in fact the only point in the process where all agencies interact and have an opportunity to share their perceptions of the process. A consistent thread running through the operation of P.C. 1000 in Santa Clara County is the absence of meaningful communication among the responsible agencies so that commonly-held goals could be set and action initiated to implement them. The Courtroom then is an important focus in the overall process.

Another important factor to consider when examining the impact of P.C. 1000 on the Municipal Court's operation is that when the system itself is experiencing general confusion due to lack of expertise and wisdom in scheduling the massive flow of cases through all of the departments, it is extremely difficult to sort out the effects of a statute change which effects 3.2% of its operations (there were a record 21,457 filings in San Jose Muni-Court in fiscal 1974 with approximately 700 being under

mantle of P.C. 1000). However, from the data gathered we can piece together a view of how the diversion statute has effected the SJ Court.

First let us briefly review the process. The first document which indicates to the Municipal Court Clerk's office that a case is to be processed as per P.C. 1000 is the notice of eligibility filed by the DA. In 27% of the cases this notice is filed with the accusatory pleading. In such instances the judge is able to direct the defendant to report to the APD for suitability screening at arraignment. The other 73% must wait until the stage of Pre-Trial Conference to be sent to the APD. The variance in time is due to the degree to which the postings of dispositions on the defendant's "rap sheet" are current.

Once eligibility has been determined and the defendant screened for motivation, etc. by the APD, he is scheduled for a Diversion Hearing on the three-way Probation, Sentencing, and Diversion Calendar. Up to this point the defendant had been appearing on the Criminal Calendar. The Diversion Calendar rotates monthly. To this date each of the judges of the San Jose Municipal Court has been exposed to the process on a number of occasions. The paper which the APD files at the Diversion Hearing is known as the Order for Diversion. If the judge approves the APD's recommendation, the defendant still must formally consent to the matter before the case is officially "diverted". If the defendant has not signed a waiver of time by this point, it is now executed.

The Divertee will have to appear at least one more time before the process is completed. Termination hearings are scheduled to resolve either satisfactory or unsatisfactory terminations. At a hearing for premature termination, the APD Officer, Counsel, and the defendant are present. At a satisfactory termination oftentimes only the defendant is present as it only takes a matter of a few minutes and, of course, receives no contest. If a defendant is terminated for non-satisfactory performance, the Clerk's office returns the case to the Pre-Trial stage on the Criminal Calendar.

A As explained above, the Diversion Calendar is part of the larger probation Calendar but is heard separately. There are approximately ten to twenty diversion matters heard each day in the department of the SJ Muni-Court to which diversion cases are assigned that particular month. It is heard each day from 10 a.m. until Noon. Other Probation matters are heard in the space of the two hours, however, the P.C. 1000 related matters are scheduled in an unbroken one hour block sometime during the two hours. Thus in terms of court time, five hours per week is a fair estimate of the impact of diversion on the judiciary. Initially, diversion matters were completed in a single afternoon. The number of cases per month passing through the courts is steadily increasing (see Diversion '74 on p. 203) and the fact that at the outset in April of 1973, the only type of hearing related to diversion being conducted was initial Diversion Hearing can be counted as reasons for the increase in court time that is devoted to processing P.C. 1000 cases. Currently there are many cases in all stages of proceedings. This 'increase' in court time must, of course, be balanced against a decrease in the court time spent in prosecuting those drug offenses which are divertable under P.C. 1000.

A 'between-the-lines' intent of P.C. 1000 was to unclog crowded court dockets by all but eliminating drug possession trials. However, the law was aimed only at the first offender and was not conceived and planned to be systematically compatible with the then current criminal process. Previous to P.C. 1000, the percentage of cases that would have been diverted under P.C. 1000, that actually reached the trial stage, was very small (1%). Most cases, unless challenged with pre-trial motions such as a 1538.5, were resolved by a plea of guilty. The customary penalty for a first offense was in most cases a fine of about \$100 or a six month period of probation or both.

In the "Results of the Judges Questionnaire," it was stated that all the judges felt that there were definite savings of court time since the inception of P.C. 1000. Several judges explained that while a trial can last from two or three hours to two or three days, diversion proceedings are accomplished in a manner of minutes. But if, previous to P.C. 1000, most cases of that nature were resolved without in two court appearances, can we state that court time is being saved. In Santa Clara County diversion had been used as a mechanism for reducing the number of pre-trial motions in drug cases. The defendant was required to choose P.C. 1000 Diversion prior to involving himself in pre-trial motions. If such motion were filed and subsequently not accepted by the court, the defendant was considered not eligible for diversion. However, Morse vs. Municipal Court has allowed the defendant to have considerable pre-trial leeway and still retain eligibility.

The Clerk of the San Jose Municipal Court does not believe that the intent of saving court time has been fulfilled to any great degree. He pointed out during an interview that while there has been a small savings of "bench" time, more out-of-court preparation time is involved for the judges since they must study the APD report for each potential divertee. Therefore, in the rather large flow of cases through the Municipal Court, the impact of the number drug possession trials that were prevented from occurring because of P.C. 1000 is minimal.

The impact in the Clerk's office is that the increased paperwork involved in processing diversion cases and the files that must be maintained for the duration of the diversion period has required the services of one additional full time clerk in the form of two half-time positions.

Therefore, overall workload shift in the courts represent an insignificant change when compared to the total activity of the system. When seen from the perspective of the entire criminal justice, we find that only the Adult Probation Department has experienced a significant impact due to P.C. 1000. In their case the workload was increased.

The impact on the courts has been more significant, though, in other areas. From the point of view of encouraging alternative dispositions in drug-related cases, P.C. 1000 is statute which has created a formal structure for the non-judicial disposition of these offenses. Beyond this, the structure can be used in the future for non-judicial of many offenses other than those originally in P.C. 1000.

RESULTS OF MUNICIPAL COURT JUDGES' QUESTIONNAIRE

This section of the diversion evaluation which concerns itself with the feelings, attitudes, and practices of the bench with regard to P.C. 1000 diversion was originally intended to be a product of both questionnaires and interviews. However, due to the busy schedule of the courts, the data presented herein reflects only that which was obtained on the questionnaire (page 113).

Approximately twenty-two questionnaires were distributed early in July of 1974. At the cut-off date in mid January of 1975, eleven completed questionnaires had been returned. This fifty per cent sample, however, represents a broad spectrum of opinion and practices and should be adequate to portray the manner in which the members of the bench view their role in the diversion process.

In this section we will state the question as phrased on the questionnaire, give a brief summary of the composite result and in some cases give examples of the responses taken directly from questionnaires.

Question 1: The first question is related to the number of diversion cases per month each judge hears on the average. Since the response to this question was very incomplete, no conclusive data could be obtained. The reader is referred to the sections on diversion statistics for 1974, on page 96. Also on page 89 a breakdown for 1973 is given of the percentage of the total P.C. 1000 caseload which is handled by each Municipal Court District. The San Jose-Milpitas Judicial District processes about fifty percent of all P.C. 1000 cases.

Question 2: What knowledge do you have of the programs to which divertees are sent (i.e. their content, method of instruction, goals)?

The responses of the judges indicated only general knowledge at best of diversion programs. Many were quite candid and stated that they had very little knowledge of programs. Some indicated that they were familiar with the APD's Resources Directory. Only one judge indicated that he had visited one of the programs.

Concerning whether or not the programs met their "statutory" goals, the judges stated that they were dependent upon the Probation Department's information that this is in fact the case. Two judges stated that the programs were not meeting their goals.

Sample Responses:

"I do not know; it is a matter which this department leaves up to the Adult Probation Department. It has no way nor time to over-see such programs."

"Only general knowledge through APD's Resources Directory (Since November 1, 1974). No specific knowledge of program intended for a particular divertee."

"Minimal."

"I reviewed all the literature which the Adult Probation Office has on these programs."

"Very little."

"General knowledge."

"Little-not enough."

Question 3: Is the recommendation of the Probation Department concerning the program which best suits the needs of the divertee almost always followed?

The majority of the judges stated that they very nearly always followed the recommendations of the APD. Many judges felt that they could not act in the selection of the particular program but only choose whether to divert or prosecute.

Sample Responses:

"Generally, there are individual exceptions."

"An attorney may convince the Court an alternative program is more suitable and the Court may allow the alternative. This is done on a case to case basis."

"Yes."

"APD selects program, not the Court."

Question 4: Section 1000 (a) of the Penal Code allows diversion to take place any time a case is before the court on an accusatory pleading without indicating the precise moment when it should take place. In your experience when is the offer of diversion usually made?

From the responses of the Judges it is apparent that the offer is in most cases made at the pre-trial conference. This is the stage in the judicial process at the misdemeanor level which follows arraignment. The reason given was that an offer of diversion cannot be made until the DA has completed his screening and has filed the eligibility papers. Normally the case proceeds to the point of pre-trial conference before this occurs. However, about one third of the judges indicated that the offer of diversion under P.C. 1000 is made at the time of arraignment.

Question 5: This question related to the judges' opinion as to whether or not the defendant should be assisted by counsel in making a decision to accept or reject diversion. They were asked to indicate their feelings on a (1) to (7) scale and explain their responses.

The judges were unanimous in feeling that the defendant should have the assistance of counsel. A rating of (1) indicated the strongest feeling for assistance by counsel and went from (2) on to (7) to indicate decreasing support of this practice. There were no responses beyond a (2).

Sample Responses:

"Lawyers in the criminal justice system are generally fully aware of the benefits and urge the program on guilty clients (95% of them)."

"Public Defender is appointed in most cases and helps a defendant. In some cases a defendant has been diverted without counsel."

"Diversion is accomplished on advice of counsel in all cases except where defendants have no attorney, in which case the judge explains the diversion program to the defendant."

"I marked (1) because I won't let a defendant proceed without counsel in a drug case."

Question 6: This question used the same ranking scale as number 5 above to determine the judges' attitude toward whether or not a defendant should be allowed to file a 1538.5 motion to contest an illegal search, prior to accepting diversion. (It must be noted that out of the eleven questionnaires received, about four were completed and returned following the Morse vs. Municipal Court decision of the State Supreme Court.

The response to this question was the point at which the various members of the bench showed the greatest diversity of opinion. Approximately half indicated that a 1538.5 motion was contrary to the intent of P.C. 1000 to divert the defendant out of the CJ system and to save the court's time. About one fourth felt that there is a need to balance between the above mentioned goals and to allow valid 1538.5 motions to be filed. Another one fourth felt that a defendant under consideration for diversion was entitled to all of the constitutional guarantees as other defendants.

Sample Responses:

"(1)-I believe the Court of Appeals has ruled that they have a right to do so without jeopardizing their subsequent decision to accept diversion. My response would be otherwise but for this appellate ruling."

"(7) - Waste of Court's time."

"(2) - A 1538.5 motion tests whether there will be a case against the defendant. He should have this opportunity."

"(7) - Diversion is not part of the criminal justice system. If the defendant elects to proceed within the system, the defendant should be bound by that choice."

"(6) - Purpose of P.C. 1000 law is to rehabilitate defendant and to avoid the criminal justice system. A successful 1538.5 motion does neither."

"(5) - Balancing the right to contest an illegal arrest or search against 'shakey' motions just to see what will happen."

Question 7: Who informs the defendant of the consequences of accepting diversion?

What information does he receive about his record in C.I.I. in Sacramento?

In most cases it is the Court or counsel that informs the judges. However, there were variations as to who had the primary responsibility to inform the defendant.

Concerning information provided to the defendant about his C.I.I. record there was a great variation in opinion expressed by the judges. Some indicated they did not know what information was provided. Others stated that the APD provides C.I.I. information. However two of the judges responding indicated that they explain to the potential divertee that the complaint against him will be dismissed upon successful completion of the required program. It might be noted at this point that there was never any indication given by any members of the criminal justice system who participated in the evaluation that they explain to the defendant that even though his complaint is dismissed upon completion that he still has a record with C.I.I. that states: "Completed Drug Diversion as per P.C. 1000."

Question 8: How does the court use the investigative report prepared by the Probation Department?

The responses of all of the judges demonstrated that they carefully reviewed each case via the APD report. The judges felt that they were responsible to decide, based upon the report, whether or not the defendant is an appropriate candidate for diversion.

Sample Responses:

"Review the report to determine if the recommendation is supported by the investigation report."

"Carefully and in depth."

"In the usual way."

"As a guide in determining whether to grant diversion to an individual defendant."

"Appropriately"

"To decide whether or not to divert. Motivation, performance, recidivism, etc. are potent factors considered."

Question 9: This question related to the issue of termination for "lack of sufficient motivation." The judges indicated that in all cases there is a court hearing prior to termination and that the defendant is represented by counsel. It was also stated that a probation officer is present at the hearing.

Question 10: This question is of limited importance at this time. The question concerned the impact of the ON TAI HO State Supreme Court decision eliminating the DA's veto on diversion once eligibility is established. In the response to this question, all of the judges felt that the decision is adhered to and that prior to it, the issue of DA concurrence had never been a problem in this County.

Question 11: It has been suggested that the records of first time offenders who have successfully completed diversion under P.C. 1000 should be automatically expunged. If you were to comment on this, what would your reaction be?

With two exceptions, the members of the bench felt that the records of divertees should be expunged upon completion of diversion. Only one judge indicated that there should be a one year period before expungement could occur. However, the majority of the judges specifically indicated that while the divertee's record should be expunged, some mechanism should be provided to prevent a defendant from being diverted twice.

Sample Responses:

"There is only an arrest record under diversion proceedings and this should remain to guard against recidivistic tendencies."

"Favorable to expungement when diversion is terminated."

"After dismissal."

"Favorable with a qualification that a person be allowed diversion only once."

"It would be desirable - except that expungement should not be such that if a defendant again is involved in the same type of offense, it should be possible to know that it is not his first offense."

Question 12: In your opinion as a judge, what is the most positive benefit (if any) of diversion?

The following are sample responses which give a balanced picture of the judges who did respond to this question:

"Hopefully the first offender will have learned his lesson without having a criminal record."

"It is a valuable experiment. The benefits (or detriments) will have to be evaluated."

"Education as to the effects of drug abuse and its personal and legal consequences."

"Prevent criminal conviction in victimless crime, and still correct a social evil."

"Victimless criminals are given a chance to re-evaluate questionable values."

"Rehabilitation including the arrest stigma."

"Reduction of drug users."

"Gives the defendant a break and educates him on drug abuse (hopefully)."

"Reduced caseload."

Questions 13, 14, and 15: This series of questions dealt with the issues of court time and court costs. It was asked if the judges felt that the implementation of P.C. 1000 had, in their experience, saved court time. The judges unanimously answered in the affirmative. The reasons given were that diversion takes only a few minutes of actual court time per appearance as opposed to a trial which can last from several hours to four or five days.

Concerning the reduction of court costs, most judges indicated that a saving court time equals a savings of court costs. Our evaluation was very limited in scope concerning the matter of saving court time; however, we have learned that within other areas of the criminal justice system, especially in the Probation Dept., P.C. 1000 has increased the time spent on each case eligible for P.C. 1000. Much of this is in increased paperwork. The San Jose Municipal Court Clerk added one full time clerical position to process P.C. 1000 paperwork. The Adult Probation department obtained funding of about \$100,000 to establish a drug diversion unit to handle their P.C. 1000 caseload.

In view of the Morse vs. Municipal Court decision of December 17, 1974, the intent of P.C. 1000 to save court time has been substantially de-emphasized. We therefore will not proceed with an in-depth discussion of the issue of saving court time except to state that while the judges perceive a savings to them in terms of actual court time, the workload has been redistributed (if not increased) throughout the criminal justice system as a whole.

Question 16: Does diversion as it presently operates, serve the ends of justice? What changes would you as a judge recommend in the diversion process to make it more just?

All Responses:

"Yes."

"Yes, enlarge eligible categories to include cases of 'under the influence of a drug' and 'possession of paraphenalia.'"

"Yes. Question cannot be answered simply."

"Yes, a better diversion statute."

"Yes, no changes recommended at present."

"If one accepts the philosophy that every public offense should not be handled as criminal proceedings (and I do accept this), it does serve the ends of

justice. Perhaps it should be extended to also cover offenses besides drugs. There are perhaps other selected areas where this type of program could be used."

"Yes. Better drug programs for defendants who are diverted. Programs should be reviewed as to content by the District Attorney's Office and the Court and not left up to the sole determination of the Probation Department. There already has been one very poor program used."

"It is serving the ends of justice in my opinion."

"Not known."

"Generally, yes."

"No response."

The evaluation team regrets that it was unable to interview the members of the municipal court bench to obtain a more detailed impression of their attitudes, feelings and practices with respect to P.C. 1000 Diversion. However, the conclusions we have drawn on the basis of the questionnaires are that generally the judges welcome P.C. 1000 as another alternative that is now open to them in the disposition of drug-related offenses. The reduced workload on their part was felt to be a large benefit. However, we feel that overall the judges, like the rest of the members of the criminal justice system, are more concerned with finding a means of dealing with such defendants so that they do not return to the system rather than being concerned about saving court time. As indicated by one judge, the real savings in court time will occur when drug defendants under P.C. 1000 do not become the type of drug offender who returns to the system again and again.

THE ADULT PROBATION DEPARTMENT

The Adult Probation Department Diversion Unit
Drug Diversion Unit Supervisor's Interview
Drug Diversion Unit Staff Member's Interviews
(Five Officers)

Summary of Intake Procedure for Diversion Clients
Adult Probation Department Diversion Report of 1973
Adult Probation Department Diversion Report of 1974
Diversion Information Given to Divertees
Adult Probation Department Diversion Forms

ADULT PROBATION DEPARTMENT DIVERSION UNIT

I. Background

In order to understand the current approach to diversion employed by the Adult Probation Department, it is necessary to understand first what precursors there were to it. Without attempting to set forth a complete and definitive list, two ideas that appear to have been influential should be mentioned.

The first concept for a separate unit within the Probation Department that would deal separately with drug-offense cases appeared in a grant proposal made by the Santa Clara County Adult Probation Department in 1971 to CCCJ. The proposal called for a small unit, made up of three deputy probation officers teamed with three ex-addicts who would work with the drug user who had serious dependency problems. In order to keep such users "on the street" and off drugs, it was proposed that the unit be given sweeping influence over an individual's living situation, his friends, associates and family. To relate the program to other programs in the community, the probation officer-ex-addict team would have also been responsible for liaison with community programs that dealt with the serious problems of drug dependency.

This proposal, which was rejected by CCCJ¹, may or may not have been influenced by the experience of Los Angeles County's Adult Probation Department, which has had a successful (and separate) narcotics unit for some time. While the Los Angeles County unit does not have the same structure as the proposed unit described above, it was and remains a model of the operation of a unit that deals only with drugs that still operates within the probation framework.

In 1973, the passage and speedy implementation of the diversion law required an immediate response from the Adult Probation Department in this County. Since there had not been any real advance warning about the advent of diversion and its real impact on County law enforcement agencies, it was necessary to deal with the first one hundred or so divertees in the first month of operation (January, 1973) within the regular Probation framework. All of the first one hundred were sent to the County's Department of Mental Health class on drug abuse, as this appeared to be in conformance with the statutory goals of education, treatment, and rehabilitation. But the flow of divertees, which was apparently greater than had been anticipated, and the rather unique status of the offender eligible for diversion, suggested that another method of dealing with diversion in the Adult Probation Department would be preferable.

The plan was to create a separate diversion unit within the Investigation Section of the Adult Probation Department; a request for funding was submitted

1. Further information about this proposal can be found in the grant proposal itself, although most of the information about the workings of the proposed unit, from the probation officer who helped write the proposal.

to the County Board of Supervisors toward the end of January, 1973, which was quickly granted, and the unit was set up around February 1st². At about the same time, the Adult Probation Department began to contact community programs that might be interested in accepting divertees into programs designed to meet the statutory goals; ten to fifteen programs submitted plans that were accepted and began receiving divertees.

The programs and the Probation Department appear to have gotten along fairly well for some time, but later in 1973, some problems began to appear. At least one of the programs did not want to continue reporting on the attendance of divertees at its classes, while the teaching materials used by another of the programs met with the objections of the District Attorney's Office. Accordingly, the Adult Probation Department began to monitor the programs for the first time (prior to this time, each of the six officers in the diversion unit served as a liaison with at least four of the programs; this monitoring was an expansion, therefore, of existing duties).

Keeping in mind the basic problem posed to the Probation Department by the unheralded enactment of the diversion law and the requisite need for an immediate response, it is no surprise that the current diversion approach in Santa Clara County appears to have been developed very quickly and without the depth of forethought and planning that precedes so many new projects. It is also not surprising that the Diversion Unit was established and put into almost immediate operation, due to the reliance of the Probation Department upon 1) concepts of approaches to probation problems (i.e., the supervision of drug offenders in a community setting) that had been developed and operated in exemplary probation departments; and 2) the experience of officers in the Diversion Unit with extensive backgrounds both in Probation and in dealing with drug offenders.

II. Structure of the Unit

The Diversion Unit, as was mentioned before, is part of the Investigation Section of the Adult Probation Department. When the Diversion Unit was first established, the chief of the Investigation Section assumed the supervision of the Diversion Unit as well. Since that time, the position of Supervisor of the Diversion Unit has been filled; the Supervisor of the Diversion Unit and the chief of the Investigation Section continue to work together closely.

Insofar as diversion is concerned, the most important joint role of these two administrators would appear to be the selection of diversion programs. Before a divertee is sent to a program, the staff of the program must prepare a resume of the programs staff, activities, and the like (put form in Appendix); they must design a class or program that will fit the diversion framework; they must agree to cooperate with the Adult Probation Department in the supervision of divertees. All of these steps were required of community programs when it became apparent that it would otherwise be possible to have the divergence of opinion that proved so disruptive to the diversion schema in 1973.

2. There was an initial training period, but since all the officers who were assigned to the unit had prior probation experience (all but one were senior officers), this period was not lengthy.

The Unit itself is comprised of the supervisor, five (originally six) probation officers, and one diversion clerk. The supervisor compiles statistics on the programs, reads the monitoring reports prepared by the individual officers on the programs, and performs other supervisory functions.

Before discussing the role of the probation officers in the unit, it should be mentioned that the diversion clerk, in addition to the routine duties required in the office, does perform other clerical functions related to diversion. Diversion, insofar as the Adult Probation Department is concerned, means extra paper work: reports must be prepared and filed with the court; copies must be made available to the District Attorney's Office when they are wanted. The diversion clerk does much of this to free the officers in the Unit. He is also responsible for making appointments between the probation officers and the divertees, and these appointments are legion.

The probation officers who are actually assigned to the cases comprise the bulk of the unit. Each of the five officers is assigned to a pre-determined caseload: four of the caseloads are determined by the courts from which they emanate, while the fifth is comprised of all the women on diversion. Two officers are attached to the San Jose-Milpitas Municipal Court, since slightly over half of all persons in this County who are diverted are processed through that court. The officers appear in the court on alternate days. One officer handles the cases from Gilroy-Morgan Hill, Los Gatos, and Santa Clara, while another is assigned to Palo Alto-Mountain View-Los Altos. The above four officers are men; the fifth, a woman, takes all the women's cases from all the courts.

None of the male probation officers appear to have time conflicts with their court appearances, as the days that the diversion calendar is heard in a given court are staggered. The woman officer, however, does have time conflicts, and to resolve them she must either request the court to change the time of a hearing or find another officer to take her place.

Once the Notice of Eligibility has been filed with the court by the District Attorney's office and the case has been heard on the diversion calendar, it is turned over to the probation officer. The probation officer must investigate the case, prepare a report on the investigation's findings, and recommend to the court the disposition of the case. If the probation officer recommends that the defendant should be diverted, he must also suggest a program that the defendant would benefit from.

In order to do all of the above, the defendant is required to go to the Probation Department for an interview with the probation officer. The average interview can last from one-half hour to an hour-and-a-half; the topics covered are those listed in the law, i.e., defendant's drug history, work experience, educational experience, family background, previous arrest record, and the like. Through the same interview, the probation officer must also determine whether or not the defendant is sufficiently motivated to benefit from diversion. If the probation officer finds that the defendant is motivated and that there has been no mistake in the District Attorney's determination that the defendant meets the statutory criteria, then the probation

officer will recommend a diversion program or class that appears to fit the defendant's needs and budget, since there is at least a small fee charged for all the classes (in some cases, probation officers will offer alternatives from among the programs, and the defendant may choose). Once the defendant has found a program that will accept him, the probation officer may return his recommendation to the court.

Once the court accepts the report and the recommendation of the probation officer, it will assign the defendant to the recommended program. For the next six months to two years, the defendant will be required to maintain at least minimal contact with the probation officer who has been assigned to his case (it must be remembered that probation officers in the Diversion Unit are assigned to a case from the time it is first sent to the Probation Department until the defendant is terminated from diversion). The average defendant checks in about one time a month with the probation officer, or whenever he or she moves or changes jobs. Since the defendant has never been convicted of a crime in a court of law, the actual power of the Probation Department to supervise the defendant on diversion is somewhat limited.

In Santa Clara County, diversion usually does not last longer than the six-month minimum period. At the end of the six months the probation officer will return to the court to present the successful defendant's compliance with the terms and conditions of diversion. At that time, a request is made to remove the defendant from diversion and to dismiss the charges against him. If this is done, the defendant is effectively finished with diversion.

When the probation officer handles a case involving a defendant with more serious problems of drug dependency or, for that matter, of any nature, then the probation officer will probably not remove the defendant from diversion at the end of the minimum period. Supervision in such a case might require more frequent contacts with the defendant, but it cannot go much beyond the minimum supervision outlined above. In fact, probation officers involved in the diversion process cannot request waivers of search-and seizure rights by defendants; the only device used within the diversion framework to determine if defendants are using drugs is the "dope scope," relatively simple instrument that consists of an illuminated hand lens that aids in showing signs of needle use. This device is rarely used, as there are relatively few divertees who are using drugs intravenously.

In addition to his or her other duties, the probation officer in the Diversion Unit is also assigned as the liaison to four or five of the programs that divertees are sent to. At the same time, the probation officer is required to monitor the programs. The assignment to programs coincides roughly with the assignment to courts, so that the probation officer who appears in the south county courts is the monitor-liaison for the south county programs. The programs that an officer monitors are usually also the programs that the officer makes the most referrals of divertees to; this is again due in part to the geographical proximity, but it also appeared that the monitored programs were those that the officer knew the most about.

Currently, the monitoring is conducted on a bi-monthly basis. The probation officer attends at least one class at each program, examines any materials which the class might be using, and talks to the staff and to the divertees about the program. From this contact, he or she prepares a synopsis of what is transpiring in the program. That synopsis is submitted to the supervisor of the Diversion Unit for his review. There is no indication as of this time as to what would happen if a synopsis were to indicate that a program had suddenly become unacceptable.

The probation officers in the Diversion Unit have one additional responsibility, the counseling of divertees who cannot find a satisfactory program. In some cases, it is apparent from the outset that although the defendant is eligible and motivated for diversion, there is no program that the defendant can attend. Such problems are usually prompted by time conflicts with jobs, but they might stem also from the defendant's inability to pay for a program or from the peculiar nature of a defendant's problem. If this is the case, the probation officer may offer himself or herself as willing to work with the defendant, either as an alternative to the program which appears possible or as the only alternative.

Occasionally, a defendant may need to be transferred from one program to another. Transfers are requested by defendants, or by the staff of the program, or can be initiated by the probation officer. There is no need for the probation officer to return to court for the approval of a transfer.

All of the probation officers do this counseling in some degree; it would appear that the women's officer in the Unit does more individual counseling than the men do.

A MEETING WITH THE SUPERVISORS OF THE DRUG DIVERSION UNIT
OF THE ADULT PROBATION DEPARTMENT

June 20, 1974

In discussing the questions we had prepared and submitted in advance, the following came out:

The diversion-unit concept had antecedents in the thought of the Probation Department if not in the practice. Five or six years ago, a probation officer currently assigned to the diversion unit, drafted a grant proposal to CCCJ for funds to set up a separate unit in the Probation Department to deal with drug cases. This proposal was rejected; the probation officer who had assisted in the drafting of the proposal, felt that the inexperience of the Probation Department in drafting grant proposals at that time was a major factor in its rejection.

When the Probation Department was informed of the passage of S.B. 714 and its content, a proposal was made to the Board of Supervisors for additional funding to establish a diversion unit. The proposal was granted and the unit was established around February 1, 1973. All of the deputies assigned to the unit were senior P.O.'s, with one exception, and all had extensive backgrounds in dealing with drug cases.

Initially, divertees were sent to the Drug Abuse Program. There were approximately 100 referrals in the first month. Referrals have averaged 125-150/month to date. At the end of that first month, letters were sent to the staffs of the community based programs in the County that had come into contact with the Probation Department, either directly or by word-of-mouth. About fifteen programs responded to this letter and showed up at a meeting with the Probation Department; they were asked at that time to design programs that would fit the needs of diversion.

Although the programs and their classes were not monitored at first, the department began to monitor the programs as a result of problems with some of them. It was stated that it had become necessary to "weed out" some of the programs. They were not questioned further on this subject.

Currently, each of the deputies in the diversion unit is assigned to about four programs. He is their contact in the Probation Department. Once every two months, he visits the classes, reviews the materials used in them, and talks with divertees and the staff of the program. He then writes a synopsis of the program and submits it to the supervisor.

The supervisors saw a definite split between the types of problems that the Probation Department dealt with in the diversion unit: the "lightweights" and the "heavies", the former being those arrested for possession of small quantities of marijuana who are otherwise normal, while the latter are those with

serious problems, such as physical dependency, severe mental and/or emotional problems, and the like. Accordingly, this relative polarization of divertees suggested an analogous polarization of the types of services offered to divertees, the "lightweights" being the purely instructive classes such as Metropolitan Adult Education, the "heavies", on the other hand including services like counselling from private psychiatrists. It should be noted that there are no divertees currently in residence facilities, and the Probation Department does not appear to accept residence facilities as a possibility, due to the cost.

In discussing the cost of the programs to the divertees, the Supervisors were most emphatic in their support of the present method of operation, and he did not see the cost as being a problem. His reasoning ran as follows: 1) divertees can afford to buy marijuana and pills, therefore they can afford the cost of the average program; 2) since the divertee is benefiting from the diversion program and the class, the fee does not serve as a fine; 3) there are enough programs with relatively low fees that there are no problems in finding programs for divertees. All saw no reason to shift the cost of the programs from the divertees to other (public sources of funding.

There are currently enough programs to handle all the divertees, and there was no need seen for additional ones.

The officers who make up the diversion unit participate in seminars and conferences to increase their knowledge. In addition, all of them have completed at least twelve units of graduate work at Chapman College since the start of the program. Most of the knowledge that they draw on, however, is based on their pre-diversion experiences.

The officers are assigned to cases according to the court that diverts the offender. Two are attached to the San Jose Municipal court; one is responsible for the cases coming from Gilroy, Morgan Hill, Los Gatos, and Santa Clara; one is assigned to cases from Sunnyvale and Palo Alto. One woman officer handles all the cases involving females. The Public Service Worker in the diversion unit makes appointments and handles much of the P.O.'s paper work.

A typical client is asked about the following topics in the course of his interview with his P.O. : work experience and background, family background and situation, educational experience and background, the violation with which the client is currently charged, and the client's drug history. The report that is based on this interview includes (in addition to the results of the interview) the rap sheet, a statement by the client if he chooses to write one, and all pertinent information, such as statements by employers, parents, teachers, and other interested parties. It was indicated that attorneys and parents were sometimes present at the interview. The report is made available to the court, the defense attorney, the Probation Department, and the D.A.'s Office, "if they want it," according to the Supervisors.

The clients are generally cooperative. The report of the Probation Department is not used in this County for sentencing purposes by the D.A.'s Office.

Besides assigning clients to diversion classes, many of them are counselled within the Probation Department, which not only provides counselling in the course of normal P.O.-client contact, but makes it possible to tailor the diversion approach to the needs of the individual client. The officer who was the source of this information pointed out that this feeling was also manifested by the number of referrals to alcohol-treatment programs; there are divertees arrested for drug violations whose most serious problem is alcohol.

The Supervisors did not appear interested in discussing funding. However, they did reveal the following:

- The Probation Department received no money under S.B. 714.
- although the P.O.'s assigned to the diversion unit were all experienced officers, these were new funded positions. Whatever funds the Board of Supervisors gave Probation would, therefore, be additional to what the allocation for Probation already was.

Diversion cases take longer to handle than do the other cases handled by the Probation Department, which leads to the conclusion that it might be more expensive to handle divertees than ordinary probationers. (The reason for the increased cost is the fact that P.O.s in the diversion unit both investigate and supervise.)

- the Department of Mental Health was the only County agency to receive funds under S.B. 714, and this money has been used to establish and run programs.

Some of the differences between diversion cases and other cases were cited. They are:

- there is no actual court control of divertees, for unlike other probationers, they have not entered a plea (guilty).
- except in the case of the heavier user who needs more constant supervision, the divertee is not required to submit as completely to the control of the Probation Department. The divertee has to report changes of address, but does not necessarily have to report on a regular basis.
- the divertee who is terminated unsuccessfully is returned to the stage in the proceeding against him from which he was diverted, while the ordinary probationer does not return to court, unless there is a court hearing concerning his violation of his probation.

DRUG DIVERSION UNIT STAFF INTERVIEW

OFFICER NUMBER ONE

---there is no waiver of the divertee's rights with regard to searches and seizures in this County.

---the only test used by the Probation Department to discover evidence of drug use by divertees is the "Dope Scope," which is used only where there is an indication that the divertee is using drugs intravenously. Regular probationers we may assume might be required to submit to urinalysis.

---the Probation Department is more cautious with regard to the release of information about divertees.

The Probation Department has complete control over the divertee, and can shift him from program to program without court approval.

The determination of whether or not a client was sufficiently motivated to benefit from diversion was not seen as a function of determining the client's eligibility for diversion. The question of eligibility, in the Supervisor's view, is within the exclusive control of the D.A.'s Office.

There is no courtesy supervision of divertees in Santa Clara County. An out-of-county resident who is arrested in this County and is diverted is assigned to a program by the Probation Department, then supervision of that divertee is turned over to the Probation Department of his county.

It was felt that the six-month minimum period of diversion could be done away with; the length of time that a client would be under the supervision of the P.O. should be determined by the P.O. according to the particular facts of the case.

Premature termination of diversion for a subsequent offense should be limited to offenses of "substance," the implication being that it would be at the discretion of the Probation Department to terminate.

In response to our question regarding the expungement of records, it was indicated that he felt that the record of completion of diversion should be kept for the purposes of the criminal justice system alone (i.e., to prevent second-time offenders from going through diversion again), and should not be revealed in cases where a record of having gone through diversion would impair a person's chances of getting employment, etc. They gave no indication of how this could be done.

The first person interviewed is probably the officer with the most experience in dealing with drug offenders in the Diversion Unit. He was involved to some degree in the training of the other officers in the unit, especially in performance of skin checks for needle use.

He stated that his usual technique in dealing with a client was to determine if possible how much the defendant was actually telling him from the nature of his answers, and then structure the questions accordingly. He said that most of the interviews were started on an informal relaxed basis, and then, if the defendant tried to mislead him, he would become more aggressive in his questioning technique, attempting to demonstrate to the client that he was well aware of the "drug scene". It was stated that he maintains contacts with the members of the San Jose Police Department's Narcotics Unit, mainly to keep up-to-date on the drug situation in the area. He does not usually explain the extent and limits of the probation officers power over the divertee, due to the fact that it is severely limited.

He did feel that diversion was used to some degree to catch cases that would not ordinarily succeed at trial, if they were to get that far. He felt that there were too many cases referred to the Probation Department by the DA where, for example, the defendant is not eligible because of a prior parole or probation violation.

In explaining how he determines a client's motivation, this office felt that a lack of motivation was apparent where a client repeatedly failed to make appointments or where the client had chosen diversion solely to "beat a rap". He also stated that in cases where Probation refused to recommend diversion for a client, but the court overruled them, the majority were later terminated for subsequent violations or lack of motivation.

It was thought that diversion is a viable alternative and should be continued, but he felt the law should be tightened. For example, there should be no second diversion; the legislative intent, as defined in In re Reed, was to keep those who were otherwise good citizens from acquiring criminal records for a single drug offense; second offenses, should be treated as crimes and prosecuted as such. This was compatible with his view of the basic goals of diversion as being, first, making it less painful for the first-time offender, and secondly, clearing the court calendars.

Since it was felt that it is not impossible for potential employers to get access to a C.I.I. record, there should be automatic expungement of diversion records after a reasonable period of time in which the defendant had been "clean". He felt this was especially true in the case of professionals and people with teaching jobs who were not really criminals.

He does counsel some of the people on his caseload instead of sending them to diversion classes. The person who receives such counseling usually has

DRUG DIVERSION UNIT STAFF INTERVIEW

OFFICER NUMBER TWO

schedule conflicts between a job and a diversion class, or is someone who would not benefit from such a class. In the latter category, he included both the heavier user (approximately 10-15% of his caseload), and the person who could only be harmed by a diversion class. In explaining what he meant by the latter category, the officer recounted the story of a school teacher who was arrested for possession of marijuana who was in his late twenties and was a stable, responsible individual with no real problems. Since it was possible that a student of his might be present in a diversion class, he was retained for one counseling session by the officer and then allowed to quietly complete the diversion period.

Much of the time in our interview was spent discussing the proposal that had been made in 1970 by the Adult Probation Department to OCJP for funding for a special unit that would deal exclusively with heavy users of heroin, barbiturates, and methamphetamines. The officer was emphatic in his assertion that such people could not be handled in the diversion framework, due to their need for intensive supervision. Basically, the program would use three teams of one probation officer and an aide who would be an ex-offender. These teams would each supervise a caseload, and would work on a staggered shift basis that would allow for round-the-clock supervision. Most of their work would be conducted "on the street". In addition to a caseload of 50 to 75 cases, each team would be responsible for liaison with community programs that deal with the problems of the heavy drug user. The officer felt that it would be highly desirable to work in conjunction with residence programs.

Additional information about this program can be found in the material that was submitted to OCJP which was provided for us by him. The most significant factor is the greatly increased degree of control that such a unit would have over convicted offenders, even greater than that of the regular probation officer.

The second officer clarified one of his responses that we had found confusing by stating that he has received no additional training since being assigned to the Unit and had included additional training in the ranking of important factors in the preparation of probation officers to deal with diversion merely because he felt that it had to be ranked.

In speaking about his clients, he indicated that most of them ("almost all") had been arrested for possession of marijuana and did not have drug problems. Most of the serious problems that he deals with are not in fact drug-related, but come out in the course of his contacts with the client. In cases where the client has no serious drug problem, he felt that a simple education class was sufficient for the purposes of diversion. As a generality, he stated that if the defendant wants assistance he will make it known, but if he has a drug problem but does not want help for it, there is no solution.

The officer said that there were few heavy-drug users in diversion, due to the existence in most cases of a prior record.

Most of the clients have jobs and can afford to pay for the programs that they are assigned to; since they are in fact arrested and given an opportunity to avoid criminal prosecution, he did not believe that the diversion classes should be subsidized by anyone other than the clients. Most of them are not transferred between programs once they are assigned; he thought that between 7½ and 10% might be transferred, and felt that the reasons for the transfers were evenly distributed over the three general reasons for transfers listed on the questionnaire. His clients are assigned primarily to the programs that he monitors because of the correlation between the geographical location of the classes and his clients. He explained that the U.S. Navy handled its own people, and that all cases involving Navy personnel were turned over to the proper Navy authorities as quickly as possible. The Navy conducts its own diversion class at Moffett Field. He rarely counsels divertees in lieu of placement in a program, but when he does, such counseling is done on a monthly basis.

The officer was critical of the District Attorney's handling of diversion in some cases. First, he felt that the DA too often recommended clients for diversion who were not actually eligible. When such a superficial examination indicates that a defendant is eligible, and the APD must make a negative recommendation to the court, the defense counsel has the opportunity to object on the basis that since the District Attorney had already determined that the defendant was eligible, the Probation Department could not make such a recommendation. He also felt that the D.A. was inclined to use diversion as a "garbage can", insofar as recommending cases for diversion where the defendant would not ordinarily be eligible, but where the DA could not succeed at trial. He recounted an anecdote dealing with a case of this type currently before the Sunnyvale-Cupertino court, in which the DA and the Probation Department are at odds over a defendant's diversion.

The officer was also quite critical of private attorneys who handle diversion cases. He felt that very few, if any, of his clients had any previous experience with the legal system and with attorneys, and therefore had no idea of what an equitable price would be for diversion. Many of his clients have paid between \$300-500 for the services of private attorneys in diversion hearings, and, that in at least one case, the divertee had been solicited by an attorney who offered to get him diverted on the morning after his arrest (all at a lower cost, due to the attorney's claim that he was new in the area, of \$500). The officer, who has had successful contacts with private attorneys in regard to diversion, felt that the fees were exorbitantly high, in light of the relative ease with which an attorney can handle a diversion case.

DRUG DIVERSION UNIT STAFF INTERVIEW

OFFICER NUMBER THREE

The third officer handles all of the women who are referred to APD for diversion. She stated that it had been the decision of the APD to assign all the women to a single woman officer in the unit, after having seen the same procedure used effectively in Los Angeles County. Since she has always handled an entirely female caseload, this was no real change for her. It was her opinion, however, that a mixed caseload of both men and women might be more realistic.

This officer is the only one in the diversion unit not assigned to a specific court or courts. Occasionally, there have been scheduling conflicts where there is an appearance scheduled for more than one of the women in her caseload. Where possible, the officer, in order to appear at both hearings, requests a change of time from one of the courts. If this is not possible, or in cases where there is no specific reason to personally appear at a hearing, one of the other officers in the unit appears in her behalf.

She did indicate throughout the course of our meeting with her that the divertee is different from the average probationer. First, divertees are generally less trouble than other probationers. Those who have been diverted are usually more affluent than other probationers, but she felt that women divertees were more likely to have financial problems than were male divertees. In addition, more counseling is done with divertees than with other probation clients.

She stated that her initial interview with the divertee usually went smoothly, due to the general cooperation found among divertees. In helping the defendant to choose a program, she usually does not offer more than one alternative program, but where there was a choice, the divertees usually chose the program with the lowest cost. Some of the women that have been diverted have found it possible to defray part or all of the program's cost by working for the program, usually by performing secretarial work. Where there is no program to fit the divertees' needs, or where divertees have schedules that prevent them from attending a suitable class the client is given the option of one-to-one counseling conducted by her. This option is also used where both she and the client have established a good relationship and it is preferable to both that the client remain with her for counseling. While this counseling is not done on a group basis, she did say that it would be possible to counsel couples together where they had both been diverted, or where the couple is willing to do so.

She assumes that the defendant is sufficiently motivated for diversion when the defendant is willing to cooperate.

When asked about the correlation between her referrals to program and the programs which she monitors, the officer stated that (1) she has a better

DRUG DIVERSION UNIT STAFF INTERVIEW

OFFICER NUMBER FOUR

understanding of the content and the benefits of the programs that she monitors. One of the programs she monitors is MAEP, which is also the program that she makes the highest number of referrals to; she felt that this was due to the low cost of the program and the fact that it has the best general offering for the divertee.

She has only made one referral to the Methadone maintenance program, due largely to the fact that there are few heroin users that are diverted, (she estimated that less than 5% of her caseload had been arrested for heroin). The heroin user is usually not diverted because; a) the charged offense is too great for diversion, or, b) the defendant already has a record that prohibits diversion. She did not feel that there were enough programs in the diversion programs currently used by APD to handle many more heroin users.

She felt that record sealing was a good idea for those who had been diverted, as long as it would be implemented automatically across the board. She was not aware of any cases where former divertees had been denied employment because of their diversion, but she admitted that there was always such a possibility. Where former divertees might need to be bonded for a job, she was of the opinion that HRD (now EDD) would bond the former divertee if an employer would refuse to do so.

The fourth officer when asked to expound upon some of his answers to the initial questionnaire, provided some excellent clarifications for us. Since he had given one of the few low responses about the benefits derived from the treatment programs by those arrested for possession of marijuana who did not have other drug problems, this was the first question that he was asked. He answered by first describing his clientele as primarily middle-class young men (ages 18-25) who were either working or going to school. Few of them were seen to have problems related to addiction; very few injected drugs. He thought that the benefits that they derived from the programs would probably describe a standard Bell curve, with only 5% or less of the divertees receiving the maximum benefit. He once again asserted the position he had stated on his questionnaire that the greatest benefit and learning experience for the rest of the "lightweight" divertees came from the arrest itself.

When asked about the heavier drug user, he did not feel that they were able to benefit greatly from diversion. He felt that these individuals needed more intensive drug supervision than the Diversion Unit could provide. For example, the Diversion Unit probation officers do not have the power the regular probation officers have insofar as requiring urinalysis (not performed by the Diversion Unit at all), nor in terms of controls over the user's living situation or his associates. The diversion unit cannot impose search-and-seizure sanctions over the user, nor are they empowered to arrest those who continue to use drugs. Since he estimated that only 3% of his current caseload had heavy drug problems, he thought that the only way that additional heavy-drug users could be diverted was through the regular probation department.

The officer felt that most of the clients had been willing to accept whatever diversion had to offer them; he had not received many complaints about the necessity of paying for programs from the divertees, nor was it usually a problem. When a divertee has complained about a program, his complaints have not been about the content of the program, but with their dissatisfaction about their "fit" in the class. By this he meant that some of the classes are designed to be participatory seminars, and some divertees, by personality, are not prepared to open up and discuss their personal drug histories.

The officer explained that divertees are not given an indication of when their diversion will be terminated until the probation officer feels that they are ready for termination. He said that diversion was geared to the six-month minimum period, and that longer periods were opted for only where the defendant needed the additional time to deal with a more serious drug problem. He also added that the occasional decision to divert a client for two years was more punitive. He felt that there was no reason to keep the six-month minimum, due to the fact that the maximum benefit of diversion had been received by the client when the class was completed. He felt that the Probation Department should have the option to terminate the successful divertee within one month of the completion of the class, especially in those cases where the client would be leaving the area for military service or the like.

DRUG DIVERSION UNIT STAFF INTERVIEW

OFFICER NUMBER FIVE

The initial question we asked the officer, who is responsible for Santa Clara, Los Gatos, Mt. View, and Gilroy municipal courts, was one of sheer logistics: how does he physically manage to cover all those courts for diversion hearings? He responded by telling us that in cases where there is a scheduling conflict, i.e. two diversion cases coming up at the same time on two of the court calendars he covers other deputy P.O.s take over for him in one of the appearances. He also commented that while he prepares cases for Santa Clara Municipal Court, another officer takes those cases to Santa Clara Court. The other route he may take if he really feels it necessary to cover both cases involved in a calendar conflict is to ask for a continuance in one case, which is usually granted by the courts.

In response to a query about questions three and four, he admitted that he did prefer to make referrals to the programs he monitors for the A.P.D. Before the inception of the diversion program, he had volunteered to "make contact" with some of the program directors to get a better idea of the programs' content and structure. Contact was made which resulted in one particular program being able to immediately expand its scope to include divertees at the inception of P.C. 1000.

He was the only P.O. to rank "program no longer accepted diversion referrals" as the prime reason that programs had been eliminated from referral consideration. When asked about this he replied that three programs in Gilroy had gone out of business and so that a relatively large number of discontinued programs led him to rank as he did. Few of the other P.O.s have had programs in their districts which have ceased to operate which should explain why his ranking was so different.

He reiterated his position that in the case of a first-time non-serious type drug offense, the mere fact of being arrested can be enough education in itself so that the diversion community programs may not be needed for these individuals. Paradoxically, however, he stuck to his position in question 14 that the 6 month minimum period of diversion should not be eliminated except in the unusual case of entry into military service or relocation to another state. He believes that six months is necessary for the Probation Department to properly monitor the individual divertree and his or her pattern of drug free development.

He indicated that he does keep some cases for in-house counseling rather than refer them to programs, but this is usually due to the nature of employment and work hours of the divertree. For instance, he has kept truck drivers and people working swing shifts for his own counseling in cases where the person simply could not fit into any program schedule.

He stated in answer to question 11 that the cost of the programs is becoming "more and more of a factor" in their assignment to divertees, yet he does not see the fact of a divertree having to pay for the programs as operating as a fine. Instead, he pointed out that had a divertree taken his case to trial, lost, and then been fined, the fine would probably be greater than the cost of any of the programs, and in addition the person would get nothing in exchange for the payment. At least with diversion, he said, the divertree gets a program which may be of some benefit to him and gets the benefit of no criminal conviction.

In summary, the officer seems, as did all of the P.O.s interviewed, to have thought out his role in the diversion process carefully and reflectively. He seemed interested in possible changes in the diversion statute, though he seemed to think of such changes in the abstract, as if the probability of change was a long way off and not very likely to be responsive to the suggestions of a few P.O.s in Santa Clara County.

Probation Department Initial Intake
Diversion Clients

- 1) The client is given the Drug Diversion Information Sheet (copy attached) and asked to read it.
- 2) Probation Officer determines whether or not the client has understood what he has just read. If the client does not understand, the Probation Officer explains the information to him verbally. Then the client signs the Drug Diversion Information Sheet which verifies he has read and understands it.
- 3) The client is given the police report and asked to read it and make comments.
- 4) The Probation Officer explains to the client that the Probation Officer must have an honest account of the client's drug history so he will know best how to assist him. It is also explained to the client that any information given to the Probation Officer can't and will not be used against him in any criminal action.
- 5) Probation Officer then collects data from client on standard Probation Department intake form #7480 (copy attached).
- 6) Probation Officer asks if the client disagrees with any information which is contained in the police report. The Probation Officer records the details of the incident as given to him by the client.
- 7) The Probation Officer then asks for and records the drug history of the client.
- 8a) The client can be tentatively accepted for diversion in lieu of program acceptance (it must be remembered that the Court makes the final determination of whether to divert).
- 8b) The client can be rejected for diversion at this time if it is determined by the Probation Officer that the client is not suitable for diversion. This determination of suitability is based on a number of criteria. It may be discovered that the client is not eligible for diversion because he does not meet the legal requirements under S.B. 714 or the client does not desire diversion or the client believes he has nothing to gain from being placed on diversion.
- 9a) If the client is rejected it is explained to him why. Also, the client is told what date and time to appear in court. He (she) is told that the Probation Officer at that time will recommend that he (she) not be granted diversion.
- 9b) If accepted for diversion the client is tentatively assigned to a program of education, treatment, or rehabilitation. The client is given a referral form to take to the particular agency where a determination will be made as to his acceptability in their program.

- 10) The Probation Officer then has the client sign a release form which allows progress reports about him to be sent to the Probation Department from the program.
- 11) The Probation Officer reviews with the client what he must now do and where and when he must appear in court.

CONTINUED

1 OF 3

DRUG DIVERSION REPORT
Santa Clara County
Adult Probation Department
Penal Code Chapter 2.5
January 1, 1973 to December 31, 1973

The Drug Diversion report of the Adult Probation Officer, Santa Clara County, for 1973, is hereby submitted.

Respectfully submitted,

FOREWORD

All information concerning statistical data was obtained from the files, reports, and other statistics gathered during the year 1973 by the Adult Probation Department of Santa Clara County. Opinions and recommendations are those of the Adult Probation Department of Santa Clara County and should not reflect adversely on the Drug Diversion Program, but only as an actual awareness of what possible advantages could be received by not only continuing the law but making suggested changes.

STAFFING

One Supervising Adult Probation Officer
Six Deputy Adult Probation Officers
One Stenographer Clerk
One Typist Clerk
One Public Service Worker II
Drug Program Liaison Officer

LOCATION

1885 The Alameda
San Jose, CA 95126
Telephone No: 299-3621

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Explanation

On December 15, 1972, the Governor signed into law an emergency statute; to wit, the Campbell-Moretti-Deukmejian Drug Abuse Treatment Act, which is covered under Chapter 2.5, Sections 1000(a), 1000.1 and 1000.2 of the Penal Code.

A summation of the law is as follows:

If a subject is before the Court for accusatory pleading for violations of:

11350 H&S (Possession of controlled substances classified in Schedules I or II, other than Marijuana),

11357 H&S (Possession of Marijuana),

11364 H&S (Possession of Paraphernalia),

11365 H&S (Visiting a Place where any controlled substance classified in Schedules I or II are Unlawfully Used),

11377 H&S (Possession of controlled substances in Schedules III, IV, or V),

11383 H&S (Possession of Methylamine & Phenylacetone with Intent to Manufacture),

and:

1. has no prior convictions of 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 a narcotic or restricted dangerous drug other than a violation of the sections listed in this subdivision,
4. has no record of probation or parole violations,

the subject is then eligible for the Drug Diversion Program.

Procedure

The subject prior to plea is referred to the Adult Probation Department for investigation to determine the subject's background, family history, work record, and other pertinent information. Special emphasis is placed on the subject's drug history. The Adult Probation Department conducts an initial interview with the subject in an attempt to determine his adaptability to a certain drug diversion program and his motivation for diversion locates a program, supervises subject while on the program, obtains progress reports, and submits same to Court. The Adult Probation Department assists in locating employment and/or completing subject's education if need be.

If the subject appears to be sincerely motivated and a specific program is found to be of benefit, an investigation of the above circumstances is made by the Drug Diversion Unit, and a recommendation is made to the Court for diversion for a minimum period of six months to not more than two years for treatment, education or rehabilitation.

In order that the subject participate in the Drug Diversion Program, the agency providing the treatment and the District Attorney's Office must grant their approval before the subject can be accepted into the program. If the program providing the treatment does not accept the subject, it is necessary to ferret out an alternative program; if the District Attorney's Office does not approve, the subject reappears in Court for further proceedings. If the District Attorney's Office and the program providing the treatment approve the diversion, the defendant appears in Court and, if the Court feels the subject would benefit from the treatment program, places him on diversion under the auspices of the Adult Probation Department.

While in the program, the subject also reports to a probation officer for counseling, job assistance, or other services the Department may offer.

Most of the drug diversion programs meet at least once a week, for two to three hour sessions. These sessions consist of drug education, individual counseling, group counseling, movies and lectures in the pharmaceutical aspects and ramifications of drugs, criminal and legal consequences of being involved, what the involvement with drugs will lead to concerning our social mores, a general overall picture of self-analysis, and, in some instances, complete meditation on behalf of the subject.

When the subject has completed the six month to two year program satisfactorily, his case is then returned to the Court for action consisting of a dismissal of the alleged Complaint.

Basics of Program:

1. Subject, Program Agency, District Attorney's Office and the Court must approve the program.
2. Diversion is for a minimum period of six months, but not more than two years.
3. The Adult Probation Department operates on an open-end order of diversion, which means the Adult Probation Department may change subject from one program to another if the need arises, without the necessity of returning the case to Court.
4. A case is returned to Court for unsuccessful termination if any or all of the following prevail:
 - a. The subject fails to become involved or motivated in the program.
 - b. He fails to report, as instructed, to the Adult Probation Department.
 - c. He is convicted of any criminal offense while on diversion.

Success or Failure?

Is Drug Diversion a success or failure?

After one calendar year of operation, much can be said for and against this relatively new law.

Subjectively, we find there has been a measured success, if we measure success by lack of recidivism on the part of the diveree, clearing some of the court calendars, and by education of the so-called first time offender.

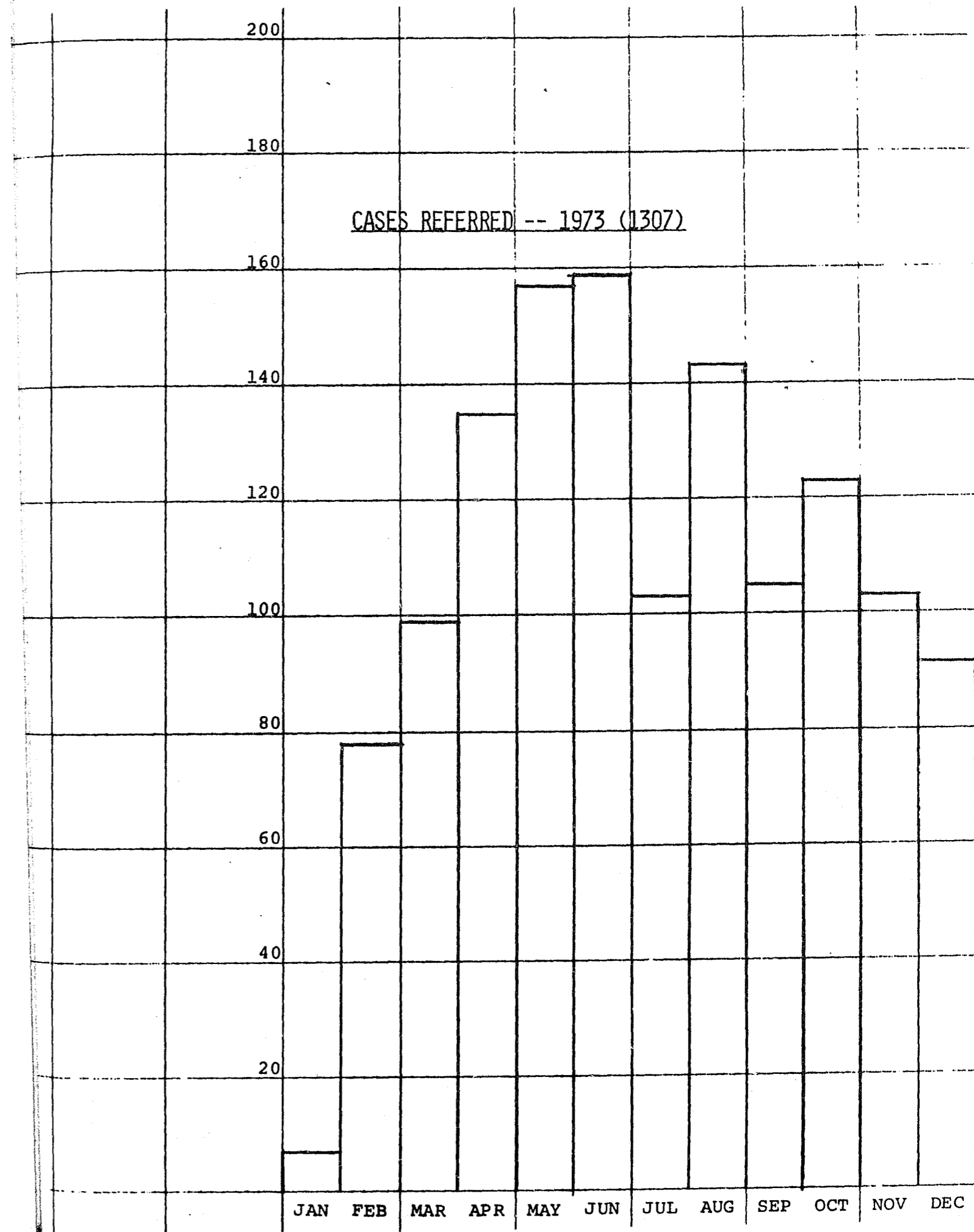
Objectively, some are diverted that, in our eyes, should not be diverted, however, they do come under the legal interpretation of the law. Some cases clutter the calendar rather than clear it.

The success of the Diversion Program over the past year is based on the three hundred thirty-seven divertees pending drug/narcotic action whose cases were dismissed as they successfully completed their program in 1973. How many of those 337 divertees may come through the system again will not be known until statistical data is gathered over the coming years. However, we do know that those divertees do not at the date of termination, have controlled substance charges on their records and we can, therefore, judge this number to be a success. In all probability, the Drug Diversion Program has cleared the court calendars to some extent but we do not feel this can be considered as instrumental in retaining the program of diversion or considering it as a measure of success.

After studying the program for one year, the main overall success appears to be the one time (we assume) young marijuana smoker or pill user who is arrested and diverted, rather than prosecuted. This, we believe, is the crux of the whole program, and any future retention of this program should be directed toward this goal only, rather than to long-time users of controlled substances (other than marijuana), addicts, or those growing, selling, transporting or possession of large quantities of controlled substances for possible sale, and later reduced to divertible charges.

The disadvantages we see are many and in our opinion changes should be made in our legislative branch of state government to correct them, to wit:

- I. Many violators of Sections 11350 and 11377 of the Health and Safety Code whom are addicts or heavy users can be diverted and should not be. Although they need help, it should be manifested in a different manner.
- II. A subject can be diverted more than once in a single case and in some instances one court may refuse diversion for reasons given in the probation report and then later, at the trial calendar, another court will re-refer for an additional diversion hearing and report and then may divert. This can be a continuous process.
- III. Section 11383 of the Health and Safety Code (Possession of Meth-ylamine & Phenylacetone) - Anyone charged under this section should not be diverted.
- IV. Sections 11550 of the Health and Safety Code (Use of a Controlled Substance), 647(f) of the Penal Code (concerning drugs), and 4143 of the Business and Professions Code (paraphernalia) -- These should be legislated into diversion. If violators of Section 11364 of the Health and Safety Code can be diverted, why not violators of the appropriate Business and Professions Code Section 4143? The same can be said about violators of Section 11550 of the Health and Safety Code and Section 647(f) of the Penal Code. If violators of Section 11350 of the Health and Safety Code (Possession) can be di-verted, why not violators of the above, who are more in need of diversion than someone who could be addicted and still charged with possession and be diverted?
- V. The offense charged did not involve a crime of violence or threat-ened violence. The phrase, "crime of violence or threatened violence" is too vague and should be reinforced and clarified.
- VI. There is no evidence of a violation related to narcotics or re-stricted dangerous drugs, other than a violation of Sections listed in the Diversion Law. This is also vague and should be re-structured.
- VII. If courtesy supervision is in order, then some legal means should be placed into the law, including Section 1000 of the Penal Code, under Section 1203.9 of the Penal Code or something similar to Section 1203.9 of the Penal Code.
- IX. A person should be diverted only once.
- X. A subject may appear on two or more diversion hearings in two or more jurisdictions. This emits a definite lack of demonstra-tive motivation, by the subject being involved in two or more sim-ilar controlled substance offenses.



200

180

160

140

120

100

80

60

40

20

CASES DIVERTED -- 1973 (986)

JAN FEB MAR APR JUN JUL AUG SEP OCT NOV DEC

100

90

80

70

60

50

40

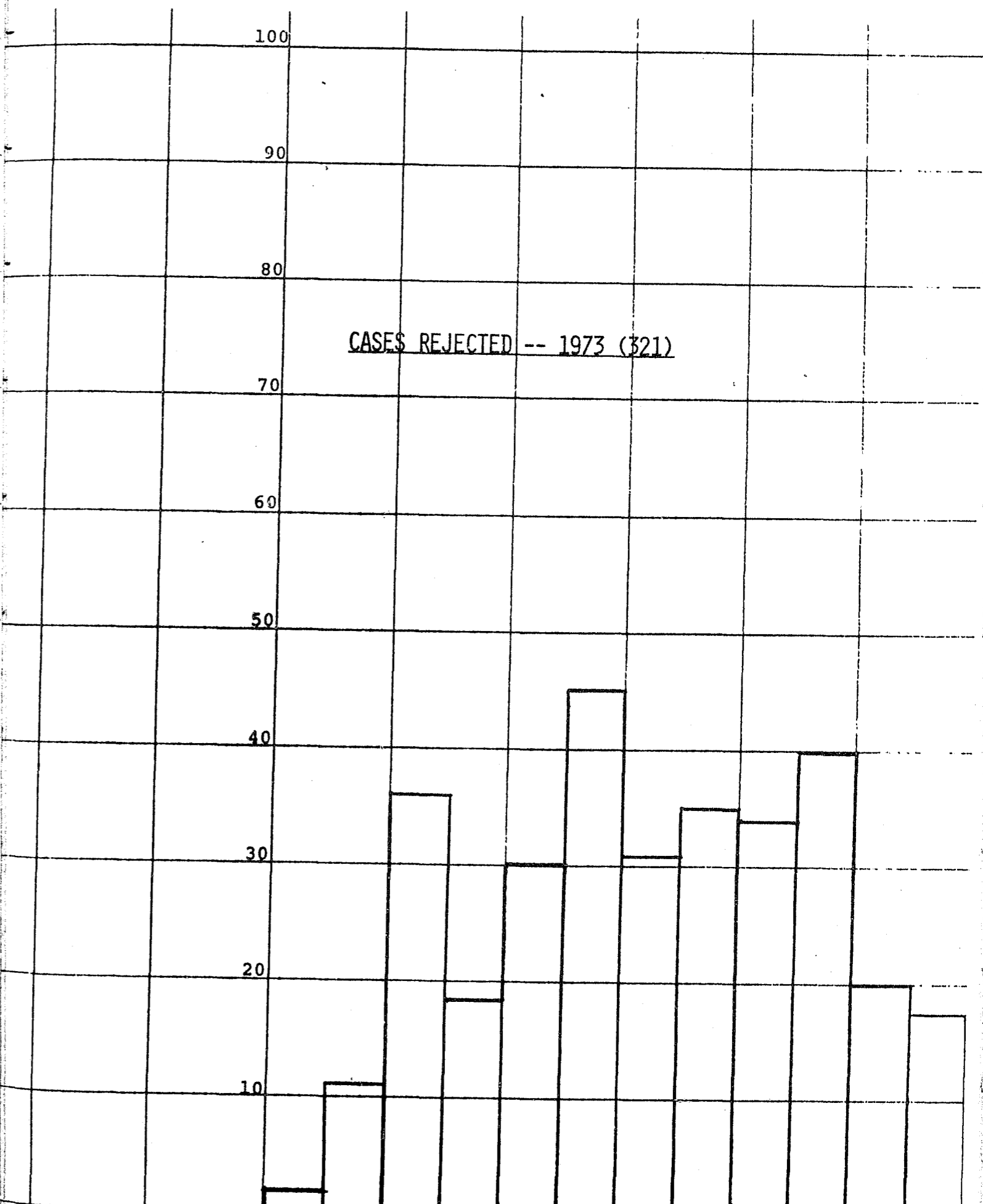
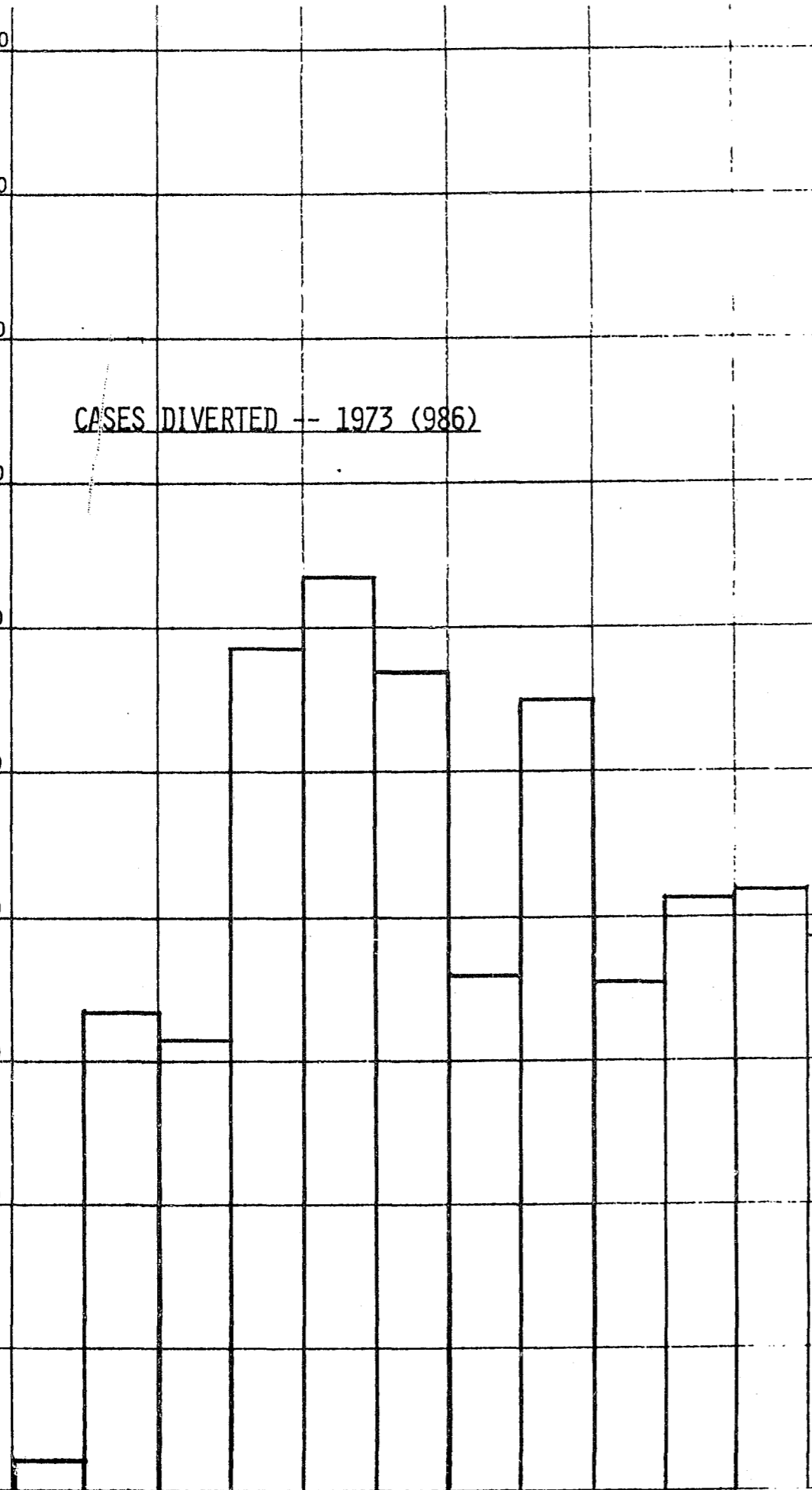
30

20

10

CASES REJECTED -- 1973 (321)

JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC



Reasons for Rejection of Subject to a Diversion Program

1. Lack of sufficient motivation on part of subject to take an active, participating interest in the program.
2. Extensive prior arrest record, history of Bench Warrants being issued, lack of Court appearance in previous cases, history of violent and assaultive behavior.
3. Prior parole or probation violations not previously noted.
4. Other serious charges pending along with diversion, which would make diversion inoperable.
5. Failing to appear for Court diversion hearings.
6. Violence or threat of violence in present case.
7. Defendant definitely stating not interested and would rather be prosecuted.
8. On probation or parole for previous narcotic conviction.
9. Denial of any drug/narcotic problem by client.
10. Subsequent arrest and conviction while Drug Diversion case pending Court action.

Health & Safety Code
Violation/Charge Breakdown

<u>Code Numbers</u>	<u>Percentage</u>
Section 11357 H&S Code (Possession of Marijuana) . . .	74
Section 11350 H&S Code (Possession of controlled & substances, other than Section 11377 H&S Code Marijuana)	18
Section 11364 H&S Code (Possession of Paraphernalia) . .	5
Section 11365 H&S Code (Visiting a Place where controlled substances are Unlawfully Used)	3
Section 11383 H&S Code (Possession of Methylamine & Phenylacetone with In- tent to Manufacture)	0
TOTAL	100%

Court Referrals

<u>Municipal Court</u>	<u>No. of Cases</u>	<u>Percentage</u>
San Jose	653	50
Santa Clara	198	15.6
Los Gatos	118	8.3
Sunnyvale	144	11.4
Palo Alto	128	9.7
Gilroy - Morgan Hill	33	2.5
<u>Superior Court</u>	<u>33</u>	<u>2.5</u>
TOTAL	1307	100%

Cases Diverted & Rejected by Sex

	<u>Male</u>	<u>Female</u>
Total Cases Diverted	815	171
Total Cases Rejected	<u>284</u>	<u>37</u>
TOTAL	1099	208

	<u>Male</u>	<u>Female</u>	<u>TOTAL</u>
Total Cases Referred	1099	208	1307
Percentage of Total Cases Referred	84	16	100

Age Group By Percent

	<u>Male</u>	<u>Female</u>
18 - 21	79	48
22 - 25	15	27
26 - 29	3	14
30 - 39	2	10
40/over	<u>1</u>	<u>1</u>
TOTAL PERCENT	100	100

Total Cases Terminated

Successful for year ----- 337

(It should be noted that successful terminations did not commence until July, 1973, due to a minimum of six months on program.)

Total cases placed back in prosecution stage for year as failure ----- 89

Reasons for Failure:

- 1. Lack of motivation and attendance ----- 40
- 2. New criminal arrest and conviction ----- 27
- 3. New drug/narcotic arrest and conviction ----- 14
- 4. Death ----- 4
- 5. Whereabouts Unknown ----- 4

TOTAL 89

Of the 986 cases diverted, 34 percent were terminated as successfully completing their diversion period and only 9 percent were unsuccessfully terminated and placed back in prosecution stage. Fifty-seven percent (560) are still in the diversion system.

PROGRAMS

Name	Location	Purpose	Fee	Length of Program	Size of Class
APOAR (Applied Principles of Alcoholic Recovery)	San Jose	Drug Education-Overcoming Problem-How to Remain Drug Free	\$45-\$180	6 months	Varies with Program
Bert Anderson Group	Saratoga & Mt. View	Learning Experience & Self-motivation	\$36 for 6 wks., \$6/mo.	Varies	20
Community Health Abuse Council	Mt. View	Self-awareness	\$20-\$40	6 months	No Limit
Dept. of SC County Mental Health	Sunnyvale	Counseling Group & Individ.	Ability to Pay	On-going	No Limit
Drug Abuse Clinic (Santa Clara Co. Health Dept.)	San Jose	Counseling-Drug Education	Ability to Pay	Approx. 3 mos.	No Limit
Drug Decision Prog. Universal Research Systems, Inc.	Sunnyvale	Drug Education-Social Stigma Effects of Drugs-Treatment	\$50	6 months	30
Wm. LaVey Group	San Jose	Drug Education	\$50	Min. of 6 wks; weekly, then once a mo. for bal. of program	20 - 30
Narconon	Palo Alto & San Jose	Self-awareness	\$35	On-going	No Limit
SC Co. North Co. Public Health	Palo Alto	Drug Awareness Education	Ability to Pay	6 wks; weekly, then once/mo.	No Limit
Operation Drug Alert	Los Gatos	Self-awareness & Drug Education	\$50	6 months	10
Project Intercept	San Jose	Education (GED)-Job Finding Drug Counseling	None	On-going	Varies
Santa Clara Co. Methadone	San Jose	Methadone Maintenance	Varies, min. of \$2/week	On-going	Single
Transcendental Meditation	San Jose	Self-awareness	\$150	6 months	No Limit

In addition to the programs on the previous page, the following programs are used on an infrequent basis. These programs are also directed towards counseling and drug education. These programs are as follows:

1. Job Corps
San Jose, CA
2. Drug & Alcohol Education Center
USNAS Moffett Field
Sunnyvale, CA
3. Sun Street Center
Salinas, CA
4. North County Volunteer Bureau
Palo Alto, CA
5. Project Eden, Inc.
Hayward, CA
6. Drug Treatment Program
Veterans Hospital
Palo Alto, CA
7. Alcohol & Drug Abuse Division
United States Army
Fort Ord, CA
8. Alcoholic Treatment Center
Santa Clara County
Gilroy, CA
9. Chrysalis
Gilroy, CA
10. Metropolitan Adult Education Program
San Jose, CA
11. North County Mental Health Center
Santa Clara County
Palo Alto, CA

12. C. U. R. A.
Fremont, CA
13. Daybreak House
Fremont, CA
14. NARCEPT
San Jose or Sacramento, CA
15. O. I. C.
San Jose & Gilroy, CA
16. Second Chance, Inc.
Newark, CA
17. Santa Cruz Community Counseling Center
Santa Cruz, CA
18. Synanon
Oakland, CA
19. Walden House, Inc.
San Francisco, CA
20. Alcohol Service Center
San Jose & Palo Alto, CA
21. South County Adult Diversion Program
Gilroy, CA
22. Pathways
San Jose, CA

Summary

After being involved in the Drug Diversion Program for one year, we can and do assume that to a degree it can be considered successful at this time. We can only judge success by the number of first time, young marijuana/pill users who do not now have a criminal record and who have possibly gained insight as to what problems may develop by the continuous use of marijuana and pills, and where continued use can lead both physically and legally.

We must also look at the problems that exist. If these problems can be resolved through legislative changes and by changes in our approach to the drugs and narcotics situation, we believe much can be said favorably for drug diversion. In the years to come, we may be able to measure the full success of the program if we can visualize the needed changes that should be made not only by legislative actions, but in our logic and insight concerning the drug/narcotic problem.

DRUG DIVERSION REPORT

Santa Clara County
Adult Probation Department

Section 1000 Penal Code Chapter 2.5
January 1, 1974 to December 31, 1974

The Drug Diversion Report of the Adult Probation Officer, Santa Clara County, for 1974, is hereby submitted.

Respectfully submitted,

LYSLE D. SMITH
Chief Adult Probation Officer

FORWARD

All information concerning statistical and other data was obtained from the files, reports, and statistics gathered during the year 1974 by the Adult Probation Department of Santa Clara County.

STAFFING

One Supervising Adult Probation Officer
Five Deputy Adult Probation Officers
One Stenographer Clerk
One Typist Clerk
One Community Worker
Drug Program Liaison Officers

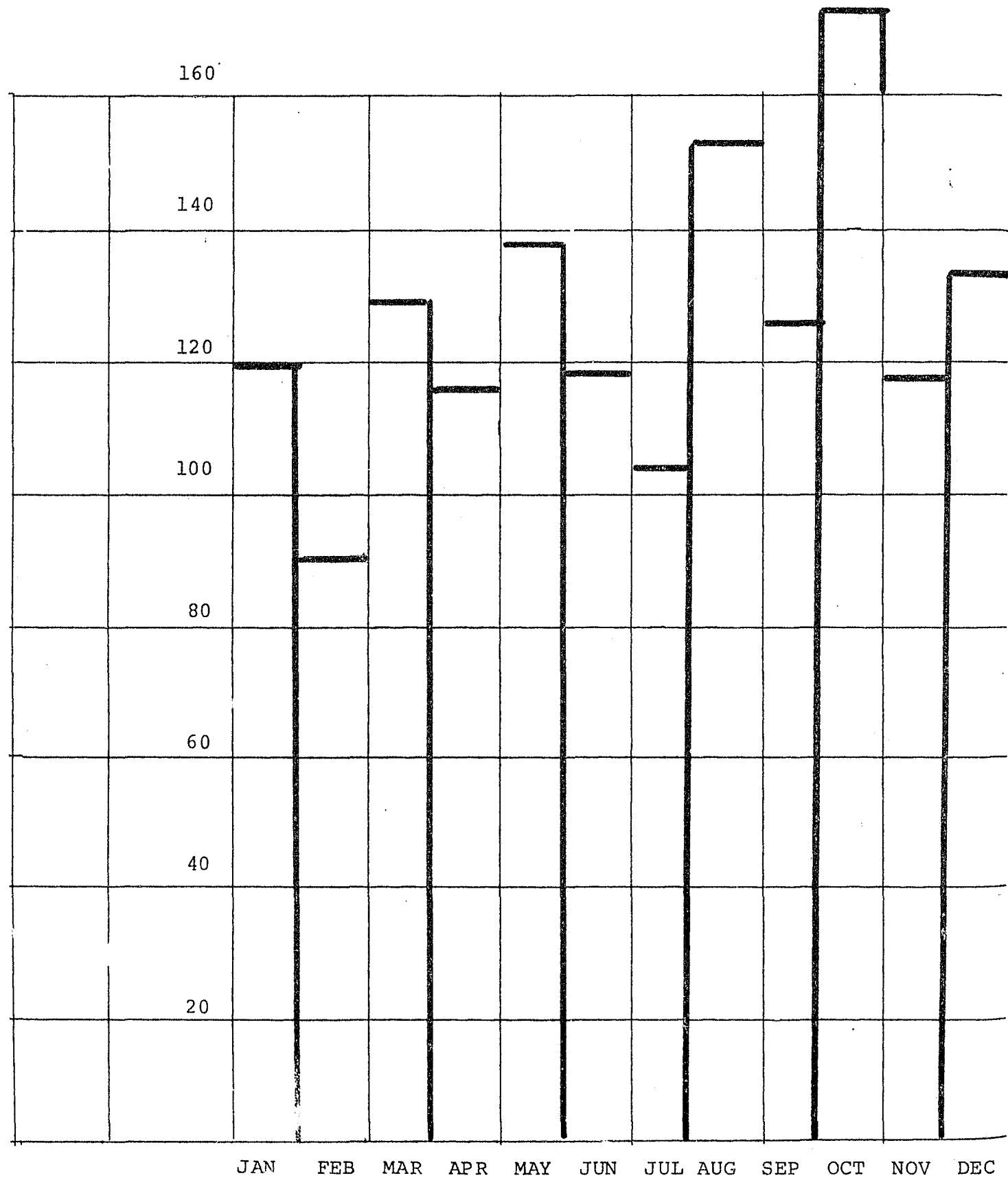
LOCATION

1885 The Alameda
San Jose, CA 95126
Telephone No: 299-3621

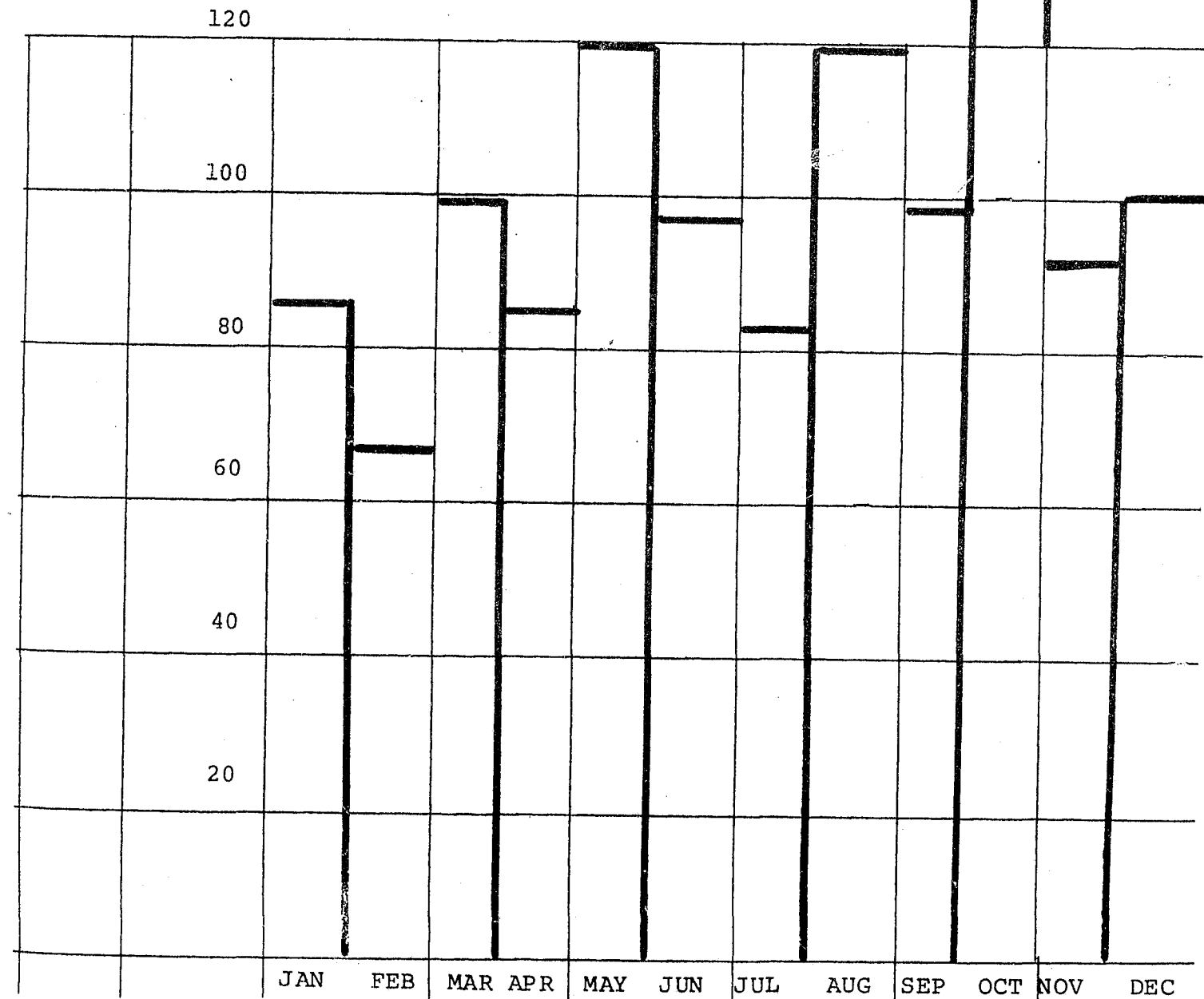
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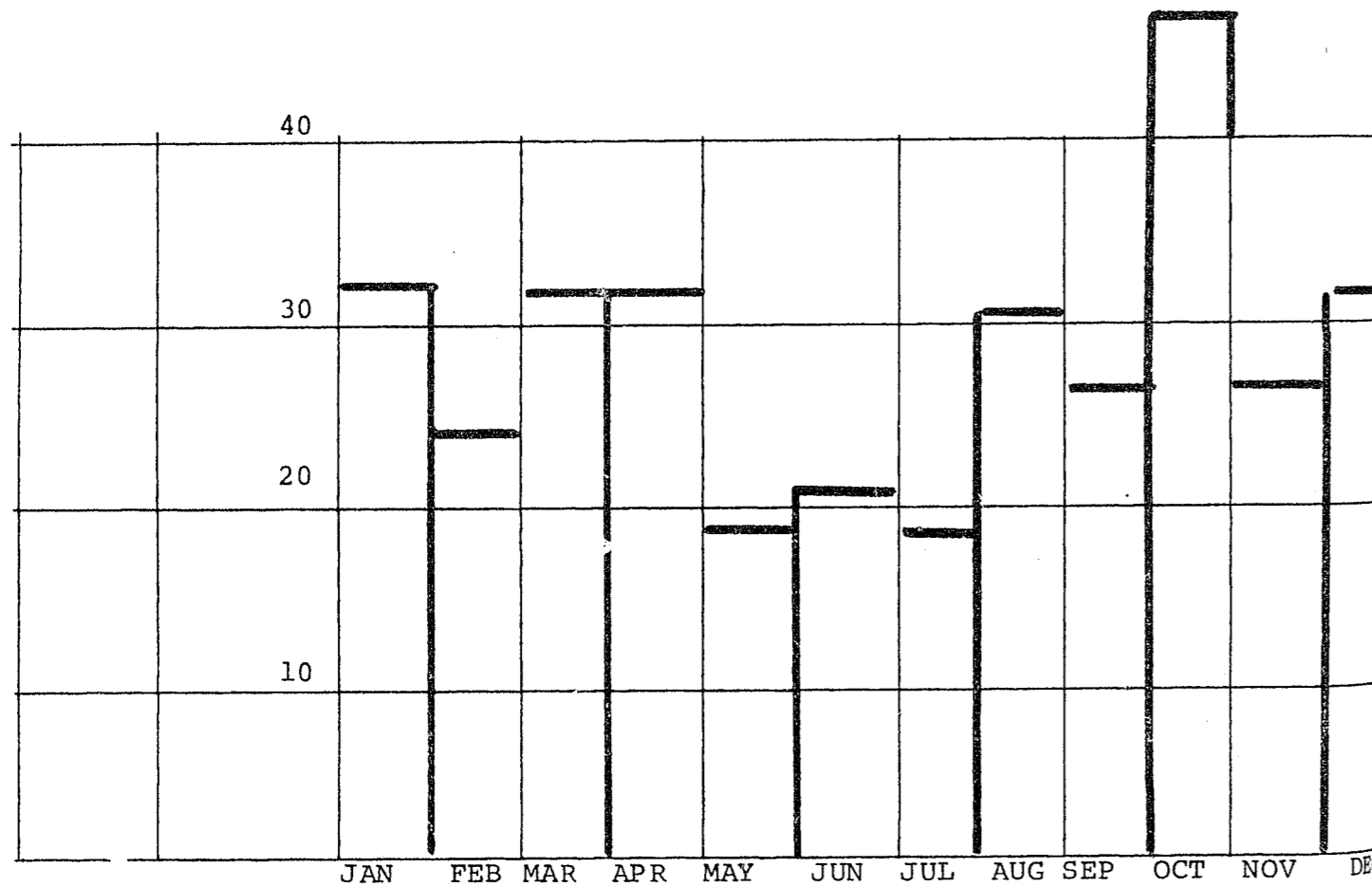
CASES REFERRED-----1974 (1515)



CASES DIVERTED-----1974 (1173)



CASES REJECTED----1974 (342)



Reasons for Rejection of Subject to a Diversion Program

1. Lack of sufficient motivation on part of subject to take an active, participating interest in the program.
2. Extensive prior arrest record, history of Bench Warrants being issued, lack of Court appearance in previous cases, history of violent and assaultive behavior.
3. Prior parole or probation violations not previously noted.
4. Other serious charges pending along with diversion, which would make diversion inoperable.
5. Failing to appear for Court diversion hearings..
6. Violence or threat of violence in present case.
7. Defendant definitely stating not interested and would rather be prosecuted.
8. On probation or parole for previous narcotic conviction.
9. Denial of any drug/narcotic problem by client.
10. Subsequent arrest and conviction while Drug Diversion case pending Court action.

1974 Health & Safety Code
Violation/Charge Breakdown

Code Numbers	1973 Percentage	1974 Percentage
Sec. 11357 H&S Code (Possession of Marijuana)	74%	72%
Sec. 11350 & 11377 H&S Code (Possession of Controlled Substances, other than Marijuana)	18%	17%
Sec. 11364 H&S Code (Possession of Paraphernalia)	5%	8%
Sec. 11365 H&S Code (Visiting a Place Where Controlled Substances are Unlawfully Used)	3%	3%
Sec. 11383 H&S Code (Possession of Methylamine & Phenylacetone with Intent to Manufacture)	0	0
TOTAL:	100%	100%

Court Referrals

	1973 No. of Cases	1973 Percentage	1974 No. of Cases	1974 Percentage
<u>Municipal Court</u>				
San Jose	653	50.0%	812	53.6%
Santa Clara	198	15.6%	161	10.6%
Los Gatos	118	8.3%	172	11.4%
Sunnyvale	144	11.4%	175	11.6%
Palo Alto	128	9.7%	149	9.8%
Gilroy-Morgan Hill . .	33	2.5%	38	2.5%
<u>Superior Court</u>	33	2.5%	8	.5%
TOTAL:	1307	100%	1515	100%

1974 Cases Diverted & Rejected by Sex

	Male	Female
Total Cases Diverted	1027	146
Total Cases Rejected	312	30
TOTAL:	1339	176

	Male	Female	TOTAL
Total Cases Referred	1339	176	1515
Percentage of Total Cases Referred	88	12	100

Age Group by Percent

	Male	Female
18 - 21	62%	52%
22 - 25	23%	28%
26 - 29	7%	9%
30 - 39	7%	7%
40/over	1%	4%
TOTAL PERCENT:	100%	100%

1974 Total Cases Terminated

Successful for year----- 832

Total cases placed back in prosecution stage for
year as failure ----- 198

Reasons for Failure:

- 1. Lack of Motivation and attendance ----- 82
 - 2. New criminal arrest and conviction ----- 74
 - 3. New drug/narcotic arrest and conviction ----- 18
 - 4. Death (1973: 4) ----- 0
 - 5. Whereabouts unknown ----- 24
- TOTAL : 198

Of the 1173 cases diverted, 79 percent were terminated as successfully completing their diversion period and only 17 percent were unsuccessfully terminated and placed back in prosecution stage. 745 are still in the diversion system.

In 1974, 1173 cases were diverted, 832 cases were terminated successfully and 198 cases were terminated unsuccessfully. 745 cases were in the drug diversion system on December 31, 1974.

PROGRAMS

Name	Location	Purpose	Fee	Length of Program	Size of Class
Metropolitan Adult Education	San Jose	Drug Education	\$10-27	7 weeks	varies
Voluntary Bureau	Palo Alto	Community Services	None	On-going	No limit
POAR (Applied Principles of Alcoholic Recovery)	San Jose	Drug Education-Overcoming Problem-How to Remain Drug Free	\$90-180	3-6 mos.	Varies with Program
Bert Anderson Group	Saratoga & Mtn. View	Learning Experience & Self-motivation	\$36 for 6 wks., \$6/mo.	6 mos.	20
Community Health Abuse Council	Mtn. View	Self-awareness-Drug	\$20-40	6 mos.	No limit
Dept. of SC County Mental Health	Sunnyvale	Counseling Group & Individ.	Ability to Pay	On-going	No limit
Drug Abuse Clinic (Santa Clara Co., Health Dept.)	San Jose	Counseling-Drug Education	Ability to Pay	Varies, depending on clients' needs	No limit
Wm. LaVey Group	San Jose	Drug Education	\$30-50	6 wks. to 6 mos	20-30
Narconon	Palo Alto	Self-awareness	\$35	On-going	No limit
SC Co. North Co. Public Health	Palo Alto	Drug Awareness Education	Ability to Pay	6 wks; weekly, then once/mo.	No limit
Project Intercept	San Jose	Education(GED)-Job Finding Drug Counseling	None	On-going 90 dys. max	Varies

In addition to the programs on the previous page, the following programs are used on an infrequent basis. These programs are also directed towards counseling and drug education. These programs are as follows:

1. Alcohol & Drug Abuse Division
United States Army
Fort Ord, CA
2. Alcohol Service Center
San Jose & Palo Alto, CA
3. Alcohol Treatment Center
Santa Clara County
Gilroy, CA
4. Chrysalis
Gilroy, CA
5. C.U.R.A.
Fremont, CA
6. Drug & Alcohol Education Center
USNAS Moffett Field
Sunnyvale, CA
7. Drug Treatment Program
Veterans Hospital
Palo Alto, CA
8. Job Corps
San Jose, CA
9. Methadone Clinic
San Jose, & Gilroy, Inc.
10. North County Mental Health Center
Santa Clara County
Palo Alto, CA
11. North County Volunteer Bureau
Palo Alto, CA
12. O.I.C.
San Jose & Gilroy, CA
13. Operation S.E.R.
San Jose, CA
14. Pathways
San Jose, CA

(Programs - Continued)

15. Project Dare
San Jose, CA
16. Project Eden, Inc.
Hayward, CA
17. Santa Cruz Community Counseling Center
Santa Cruz, CA
18. The Owl
Gilroy, CA
19. Transcendental Meditation
San Jose, CA

SUMMARY

As noted in this report on page 10, there has been little change in the type of violation from 1973 to 1974 that has been referred under the Drug Diversion Law, although the total referrals have gone up over 200 in 1974 over 1973. There appears to be little indication of change as of the date of this report concerning the Drug Diversion Law. The law was extended through 1976 just as it was presented in December, 1972, as law. We do note, however, that several pending cases in the court systems could change the law as written, but most of the cases are still pending. We still are of the opinion that the law is of benefit, especially to the so-called first-time young marijuana user who could jeopardize a career by an arrest and conviction. It is our opinion that the record should be completely expunged in some way to eliminate any future reference to the violation of the law if it is to succeed as, apparently, it was intended.

Diversion Information Given
to
Divertees

Adult Probation Department
Diversion Forms

DRUG DIVERSION INFORMATION

The Drug Diversion Program is designed to deal with drug and/or narcotic offenders, and is granted for a period lasting from six to twenty-four months. In order to qualify for the program you must be referred by the District Attorney and/or by the Court, waive your rights to a speedy trial and meet the following conditions:

1. Be in violation of the following Health and Safety Code Sections:
 - a. Section 11350 (Possession of a Controlled Substance).
 - b. Section 11357 (Possession of Marijuana).
 - c. Section 11364 (Possession of Paraphernalia).
 - d. Section 11365 (Visiting a Place Where a Controlled Substance is Used).
 - e. Section 11377 (Possession of a Controlled Substance).
 - f. Section 11383 (Possession of Methylamine and Phenacetone with Intent to Manufacture).
2. Have no prior conviction involving narcotics or dangerous drugs.
3. No evidence of a violation exists relating to narcotics other than those listed above in (1).
4. The offense you are charged with did not involve a crime of violence or threatened violence.
5. You have no record of parole or probation violations.

The Adult Probation Department will conduct an investigation of your prior arrest record, employment, military history, educational background, community and family ties, related factors, and specifically your drug background and motivation to determine your suitability and eligibility for the program. Any information you give your probation officer relating to the specific offense for which you are charged cannot be used against you in subsequent actions with respect to the specific offense with which you are charged.

At this point, if eligible, you will be referred to an educational or rehabilitative program. Next, your case will be returned to Court and considered by the judge for formal Drug Diversion. Once in the program, you are required to meet the following conditions:

1. Meet all obligations of your program.
2. Maintain constant contact with your probation officer and inform him of any address or employment changes, or any arrests that may have occurred.
3. Do not violate, be arrested and convicted of any laws.

Failure to maintain these conditions will result in your case being removed from Drug Diversion and returned to Court for criminal prosecution.

However, successful completion of the entire program for the diversion period will result in your case being returned to Court and the drug charges dismissed.

In order to assist the probation officer in determining your eligibility, as well as present your views, please answer in writing the following questions and bring them to the interview.

1. Tell why you wish to enter the Drug Diversion Program.
2. Tell your side of the story relating to the present drug charges.
3. Give a detailed history of your drug or narcotic usage.

I have read and understand the above

Date _____ 19 ____

IN THE MUNICIPAL COURT FOR THE _____ JUDICIAL DISTRICT

COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff
vs.

Defendant

ORDER FOR DIVERSION
Pursuant to Chapter 2.5 of
the Penal Code, Section 1000.2

Court Case No.: _____

Charge: _____

The Court, having determined that the defendant has waived his right to a speedy Trial and consents to further proceedings under this Chapter, having obtained the concurrence of the District Attorney that the defendant is a proper candidate, and having considered the Probation Department's report now makes its order that the defendant be diverted for a program of education, treatment or rehabilitation.

The length of diversion will be for a period of _____ months.

Progress reports will be filed with the Court by the Adult Probation Department every _____ months.

Failure on the part of the defendant to satisfactorily complete the program of education, treatment or rehabilitation will result in him being returned to Court and criminal proceedings will be resumed in the usual manner.

PROGRAM: _____

Dated _____ 19 _____

I have read and understand
the above procedures

Judge of the Municipal Court

Defendant

ADULT PROBATION DEPARTMENT
SANTA CLARA COUNTY

CASE NO.:
DATE:
TIME:
ATTY:

DEFENDANT: _____

COURT AND DEPARTMENT: _____

CHARGE: _____

PRIORS ADMITTED (NUMBER): _____

DATE OF CITATION: _____ DAYS IN CUSTODY: _____

DATE OF PLEA: _____ JURY TRIAL: _____ COURT TRIAL: _____

AGE & DATE OF BIRTH: _____

RESIDENCE ADDRESS: _____ HOW LONG? _____

MONTHLY RENT: _____ MONTHLY PAYMENT: _____

MARITAL STATUS: _____ NAME OF SPOUSE: _____

CHILDREN AT HOME & AGES: _____

COUNTY WELFARE: _____

OCCUPATION: _____ SOCIAL SECURITY NO. _____

EMPLOYER: _____ HOW LONG? _____

OCCUPATION OF SPOUSE: _____

DEFENDANT'S MONTHLY NET INCOME: _____

SPOUSE'S MONTHLY NET INCOME: _____

PRIOR RECORD: _____ C.I.I. _____

_____ D.M.V. _____

GENERAL INFORMATION:

RECOMMENDATION:

DATE: _____

RE: _____

NO: _____

The above-named individual has been referred to our Department by the Court for investigation and recommendation regarding the suitability of being placed in the Drug Diversion Program.

Our initial investigation indicates that this person may be able to benefit from your program. We are therefore requesting that you interview this person and notify us as to whether or not you will accept him/her.

For your convenience in replying, please fill in the appropriate spaces and return the original copy by mail as soon as possible.

Deputy Probation Officer
Telephone number _____

_____ Subject has been accepted into our program.

_____ Subject is not acceptable for our program.

_____ Length of Program.

REMARKS: _____

SECTION IV
CRIMINAL JUSTICE AGENCY QUESTIONNAIRES
(Blank Samples)

QUESTIONNAIRE FOR DISTRICT ATTORNEYS

1. At what point is the decision to consider a drug offender eligible for the diversion program made?
2. When is the offer of diversion made to a defendant?
 - a. Pre-arraignment?
 - b. Post-arraignment?
 - c. Preliminary hearing?
 - d. When trial date is set?
 - e. During or after adversary proceedings?
3. At what point does the D.A. first encounter the defendant and the facts of his case?
4. How does the D.A. go about screening each defendant to determine his or her eligibility for the diversion program?
5. What criteria are used by the D.A.'s office in making the eligibility decision?
 - a. P.C. 1000 criteria rigidly applied?
 - b. Criteria which have been pragmatically developed by the D.A.?
 - c. Information as to the offender's past violations?
 - d. Intelligence reports of other possible criminal activity in which the offender is believed to be involved?
6. Are defendants allowed access to defense attorneys in order to consult with counsel when they are first presented with the possibility of diversion? If not, at what point are they allowed to do so?
7. Since the inception of the diversion law in January, 1973, have you encountered any increase or decrease in arrests for the following offenses:
 - a. possession of marijuana?
 - b. sale of marijuana?

8. Is possession of marijuana almost always treated as a misdemeanor rather than a felony by the Santa Clara County D.A.'s office?
9. Exactly what information is given the offender regarding the nature of the diversion program and its possible effects and ramifications?
10. Is there a standard written diversion information form given to potential divertees in Santa Clara County by the D.A.'s office if the individual offender appears to meet the legal eligibility requirements of the statute?
11. Currently the defendant who successfully completes the diversion program emerges from the legal system without a conviction on his record, but a C.I.I. record does remain which reads "Completed diversion under P.C. 1000." Do you favor maintaining this system of record - keeping, or do you think the divertee's record should be completely expunged upon successful completion of the program?
12. What effect has the recent On Tai Ho decision had on the D.A.'s office with regard to possible judge/D.A. conflict on the issue of a potential divertee's eligibility for diversion?
13. How has the diversion program directly affected the work of the D.A.'s office with regard to the handling of offenses listed under P.C. 1000?
 - a. More preparation?
 - b. Less preparation?
 - c. About the same?
14. Are there any special training programs that members of the D.A.'s staff handling diversion cases have taken to prepare for the implementation of the law?

15. The Adult Probation Dept. has informed us that the investigative report which they prepare on each divertee is always made available to the D.A.'s office. What does the D.A. do with this report when it is made available? Is it maintained on file in the D.A.'s office for possible prosecutorial use at a later date in the event the divertee does not successfully complete the program?
16. What contacts does the D.A.'s office have with the Probation Dept. other than receiving the investigative report on the divertee?
17. When a divertee is terminated for lack of motivation as determined by the Probation Dept., does the defendant have the right to a hearing on the issue of his termination? What part, if any, would the D.A. have in this hearing?
18. Do you think a defendant should be allowed to raise a 1538.5 motion to suppress evidence as well as opt for diversion, or should he have to make a choice of one or the other course of action?
19. What aspect of the diversion treatment programs promotes education? What aspect rehabilitation? What aspect treatment? To your knowledge, do the majority of the treatment programs meet these specified statutory goals?
20. Do you believe diversion promotes more respect for the legal system than does the arrest-conviction-suspended sentence route?

21. Why are some defendants who from all appearances, fit the diversion eligibility requirements simply not diverted in some cases?

22. Are heroin divertees who meet statutory requirements freely diverted in Santa Clara County?

23. As an officer of the court, the D.A. has a duty to further the ends of justice for all parties. Do you feel that P.C. 1000 operates to this end?

24. If P.C. 1000 were to continue in its present form, do you feel that it would serve a positive role in the criminal justice system in Santa Clara County? Why or why not?

25. What goal or purpose do you believe is best served by the diversion law?

DISTRICT ATTORNEYS' QUESTIONNAIRE

The following questions will require answers of varying lengths; if you need more room for an answer, please use the other side of the page.

1. (Circle the appropriate answer)
I am / am not assigned to the diversion unit of the District Attorney's office.

2. Approximately how many diversion case have you handled:
 - a. in calendar 1973? _____
 - b. in calendar 1974 to date? _____

3. Please list in order the steps that a case must go through in the District Attorney's office before an offer of diversion can be made; at the same time, please list the parties involved in each step.

4. It appears to be the practice in this county to offer diversion to a defendant at either the arraignment or the pre-trial hearing. What reasons are there for the time difference? What parties are involved (e.g., if it is necessary to wait to make the diversion offer until a CII records check is completed, please indicate the approximate waiting time, in addition to the name of the agency.)

5. Please respond to the following hypothetical situation in light of the questions listed at the end:

Harry Hophead was sitting in front of his San Jose home recently when Officer Jones pulled up in his squad car to ask what time it was. Jones noticed that Harry had just lit a "joint," and arrested Harry for possession of marijuana (Harry had no other marijuana on his person and Jones did not search Harry's house). Later, as Jones was completing his report of the arrest, another officer, T. Oma, who works undercover for the San Jose

Police Department's "Narco Unit," told Jones that he had received an unverified tip that Harry was dealing marijuana. Jones includes this information in his report. The District Attorney's office has determined that Harry meets all the criteria for diversion, and in fact has no prior arrest record.

Would Harry be diverted?

Why or why not?

What is the procedure that would be followed in a case of this kind?

6. What conflicts are there (if any) with regard to a defendant's eligibility for diversion:

a. between the Adult Probation Department and the District Attorney's office?

b. between the bench and the District Attorney's office?

(In your answer, please indicate the types of situations where conflicts have arisen and the method(s) of resolution. Does the defense attorney play a role in either situation?)

7. What contacts, both routine and unscheduled, does the District Attorney's office have with the deputies in the Adult Probation Department's Drug Diversion unit?

8. The investigative report of the Adult Probation Department is usually made available to the District Attorney's office. How is this report used?

9. When a divertee is terminated for lack of motivation or failure to cooperate with the diversion program, what role does the district attorney play in the hearing on his termination?

10. What are the goals of P.C. 1000 in your opinion as it currently operates in this county? Please list them (if there are more than one) in decreasing order of importance.

In your experience, are these the same goals that you would have listed for diversion in March of 1973? Are there any others that you would have included at that time?

11. Does diversion promote more respect for the legal system than the trial-conviction-suspended sentence or fine alternative in cases involving first-time offenders?

12. If diversion were to remain an alternative in drug offense cases, what changes would you recommend in it? (Please list separately) What additional topics should have been covered in this questionnaire?

PUBLIC DEFENDERS' QUESTIONNAIRE

1. Approximately how many clients have you had who were eligible for diversion?
 - a. In the year 1973?
 - b. In the present year (to date)?
2. How many of them opted for diversion in the same periods?
3. What are the reasons that clients who were otherwise eligible for diversion chose not to be diverted?
4. When are your clients usually informed of their eligibility for diversion? Are any of them informed at different times?
5. To what extent have you been informed about the programs to which your clients have been diverted? Please list all the programs that you know about.

What has been the source of this information?
6. Do you ever participate in the choice of a program for your clients?

If so, to what extent?
7. Have you had any contacts with the staffs of the various programs?

PUBLIC DEFENDERS' QUESTIONNAIRE
Page 2

8. Does a public defender need any special knowledge concerning the problems related to drug use/abuse to deal with defendants who are divertable?
9. Would such information aid in the disposition of diversion cases?
10. What differences are there in the way the public defender handles a case involving:
 - a. possession of a small quantity of marijuana?
 - b. possession of barbiturates or amphetamines?
 - c. possession of heroin?
11. When a client is prematurely terminated for unsuccessful completion of the diversion program, what does the public defender do? Do you only handle those cases which you handled when the client was first diverted?
12. What contacts do you have with the Adult Probation Department concerning diversion cases?
13. Does diversion generate any savings?
 - a. for the public defender's office (explain)?
 - b. in terms of court costs (as opposed to court time)?

14. What is your understanding of the judges' role in the diversion process? Do judges appear to have a knowledge of the programs to which they assign divertees?
15. Does diversion serve the ends of justice?
- a. One of the goals of the diversion concept was to keep first-time drug offenders from getting a criminal record. However, the defendant who successfully completes diversion still has a record stating that he has been diverted. Does this work against defendants? Could it work against them in the future?
 - b. Should there be automatic expungement of all records of a defendant's completion of diversion, and, if so, when?
 - c. By opting for diversion, the defense is precluded from such techniques as a 1538.5 motion. Does this allow the District Attorney to use diversion as a "dumping ground" for the cases which might not succeed at trial?

THANK YOU FOR YOUR COOPERATION.

QUESTIONS ASKED OF SANTA CLARA COUNTY
PUBLIC DEFENDER

1. What, if any, are the guidelines established by the Public Defender's Office for handling diversion cases?
2. The District Attorney's Office has established a special unit that deals with diversion cases; the Public Defender's Office apparently has done so. Why the difference?
3. What have been the fiscal ramifications of diversion for the Public Defender's Office? Has it generated either savings or increased expenditures? What effect has diversion had on the attorney's use of time?
4. It has been mentioned that in the future the Public Defender's Office will attempt to offer additional services to its clients, particularly in terms of social services. Insofar as diversion is concerned, how will these additional services, a) augment the public defender's current function as counsel, b) tie into the services of the diversion programs themselves?

QUESTIONNAIRE FOR SANTA CLARA COUNTY JUDGES

1. a) On the average, how many diversion cases per month do you encounter in court? _____

b) Out of your total narcotics offense caseload, how many cases are actually diverted (of those eligible for diversion)? _____

2. What knowledge do you have of the programs to which divertees are sent (i.e., their content, method of instruction, goals)? _____

To the best of your knowledge, do the programs to which divertees are assigned meet their statutory goals of education, rehabilitation, and treatment? _____

3. Is the recommendation of the Probation Department concerning the program which best suits the needs of the diverttee almost always followed? _____

What is the procedure in cases where the court chooses not to follow the recommendation of Probation? _____

4. Section 1000(a) of the Penal Code allows diversion to take place any time a case is before the court on an accusatory pleading without indicating the

precise moment when it should take place. In your experience, when is the offer of diversion usually made? _____

What are the reasons that it is made at that point? (Also please indicate percentage of time that the offer is made at the above point) _____

Approximately how often is the offer of diversion made earlier than that point? (In percentages) _____

Approximately how often is it made later? (In percentages) _____

What influence does the judge have in deciding when the offer is to be made? _____

5. Please respond to this statement:

Defendants usually have effective assistance of counsel in making the decision to accept or reject diversion.

1 2 3 4 5 6 7

Code: 1 = Strongly Agree
2 = Agree
3 = Agree with Reservations
4 = No Comment
5 = Disagree with Reservations
6 = Disagree
7 = Strongly Disagree

Please explain your response: _____

6. Please respond to this statement:

Defendants who are eligible for diversion should be allowed to file 1533.5 motions prior to accepting diversion.

1 2 3 4 5 6 7

Please explain your response: _____

7. Who informs the defendant of the consequences of accepting diversion? _____

Does the court explain in any way the need for the defendant to cooperate with the Adult Probation Department and the staff of the program to which he is assigned? _____

What information does he receive about his record in C.I.I. in Sacramento? _____

8. How does the court use the investigative report prepared by the Probation Department? _____

9. When a defendant is terminated by the Probation Department for lack of sufficient motivation, what recourse does he have? What is the court's role at this point? _____

Is there ever a hearing on the issue of termination? _____

If so, who participates in such a hearing? _____

10. The California Supreme Court held in the case of People v. Superior Court of San Mateo County, Lawrence On Tai Ho, Real Party in Interest that the District Attorney should no longer be allowed to veto the court's decision to divert a defendant who is eligible for diversion. What are the ramifications of this decision in the courts of Santa Clara County? _____

Has it had any impact to date? _____

11. It has been suggested that the records of first-time offenders who have successfully completed diversion under P.C. 1000 should be automatically expunged. If you were to comment on this, what would your reaction be? _____

If the record should be expunged, when should this take place? _____

Should the defendant be required to request expungement, or should it be automatic? _____

12. In your opinion as a judge, what is the most positive benefit (if any) of diversion? _____

13. One of the stated goals of diversion as set forth in S.B. 714 was the reduction of court time. Has this been the case in your experience? _____

14. Has diversion reduced court costs to any substantial degree? _____

15. What is the time difference between hearing a "normal" criminal case involving a drug offense and hearing a diversion case? _____

What is the time difference (insofar as total court time is concerned) between hearing a "normal" criminal case involving a drug offense and in hearing a diversion case where the defendant is terminated and returned to the proceedings against him? _____

16. Does diversion, as it presently operates, serve the ends of justice? What changes would you as a judge recommend in the diversion process to make it more just? _____

Thank You for Your Cooperation.

PROPOSED QUESTIONS FOR

ADULT PROBATION DEPARTMENT

1. Since the diversion program was first instituted in Santa Clara County, what changes have been made?
2. How effective were the early months of the program? Were there any mistakes or pragmatic considerations arising out of those first months that led to later changes?
3. What sorts of guidelines were used in first setting up the diversion program in Probation?
4. Did the officers first assigned to diversion cases receive any additional special training?
5. When was the special diversion unit established? Why was it established?
6. Describe the positions in the diversion unit and their responsibilities and duties.
7. Have the officers who comprise the diversion unit received any training designed to help them deal with diversion cases?
8. In addition to the initial costs involved in the set-up of the diversion program in the Probation Department, has the program caused any increase or decrease in the Probation Department's budget? Did the Probation Department receive any additional funds to aid in the implementation of the diversion program? Did these funds stem from S.B. 714 or did they come from other sources (list sources)?
9. How has the diversion program changed the staff assignments and the work load of the probation department?
10. With respect to the programs that the divertees are assigned to:
 - A. How many were in existence in January of 1973?
 - B. What modifications were made in these programs to adapt them to the diversion approach?
 - C. What new programs have arisen since January, 1973? Were they generated in whole or in part by the needs of the diversion program? What impact has the Probation Department had in the establishment of new programs?
 - D. How does the Probation Department monitor existing programs and how are new programs selected?

11. What unique problems are there in the supervision of divertees?
12. What sort of information does a probation officer compile concerning a divertee in the course of his investigations? What are the sources of this information?
13. What kinds of questions does the probation officer ask a divertee in the course of an interview? Who else is present at such an interview? (Could we see one?)
14. How is it determined which program a divertee will be sent to? Is the divertee ever given a choice? Does it vary with the individual P.O.?
15. Once a program has been selected, what are the probation officer's usual procedures in supervising the divertee? What contact does the probation officer have with the program staff insofar as a particular divertee is concerned?
16. What conditions are imposed on the divertee:
 - a. Arrested for possession of a small quantity of marijuana?
 - b. Arrested for possession of amphetamines or barbituates?
 - c. Arrested for possession of heroin?
17. A. Do divertees ever waive their rights regarding searches and seizures conducted by the probation department? B. Do divertees ever have to submit to urinalysis or skin tests, and if so, what do these procedures consist of?
18. Where the offenses are substantially similar, what are the differences in a case handled by the diversion unit and a case handled by a regular probation officer?
19. It has been recommended that the six-month minimum period of diversion should be eliminated, and that there should be no further supervision of the divertee once he has successfully completed a program. In light of your experience in this County with the program, could you comment on the impact that such changes would make, especially in light of the fact that the recommendation seems to have been in part directed at cases involving possession of small quantities of marijuana, and since arrests for that offense appear to be the majority directed toward diversion.
20. Are there other agencies, such as the County Department of Mental Health, that could assist the Probation Department in the supervision of divertees, the monitoring of programs and the like? Please name them, and indicate the ways in which they could assist you.

21. The investigative report prepared by the probation department is currently submitted to the court charged with the disposition of the case, the defense attorney, and the district attorney. It has been suggested that this report no longer be made available to the district attorney. What might be the reasons for such a suggestion, and what effects, if any, would it have on the Probation Department? Do you favor keeping the abstract on each divertee who has successfully completed the diversion program rather than sending it to CII (Criminal Investigation Information)?
22. The Attorney General has recommended that the Department of Justice and the Department of Mental Health should jointly establish and administer a training program for probation officers involved with diversion cases, but there has been no mention to date of the possible curriculum and content of such a program. What recommendations would you make if you were asked to assist in designing such a program, in light of your experience in this County?
23. Without attempting a value judgement of the performance of agencies or individuals that deal with the probation department in the course of an average diversion case, where have those other agencies been especially helpful to Probation? Where have they failed to meet Probation's expectations? What contacts, both official and unofficial, do you have with those agencies?
24. We understand that a survey of probation officers involved in diversion has been taken by the Probation Dept. What did this survey attempt to discover? What were the results?
25. Could you give us an update of statistics on divertees contained in Drug Diversion Report, 1973 from Jan. 1, 1974 to date?
26. Please provide all available information concerning assignments of divertees to specific programs.
27. Can you provide any information concerning changes in budgetary allocation generated by the diversion program?
28. Are there any figures available which indicate per client cost of the diversion program to the Probation Dept? Please compare w/costs for handling other probationers.

QUESTIONNAIRE FOR DIVERSION UNIT

PROBATION DEPARTMENT MEMBERS

1. In your experience, what has been the most valuable preparation for your current position?

Please rate the following in order of their relative importance:

- _____ pre-diversion duties as a probation officer
- _____ pre-diversion experience with drug offenders
- _____ experience since assignment to the diversion unit
- _____ additional training and education since assignment to diversion unit
- _____ other (please specify) _____

2. What additional training have you received since being assigned to the diversion unit? Please distinguish between training resulting from your assignment to the diversion unit and other training.

3. Please list the programs that you make the most recommendations to in decreasing order of number of referrals.

1	5
2	6
3	7
4	8

4. Please list the programs that you monitor.

5. What have been the reasons for the elimination of programs from the list of programs receiving divertees?

Please rank the following possible reasons in order of their frequency:

- _____ program refused to turn in attendance records to probation dept.
- _____ program content or structure was unsatisfactory for diversion purposes
- _____ divertees complained to the probation dept. that the program was not meeting their needs or expectations
- _____ program no longer accepted diversion referrals
- _____ other (please specify) _____

6. How do you determine the motivation of an offender who is eligible for diversion? Please list all important factors involved in this determination.

7. Of the total referrals you have received, what percentage of that total have been diverted? _____

8. What techniques and questions do you use in getting someone to discuss his or her drug experiences and history?

9. Please indicate your response to this statement:

The person without a serious drug problem (e.g. those arrested for possession

of small quantities of marijuana who do not have other emotional and psychological problems) benefits from the diversion treatment programs available.

(Please circle response)

1 2 3 4 5 6 7

Code: 1 = Strongly Agree
2 = Agree
3 = Agree with
 Reservations
4 = No Comment
5 = Disagree with
 Reservations
6 = Disagree
7 = Strongly Disagree

Please explain your response:

10. The person with a serious drug problem (e.g. dependence or emotional or physical problems resulting directly from drug use) benefits from the diversion treatment programs available.

(Please circle response)

1 2 3 4 5 6 7

Please explain your response:

11. Is cost of a program a factor in choosing which one a divertee will be assigned to? Should it be a factor?

12. Approximately how often are divertees shifted from one program to another?

Approximately what percentage are shifted: (please indicate percentages)

a. at the request of the divertee?

b. at the request of the program staff?

c. by the decision of the Probation Department?

13. Briefly list the topics covered in an interview with an average candidate for diversion.

14. The six-month minimum period of diversion should be eliminated at the discretion of the probation officer in charge of a case.

(Please circle response)

1 2 3 4 5 6 7

Please explain your response:

15. The investigative report of the Probation Department, currently made available to the court, the defense attorney, and the district attorney should no longer be given to the district attorney to prevent its possible use in a sentencing hearing if the divertee is terminated prematurely and his case is returned to trial.

(Please circle response)

1 2 3 4 5 6 7

Please explain your response:

16. Records of those who complete diversion should be expunged upon successful completion of the diversion program (or shortly thereafter). (Please circle response)

1 2 3 4 5 6 7

Please explain your response:

17. Please circle the statement below which seems to be the most accurate:

- a. Currently, there appear to be enough programs offering a sufficiently broad range of services to handle all diversion referrals.
- b. Currently, there are not enough programs offering a sufficiently broad range of services to handle all diversion referrals.

Please explain your choice: _____

18. Please circle the best response:

If more places are needed for divertees, the Probation Department should:

- a. request expansion of existing programs;
- b. send more divertees to programs that now receive small numbers;
- c. look for new programs.

Please explain your choice: _____

THANK YOU FOR YOUR COOPERATION.

SECTION V

Community Programs

Program Descriptions: The Top Ten

Community Programs

What follows is a brief description of the ten most often used diversion programs in the County. They are in order of the number of referrals to each program. The reader can consult the Adult Probation Diversion Report in the APD Chapter of this evaluation to find out other programs which are used by the Probation Department.

As was mentioned earlier, one of the criteria for selection of the specific program in each case is the divertee's financial situation. Therefore, one cannot judge the number of referrals to a program without taking price into account. The Metropolitan Adult Education Program is by far the most often used program. A factor in this may be that it is the least expensive at \$10. While Narconon charges no fee to P.C. 1000 divertees, the program requires three nights of attendance per week. From divertee interviews, the evaluation team has discovered that most are looking for an inexpensive program which demands little in time or effort. Those that do have a particular problem, however, either with drugs or some other area of life, are given referrals to programs which can deal with the specific problem. For instance the County Drug Abuse Clinic has a very comprehensive program to deal with a wide range of drug-related problems. And such organizations as Project Intercept are able to provide the divertee with a G.E.D. certificate, job training, and vocational counseling. In one case the Probation Department referred a young man to truck driving school to obtain his Class I license.

Based upon the attitude of the Probation Department, the evaluation team feels that at present, the lack of a wider range of agencies and programs to which divertees could be referred is due simply to viewing the problems of the P.C. 1000 divertee in too narrow a manner. Most programs are oriented to deal in some way with the divertee's drug use rather than with other hassles he may have in his life. In certain obvious cases where the problem sticks out like a sore thumb, the person is directed to the appropriate resources. However, from our conversations with divertees, we have learned that their primary problem is not with drugs, but rather most divertees are at a crucial time in their life and facing many uncertainties. There are many community resources which can help with the process of growing up and 'making it' in the world. It would be beneficial if such programs could be used more often. This however, is not to fault the Adult Probation Department. It is one of the most progressive in the state and has led the way in developing meaningful alternatives to incarceration or fines. But the attitude towards 'drug abuse' is still much too narrow.

Based upon the current approach we find a lack of vitality in most diversion programs because the divertee is not turned on by the material or the method of instruction. However, when various guest speakers are brought into introduce the young people to values clarification, communications, techniques, or other consciousness-changing experiences it seems to spark the class to life. We have observed it on a number of cases. People are turned off to hearing about the dangers of drugs, but are definitely interested in learning how to develop their potential in life.

PROGRAM DESCRIPTIONS: THE TOP TEN

(By Numbers of Referrals)

1. Metropolitan Adult Education
2. William La Vey Drug Education Program
3. Adult Probation - In House Referral
4. Bert A. Anderson Diversion Program
5. Project Intercept
6. Out of County Referrals
7. Narconon of Palo Alto
8. Voluntary Action Center Court Referral Program
9. Alcohol Service Center
10. Santa Clara County Drug Abuse Clinic

A Sample of Referrals to Programs

January to May, 1974*

Program Name	Jan.	Feb.	March	April	May
Chuck Woll	1	0	0	0	0
La Vey (CYA)	25	15	19	14	21
Adult Probation Dept.	4	8	5	5	11
APOAR	1	3	1	0	8
MAEP	5	7	21	22	17
Alcoholic Service Center	5	3	4	7	0
Narconon	2	7	9	4	3
Project Intercept	5	1	4	1	14
Mt. View Com. Mental Health		2	6	2	2
Drug Decision	4	0	5	3	4
Drug Abuse	6	6	6	2	3
Santa Clara C.C.	1	0	0	0	0
Dr. Anderson	7	7	5	2	12
Voluntary Action Center	0	3	1	6	0
Alcoholics Anonymous	0	1	0	0	0
So. Co. Alcoholic Treatment Center	0	0	0	1	5
No. Co. Mental Health	0	0	1	1	3
Sunnyvale Mental Health	0	0	1	1	0
Introduction to Emotional Growth	0	0	2	0	0
Gilroy Alcoholic Awareness	0	0	0	1	0
Teen Challenge	0	0	0	1	0
Volunteer Bureau	0	0	0	0	3
Operation SER	0	0	0	0	1
Transcendental Meditation	0	0	0	0	2
Santa Cruz Community Center	0	0	2	1	2
S.C.C. Juvenile Probation	0	0	0	0	1
Narcotics Symposium	0	0	0	0	2
Sunset House	0	0	0	0	1
U.S. Navy	4	0	1	1	1
U.S. Army	0	0	1	1	0
Out of County	8	1	5	7	4

* Even though this time frame represents an incomplete year and was obtained during an interview with the Probation Dept., the evaluation team felt that it was useful in showing the spread of referrals so that the ranking of the top ten programs (numerically) would be seen in better perspective.

Metropolitan Adult Education Program
Drug Diversion Class
1224 Del Mar Avenue
San Jose, California 95128
Phone: 292-2737

Instructor: Ms. Beth Bottomley of International Chrysalis, Inc. (288-8200)

Current Fee: \$10.00

Date and Time: Wednesday Evenings 7:30 p.m.- 10 p.m.
Seven weeks

Program Description

This Adult Education sponsored program is by far the most popular diversion program due to the fact that it is the least expensive for the divertee. The MAEP program is strictly educational in design, however, there is a structure to provide ample time for group interrelations.

Screening is conducted by the Adult Probation Department and MAEP accepts all those who are referred. The class runs for seven 2½ hour sessions. There is a limit of 20 per class. One make up is allowed for a missed class. If a person comes to class late or is intoxicated, it is considered as an absence.

The atmosphere and environment of the classes is much similar to the driver education classes which are offered by the courts in lieu of a fine to traffic offenders. In fact such classes are conducted in the same set of buildings as the diversion sessions.

The content includes an introduction to the, "types of drug usage, patterns of users, and the real and implied dangers of drug abuse." This informational format is coupled with time devoted to "enhancing oneself through a variety of techniques including communication skills, transactional analysis, values clarification, and decision making skills."

Success in the MAEP program is considered to be simply completing the program by attending all classes without being late. There are no exams or other criteria upon which individual progress is measured or judged. Upon completion a certificate is issued and the Adult Probation Department is informed of the divertee's completion, or non-completion, as the case may be.

William LaVey Drug Education Program
San Jose YMCA
1717 The Alameda
San Jose, CA 95126

Instructor: William LaVey, California
Youth Authority
Phone: 277-1221

Current Fee: \$30-\$50 depending upon the number of sessions attended

Date and Time: Tuesday evenings 6 p.m. - 7 p.m.

Program Description

Mr. LaVey's program consists of a dual format. The first half hour of the evening is devoted to a didactic lecture which is taken from material supplied by the Drug Enforcement Administration of the Federal government. The lecture size is limited to thirty clients. Following the lecture the class is broken down into two or more discussion groups where a selected topic is discussed with the assistance of a resource person.

Mr. LaVey indicates in his course description that the classes never vary as to the content from cycle to cycle.

Session One:

- A. The lecture consists of an introduction to the vocabulary of drug abuse and drug enforcement.
- B. The group discussion is centered around allowing the divertee to learn about the "big business" of drug trafficking. Also discussed are the latest techniques used by the DEA and state agencies to bust big time dealers.

Session Two:

- A. A lecture is presented about the effects of abusing barbiturates.
- B. A discussion is held to clarify the theory of progression which occurs from the use of marijuana to addiction to heroin. Also the effects of peer pressure to either encourage or discourage the misuse of chemical substances.

Session Three:

- A. During this session the dangers of abusing amphetamines is covered.

- B. The discussion portion focuses upon parent/child and husband/wife relationships and the special problems created when the misuse of drugs enters the picture. The dynamics of the relationship is discussed in terms of the persons involved and to society at large.

Session Four:

- A. The dangers of hallucinogens is the subject of session four's lecture.
- B. The discussion session is centered around drug abuse treatment resources. Also included is a discussion of theories of rehabilitation. Finally the subject of personal loss due to drug abuse is covered such as losing vocational or DMV licenses.

Session Five:

- A. The lecture thoroughly covers the current information available about marijuana, its dangers and the penalties for being apprehended a second time.
- B. The discussion portion of session five is designed to inform the divertee about the history of the development of drug enforcement agencies and of modern concepts of enforcement.

Session Six:

- A. The drug presented in this lecture is heroin.
- B. In the discussion portion of session six a film made by the DEA is shown which portrays the history of drug use (licit and illicit) from Biblical times to the present.

Following the six weekly sessions, the divertee is obliged to attend a monthly meeting until the term of diversion expires.

The purpose of the LaVey program is twofold. The first intent is to "create a trusting relationship between the divertee and the group leader." This is seen as a foundation for the second purpose which is the "channeling of divertees toward local treatment centers of their choice or to motivate self-improvement." The families of the divertees are welcome to attend along with the client.

The program complies with all of the reporting dictates of the Adult Probation Department.

Adult Probation - In House Referral

In certain special cases, where no special program seems applicable, the officer may refer the defendant to the Probation Department for counseling or other services. One example was the case of a high school teacher that was diverted but it was felt that it would be undesirable for him to be observed attending a diversion class by his students, and thus he was referred to an in-house program. This type of referral ranks third in number of referrals.

Bert A. Anderson Diversion Program
1057 El Monte Avenue
Mt. View, CA 94040
Phone 964-5551

Instructor: Bert A. Anderson, Ph.D.

Current Charges: A six week program for \$36. Divertee then pays \$6 per session for subsequent monthly meetings. Also there is an eight week program which is available for \$48.

Date and Time: Dr. Anderson has two concurrent groups. One is held in the Mt. View area and the other is held for residents of the West Valley in the city of Saratoga. Both classes run from 7:30 p.m. to 9:30 p.m.

Program Description

The course is entitled: "Introduction to Emotional Growth." Dr. Anderson and officials of the Adult Probation Department have indicated that this program receives those persons that are in need of "light treatment." While the program contains a drug education component, it is primarily oriented towards fostering emotional growth in general.

The stated objective of the course is to relate to the inexperienced drug defendant in such a way that he is motivated to look into a more responsible life style. The goal is to provide an elementary learning experience about himself as a person and of the resources for gaining personal freedom and emotional health.

The program is structured such that the divertee attends the basic course (once per week for six weeks) and then has the option to enroll in an advanced course which also meets weekly. Few divertees take this option, and most choose to attend once monthly until the six month period has elapsed. The Mt. View class is limited to 20 divertees and the West Valley class is limited to 14 divertees.

Briefly, the class operates along the following schedule: There is an initial introduction which delves into several subjects including "common sense, responsible behavior- what is it?, drug addiction, psychological theory, and the objective of emotional growth. There is also a demonstration of methods of gaining such growth. These methods are drawn from a variety of sources such as communication theory, Gestalt Therapy, Transactional Analysis, Peer counseling, and values clarification. Throughout the subsequent meetings these techniques are put into practice.

As the sessions progress, the following themes are brought into play each week:

1. Examination of personal feelings, content of good emotional health, definition of responsibility.
2. Setting life-goals.
3. Transactional analysis concepts and techniques: parent-adult-child.
4. Addictions - chemical and otherwise.
5. Encounter group (gestalt)
6. Introduction to peer counseling methods.

The extended (8 week) basic course is centered on increasing awareness about the use/misuse of drugs and the value of life. Also it seeks to convey actual information about the short and long term effects of the misuse of drugs upon a person's life.

Included in the thrust to promote awareness of the potential harm in drug abuse, is an effort to help the client discover and utilize healthy alternatives to dependence upon drugs. The course concludes with the group beginning to focus on learning how to apply the emotional growth skills used in the course to all problem areas in the client's life rather than simply to drug-related problems.

Dr. Anderson also makes available other resources such as films and written materials which cover a wide variety of topics including pharmacology and the legal aspects of drug abuse. The advanced course concentrates chiefly on further developing peer counseling skills.

The program complies with all Adult Probation Department reporting requirements.

Project Intercept
235 E. Santa Clara Street
San Jose, CA 95113
Phone 286-9247

Richard Boss, Director

Current Charges, No Fee

Date and Time: Tailored to individual needs

Program Description

Project Intercept is a pioneer among diversion or sentencing alternative type programs. It is a program of counseling, job training, and job placement for general misdemeanor first offenders.

Originally funded by a Federal grant, the intervention services provided by Project Intercept proved successful enough to be picked up under revenue sharing by the County. The fundamental criteria for entry into the program, via the criminal justice system, is that the defendant be a high school dropout, unemployed, underemployed, or lacking in employable skills.

The usual length of stay for most misdemeanor referrals to Project Intercept is three months. However, since P.C. 1000 involves a six month minimum program duration, the staff takes this opportunity to work with the client for a longer period of time.

P.C. 1000 referrals go through the same screening and diagnostic intake process as do other potential clients. A primary purpose of the screening is to determine the level of motivation prior to acceptance. Once admitted, each client is assigned a project counselor. However, the P.C. 1000 portion of Project Intercept's total program differs in that P.C. 1000 clients are required to attend by-weekly group counseling sessions. Project Intercept employs a special counselor with a background in drug counseling that runs these sessions:

Prior to P.C. 1000, Project Intercept had accepted no referrals of people with drug related problems for fear of jeopardizing other clients who had not yet come into contact with drugs. However, it was felt that the level of involvement with illicit drugs of the P.C. 1000 referrals was not sufficiently deep as to adversely affect the other clients in the program.

Once accepted the Project Intercept diversion client is channeled into the type of program most suited to his needs or (as determined during the screening process). This can range from in-house instruction (GED) and vocational counseling to referral to outside agencies such as Operation SER, OIC, Adult Education, Job Corps, Family Services Agency, or a host of other community resources.

A "service plan" or basic "contract" is worked out with the client so he is fully aware of the terms of his court referral and of what is expected of him.

Project Intercept
Page 2

Clients also have the opportunity to participate in a "police session." This seminar allows the offender to meet with representatives of the police department so that communication can begin between what has been two antagonistic groups.

Staff indicated that most clients get enthusiastic about the opportunities afforded them by Project Intercept. The program complies with all Adult Probation Department reporting regulations.

Out of County Referrals

Those non-residents who are arrested and diverted in Santa Clara County are allowed to participate in acceptable diversion programs within their own local areas.

This type of referral ranks 6th in numbers of referrals to a particular program.

Narconon of Palo Alto
532 Emerson Street
Palo Alto, CA 94301
Phone 327-4250

Director: Mr. Nate Jessup

Current Charges: No fee to P.C. 1000 Divertees

Date and Time: The classes initially require three visits per week for six weeks and then monthly visits thereafter. Staff indicates that the Narconon Program requires a stronger commitment than is usually required in P.C. 1000 programs and as a result fewer enroll even though it does not charge a fee as do other programs.

Program Description

The Narconon method is centered around developing communications techniques in the participant in order to help him encounter various problems in his environment and to finally cope with the problems by himself. Briefly the objectives are as follows:

1. To increase individual self-awareness.
2. To enable the individual to take responsibility for himself, others and his environment.
3. To increase the individual's ability to focus his attention on the activity or person at hand and willingly experience his environment in present time.
4. To develop the individual skills to communicate easily and in a fulfilling manner.
5. To complete in life that which one starts no matter what obstacles may arise.
6. To get and keep the individuals attention on the present environment and the activities in it.

The program accomplishes its goals by means of a set of programmed instructional materials and highly trained instructors.

Narconon complies with all Adult Probation Department reporting regulations.

Voluntary Action Center
Court Referral Program
2175 The Alameda
San Jose, CA 95126
Phone 244-5252

Program Director: Ms Betty Moore

Current Charges: No fee

Program Description:

The Voluntary Action Center of Santa Clara County for the past two years has been operating a court referral program for the San Jose, Santa Clara and Sunnyvale Municipal and Superior Courts. This program has offered an alternative for many people sentenced in our municipal court system. Rather than a jail term or a fine, probationers have been allowed to work off their sentence through volunteer service in the community.

People referred by the courts are interviewed in exactly the same manner as any "self-motivated" volunteer. An appointment is arranged for an interview in which employment background, skills, interests, etc., are explored. The individual is then referred to that organization with which there appears to be the best "matching". It is made clear during the interview that the Voluntary Action Center is not an arm of the law, but instead, a helping agency whose role is in no sense punitive.

The primary objective of the program as funded is the alleviation of hardships that a fine or jail sentence sometimes imposes on an offender's family. The P.C. 1000 referrals to the V.A.C. are handled in the same manner as all other court referrals. The Drug Diversion Unit of the APD refers those divertees to the VAC that it is felt are not in need of any education and/or treatment.

The program complies with all Adult Probation Department reporting regulations.

Alcohol Service Center
2320 Moorpark Avenue
Bldg. H-10
San Jose, CA
Phone 286-5442 Ext. 251

Medical Director: Frederick Tempey, M.D.

Current Charges: UMDAP

Program Description

The Alcohol Service Center is an official Santa Clara County Alcoholism Program which provides comprehensive alcoholism treatment services through its several offices.

The program is also a referral agency for other more specialized alcoholism programs. At the Moorpark facility individual and group counseling is available as well as a 72 hour detoxification service.

The Adult Probation Department uses this program when it feels that the divertee's principal problem is with alcohol, even though the defendant may have been busted for grass or pills.

The Alcohol Service Center is a central point for those seeking help to be directed to the most appropriate treatment modality. The program complies with all Adult Probation Department reporting regulations.

Santa Clara County Drug Abuse Clinic
2220 Moorpark Avenue, Bldg. H-11
San Jose, CA
Phone 286-5442, ext. 354

Instructor: Mr. Mike Kington

Current Fee: UMDAP

Date and Time: A screening interview is required to construct a DSMII, following this the divertee is required to attend two Saturday afternoon introductory sessions to gain familiarity with the techniques used in the on-going group. The divertee is then required to attend six sessions of that group. He has a choice of Monday afternoons or Monday evenings. The group lasts from 1 to 1½ hours depending upon the amount of participation by those present.

Program Description

The County Drug Abuse Clinic is a multi-modality program offering a high level of service to those seeking help. However, in recent years they have begun to accept non-voluntary clients. This includes probation referrals as well as P.C. 1000 divertees. In response to the implementation of the drug diversion law, the clinic has developed a program tailored to the needs of the divertees that are referred to the clinic.

Staff has indicated that while most diversion programs are educational in nature, the drug clinic receives those persons that the Probation Department feels are in need of treatment.

Upon arrival the divertees are subjected to a diagnostic screening to determine the best modality for them. For the great majority of divertees, "treatment" consists of a transactional analysis group which allows the person to assess and begin to deal with "who he is, where he is going, and how he is getting there." The group which consists of two introductory sessions to gain familiarity with T.A. itself and then six sessions in an on-going group is designed to promote self-awareness about how the individual makes choices about his life's management and to encourage taking responsibility for one's own life.

Success in the above modality is judged by the person gaining insight that there are better ways to take care of themselves. This may focus on the actions which led to the arrest. In the course of the groups, the divertee is required to participate and give feedback.

For those persons with graver problems, an individual program is designed. It can either be one of the on-going non-diversion groups which make use of many other techniques besides T.A. or it can be individual therapy. In some

cases of persons who cannot be worked with, staff will send them back to the Probation Department. This includes people in a highly dissociated space, un-accessable, and those who have been running a long term game with the criminal justice system.

As far as reporting is concerned, when a client is accepted a letter is sent to the Probation Department. Upon successful completion another letter is sent. If, in the course of the program, two weeks pass with no contact the divertee is automatically dropped. For every reported absence, the client must make up two sessions.

In conclusion, staff indicated that about ½ of 1% of all divertees in the T.A. groups remain voluntarily beyond the term of their diversion to seek further assistance.

SECTION VI

The Experiences and Opinions
of P.C. 1000 Divertees

Divertee Profiles

THE EXPERIENCES AND OPINIONS OF P.C. 1000 DIVERTEES

In our eyes the concept of evaluation from the diverttees standpoint, although untried in other counties, was a requisite to a thorough evaluation. When considering the after-the-fact interpretations of P.C. 1000's intent spelled out previously in this report, we felt success or failure or variations of both, would be complete only if the diverttees opinions and the various programs roles in forming those opinions were studied and expressions of those concepts expressed in the text of this report.

Methodology

In the infant stages, of our study we referred to the Adult Probation Departments 1973 Annual Report on Drug Diversion to give us a listing of on-going programs accepting diverttees. Interestingly this report failed to provide addresses, phone numbers, or group leaders or any other means of making initial contact to any of the diversion programs in the County. Although somewhat clumsily, we gradually made contacts with program leaders and established a time to get the diverttees together and through whatever means available provide us with the necessary data. Perhaps this is the best place to spell out just what was allowed us in terms of freedom with the groups including the time per session given wholly to our efforts.

It must first be pointed out that most of the programs are run by the private sector and therefore; under no obligation to County funds, have very graciously allowed us time normally spent in their program schedule, to interrupt their course and complete this study. We wish to thank each and every one of the group leaders, instructors, participants, and all others we have had the pleasure of meeting throughout the evaluation.

The variations of class or group time spent and the freedom we were given with each were many, and covered a broad spanse of introductions from: "The group is yours - feel free to do what you wish", to: "You are welcome to visit our program and observe how we function." We were never refused entrance to any group we had contacted prior to our visit and were always courteously introduced to members of the group. The difficulties experienced were basically ones of time allowed. Time for questions to be asked of the group and the time spent in developing a rapport with members in order to encourage confidence in our presence; to overcome any feelings of fear often felt in initial contacts with people. Especially difficult in our study was the establishment of confidence between us as County sponsored evaluators and the individuals who were required by the County to attend the sessions because of

some unlawful act. A sufficient number of members felt enough at ease to openly respond to initial questions and this usually encouraged others to freely respond and gave us, as evaluators, insurance that our study would be complete as possible under the conditions prescribed by program/group leaders. In many cases repeat visits were necessary in order to cover the materials in Attachment I. Where repeat visits were in order, the groups response was usually freer and more complete at the second session than in the first. We had eliminated most of the social barriers in the initial session and members had a more complete understanding of our presence and the functions this evaluation were to serve. Because programs varied the length of sessions from one hour to two and one-half hours, our time allotted to discuss the evaluation with divertees ranged from fifteen minutes per session to the full two and one-half hours. Generally each group was studied a minimum of two hours including non-group discussions with leaders covering the programs goals, history, and current methodology of applying P.C. 1000's intent to members in regular sessions.

The range of group studying time covered the two hour minimum to about six hour maximum and was generally based on freedom to interact with the members of each group. In programs where no regularly scheduled sessions took place, we met with program leaders and discussed in what manner was the divertee handled and what criteria were used to judge the divertee in regards to satisfactory completion of P.C. 1000 diversion. Because most divertees accepted in non-group programs had an unusual background (either because of extreme difficulty with the handling drugs or the individuals request to be away from group sessions, all choices of this nature were handled by the adult probation department in personal interviews), we made no contacts with individual divertees. We by no means intend to indicate an impossibility to evaluate these individuals, rather, in the interest of time allotted and the right to privacy required by law - it was felt the small number of divertees selected to private counseling or other non-group session programs would have little effect on the evaluations success.

In addition to the time differences between programs the material offered as well as the methods of deliverance varied greatly. We again have not attempted to judge the variations offered but we are attempting to simply list just what formats divertees deal with and in turn what are the basic requirements of successful completion of P.C. 1000.

The latter (successful completion) is generally based upon attendance record (in some programs punctuality is equal to showing up; i.e. being tardy by a few minutes disqualifies credit for attending and may even force the divertee to start over at the first session of the six-month program) and the attitude of the divertee toward the information offered in the program. All records are forwarded to the Adult Probation Department for their scrutiny and any legal action

which may be necessary. In juxtaposition to the limited punctuality, other programs feel infrequent or irregular tardiness or even excused absences are quite permissible and only ask for advance contact when the divertee will be unable to attend and a reasonable excuse for the absence.

Regarding methods of delivery, the criteria seems to be based on the number of divertees involved rather than any preference as to formality of the programs material. For the most part the smaller the group the more individual participation is involved and in turn the divertee contributes more within the group. In larger groups (twenty or more) generally stick to a lecture type structure with smaller groups breaking down into "rap sessions" discussing the lecture. We found that some large groups offer only the lecture structure and no or very little participation by the divertee. Because of the broad variety of programs from individual counseling, to group raps, to group lectures, to participating in approved voluntary action programs we have only attempted to study divertees roles in small and large group areas and have relied on group leaders to define the divertees role to the Probation Department. Perhaps this area of study could be covered by a subsequent evaluation or by contacting the Adult Probation Department and further investigating their use of these programs and the individuals assigned to each.

The assortment of programs also included another variation involving entrance to the program. Some programs accept people at any stage in their schedule while others require the divertee to wait until a new group of classes or sessions are to start and only accept new members at the first session. No differences seemed to be obvious except that if anyone signed on for the closed session schedule, it may take months until the six month diversion schedule actually begins. With open schedule groups - entrance is allowed during any session and it is quite probable the divertee will receive the same information at least on two occasions before the six month period of diversion is complete.

It has been previously mentioned that some difficulty in defining and locating diversion programs was experienced in the initial stages of evaluation. This area of concern was later expressed to the Adult Probation Department in hopes that all programs could be contacted and evaluated.

Our first request for this information was only partially complete when received from the Probation Department. It lacked many locations, almost all meeting schedules and even some of the on-going programs within the County but did include some programs carried on in neighboring counties.

The lack of completeness precipitated a meeting with the coordinator of the Adult Probation Departments diversion program in order to give us a full listing of at least who (what programs)

was currently accepting and handling divertees. This somewhat confusing area of just who/where divertees are to be directed seems to be one the Adult Probation Department is now looking into and perhaps the future will hold a more complete listing as to program location, availability, type of operation and costs included to the divertee.

We found that not only were divertees not informed of all the possible program alternatives (probably because of internal Adult Probation Department functions) but, that most divertees were not informed by group leaders that the choice of programs was not finite and that if it was not suitable, the divertee could return to the Probation Department and request an alternative program be offered.

Early in the evaluation development we concluded that this report was not the proper place to discuss or even make an attempt to appraise individual programs success in terms of other programs offered, but rather to give conclusions in general terms eliminating judgments of any one programs work. This is to say; any differences in techniques between programs was not judged as being good or bad, rather our values only concerned the divertees opinions and his/her feelings in participating in P.C. 1000 diversion.

In terms of actual methods of studying programs, we generally recorded or took notes of responses to open questions in group sessions. No one person's responses were considered right or wrong and we attempted to stress that our function was to evaluate freely given input as a complete picture at a later date rather than stifle individuals expressions of personal belief or private opinions given at the time of the group study.

Results of Program Studies

The following are expressions of our field notes taken at the time of program studies and have been compiled without interjection of personal desires or interpretations to the best of our abilities. The questions asked were our method of allowing free responses from divertees and often throughout the study, the outcome differed from the original question as posed to the group. We've condensed facts to eight conclusive answers per formal question and included general opinions to other ideas posed to the groups.

QUESTION: At what point in the proceedings did the D.A.'s office or your attorney tell you about the diversion program?

RESPONSES: 1. I was told by my attorney after he talked to the arresting officer.

2. After my lawyer fees were paid. Should be told that you can get diversion after arrest so money to lawyer would not be a waste.
3. After pre-trial.
4. Second visit to the public defenders.
5. At the time of my arrest-public defender told me.
6. Sentencing.
7. The end.
8. Never, my lawyer informed me.

QUESTION: Do you think the class has been successful at informing you about the drug you were "busted" for? If not why?

- RESPONSES:
1. Yes.
 2. Not entirely, because I was bused for three joints.
 3. No. I was busted for pot. What is it about pot that nobody knows about.
 4. No. Very little if any information on pot, information given was not useful.
 5. Yes, definitely.
 6. No. Heroin.
 7. Yes and no-not much real information.
 8. No, we don't talk about any one drug-we talk about the situations we live in and what to do with them.

QUESTION: What information did the probation office give you about choices for diversion programs? i.e. a) Did it include a number of choices, b) Was it based on: 1) ability to pay? 2) close to home? 3) best for the drug involved?

- RESPONSES:
1. Best for the drug involved.
 2. a) Yes. b1) No. b2) No. b3) No. Probation officers choice.
 3. a) Yes. b1) Yes. b2) Yes. b3) No.

4. No, in all cases I was informed only of this program no other choices were offered to me.
5. a) No. b1) No. b2) Yes. b3) No.
6. No information at all.
7. Very little. I was busted and "tried" in San Diego and was allowed to go to diversion here close to home.
8. Never heard of an alternative other than jail.

QUESTION: Did this program include what happens to you in the future? 1) Another drug offense? 2) Status with the probation department?

- RESPONSES:
1. 1) Yes. 2) No.
 2. 1) No. 2) No.
 3. 1) Yes. 2) Yes.
 4. Actually, I am very ill informed about this program. I have no idea what happens when I am through with this class. I don't even know when it ends.
 5. 1) No. 2) No. 6. 1) No. 2) Yes.
 7. Nothing 8. 1) No. 2) No.

QUESTION: Do you think you will have a clean record after completion of diversion.

- RESPONSES:
1. No, somewhere it will be on file.
 2. Yes 3. ?
 4. Arrest record only. 5. Who knows?
 6. No. 7. No.
 8. No - really don't know (unqualified maybe).

QUESTION: Did you receive drug education in any school prior to this offense? Was it helpful? How?

- RESPONSES:
1. Yes. The way it was helpful to me is that it informed me about the laws and it also let me know about what other drugs can do for you.

2. Yes. Helpful? No. Wasn't informative enough.
3. Yes. Yes. 4. Very limited.
5. In high school. No
6. Yes. At the time yes. Now I have a different opinion.
7. Yes. No.
8. Only other education was a research paper I formulated - not helpful.

QUESTION: Did you qualify for a public defender? If not - how much did your lawyer cost?

- RESPONSES:
1. 1) Yes. 2) I did not have a lawyer.
 2. 1) Yes. If you want that S.O.B. 2) \$300.
 3. Yes
 4. 1) No. 2) I did not have a lawyer.
 5. 1) Yes. 2) \$800.
 6. 1) Yes. 2) However I paid over \$1,000. to be diverted which has proven valuable. I have discontinued my use of pot.
 7. 1) No. 2) \$500. 8. 1) Yes.

QUESTION: What changes would you like to see in the diversion programs and/or the drug possession laws?

- RESPONSES:
1. I would like to see something like guest speakers come in once a month talking about what's going on in the drug scene. Also I would like to see some better films on drugs and related laws regarding drugs.
 2. Grass is not a drug that should be against the law. Grass laws are just like prohibition in the 20's for booze.
 3. To look at a person's past, their family life, their stability in what they do-to see if they're really criminals.
 4. Diversion program is O.K. as far as it goes. Drug possession laws need to be totally revised. Marijuana laws should be either slackened or dropped entirely.

CONTINUED

2 OF 3

5. Relax grass laws for simple possession for personal use or altogether.
6. What the drugs do to your body, does it burn you out? Brain damage? Physical addiction? Mental? Does smoking grass do anything but get you high? I want to know!
7. Pot should be legal for private use and cultivation. Diversion program should be run by young people from the "counter-culture" so that rapport with diversion participants can be achieved. At present, unfortunately, policing, probation officers, etc. (people from "the other side of the fence") can not get across very well.
8. Shorter--no changes other than shorter.

The preceding question/response data was compiled from over one hundred printed forms given out during sessions with divertees and all responses were those of the divertees. We have grouped similar responses and used those we felt appropriate on a percentage basis, i.e. if all were to have expressed a yes response - all eight answers in the report would say yes to that question. If 25% indicated a yes than two of the eight answers would indicate yes. The outcome of these responses has not been changed in any manner by us as evaluators or by any group leaders or any individuals. We hope that our choice of responses is clear and precise to anyone reading this evaluation. It certainly displays evidence of some change being required in both the laws and in program format to the writers.

Beyond the formal questionnaire used for evaluation, we spent dozens of hours in informal discussion with divertees, discussing many aspects of the laws and their applications within Santa Clara County. From the unstructured portions of our study we have drawn the following quotes and responses to give a clearer picture of the divertees evaluation of current laws and their enforcement. By no means does the following data intend to show cause for dropping the use of P.C. 1000, but, rather hopefully it will enrich the findings of this study and clarify points perhaps left somewhat clouded by direct written response to formal questions. Again, as always, the writers have reviewed all field data gathered in the course of our three month evaluation and are only displaying here composite views expressed by those directly involved.

Group Leaders Concepts of Their Role in the Diversion Process

In the process of evaluations, each group leader or leaders volunteered their opinion of their role in application of P.C. 1000 diversion. These responses were expressed either in terms of response to a question from us or, more often than not, came out as a natural injection of their beliefs during the studying of the groups they were directing. The outcome of their reactions varied somewhat, but was always restated by the evaluator and the reply was discussed again in order to develop a more complete definition of their role and allow for re-examination of the questions implications. The effects did not vary from initial response to final answer, except in terms of specificity and clarity.

"I've really seen only a few people around who I thought smoking pot affected their lives. As far as the classes are concerned, I think some people smoke to a point their minds don't work so well, but there are many other people who get along alright--same as cigarettes I guess. Same as television--that's a problem too you know--watch it eight to ten hours a day--watch it 'til they go to bed at night. That's a problem."

"I had a gal (over 30), she was visiting someone's house and they were talking about marijuana--and they said -- 'Hey take one home, and try it out', so she had a refer in her purse. God, her story is really sad--her mother had just died and some friends had come down, she had a sister and sister-in-law who had just come down from Canada, so when she went through customs at the airport she had to give her purse over to be checked and she had that refer in it, and they put her in jail at the airport. And she'd never smoked marijuana in her life -- never used it. You can tell if a person's straight or not. Why they would prosecute a case like that? I have no idea!"

"I feel very strongly that all drugs, which is to say--alcohol, marijuana, amphetamines, barbiturates, tranquillizers or any substance used as a depressant and/or stimulant should only be administered under the direct supervision of a licensed physician and that all unsupervised use of these drugs should be considered anti-social behavior and be severely punishable under our legal system."

"The facts about some drugs; especially marijuana are in conflict and until the situation of possible damage can be resolved, these drugs should be controlled. At present the only means of control is through the criminal justice system and that is far from the best means of dealing with what is

actually a social/human problem. At present I agree with the use of the courts only because it allows for some treatment and rehabilitation of people who require it. If it were possible to effect the necessary supervision without involving the courts, I think all of society--- especially those being prosecuted, would gain in the process."

"I just can't understand why our courts won't wake up to the facts about grass and release it as a dangerous drug. It's biggest danger today is that it causes innocent productive people to go through the dehumanizing process of arrest and the court. Perhaps all drugs should be removed from the criminal system and be dealt with by people who are trained in handling social problems--after all that's what causes the use in the first place."

The group leaders were almost unanimous in their opinions of the role they were to play regarding the intent of P.C. 1000 diversion. The conclusion that the law was for the purposes of rehabilitation, education and treatment of first-time drug offenders was discarded by almost all group leaders. Their reasoning included the fact that rehabilitation can only come from within the individual and no influence--no matter what it's magnitude or from whom it came could change that basic premise. Also, the question of what treatment can be offered for a marijuana smoker was of sufficient difficulty that no one could answer the question. Most leaders feel it is a drug with possible yet unlikely damaging effects but had no, none whatsoever, treatment for its use, and furthermore felt that no treatment was required except perhaps abstention from the use of the drug. A vast majority of group leaders feel that the basic drug laws require change in order for their programs to perform the functions they were established for and until such time, they would only be handling cases after the damage has been done with no influence on the causation of the damage.

Divertee Experiences

The following are excerpts, taken from tapes and notes, generally expressing the feelings of the diverttees regarding many aspects of the diversion program and drug laws in general. We have attempted to include a broad spectrum of individual feelings in this portion and we again have done our best in random, unbiased selection of comments and critiques.

QUESTION: Do you think that one of your group sessions could benefit from sitting down with a D.A., Probation Officer, P.O.,

or sheriff/police officer and just carrying on a rap? Would that be a worthwhile addition to your diversion program?

"If I were to do my rap and a sheriff was to do his-- he'd probably say he's in favor of marijuana use and cultivation and all that--I've talked to a lot of them and lots of 'em say just that except they also say they have to enforce the laws and they can't let me get away with what I enjoy. They think it's a bunch of B.S. too."

"As long as it's against the law the man's going to keep bustin' ya for it--it's as simple as that. It's not right."

"The top men in the system just don't know--they never been high--but they don't want me enjoyin' my high."

"A lot of the people talkin' down dope are doin' it themselves--they just won't say it. I know doctors who've been gettin' high for years but still, when they're out front, talk it down. But yet they're doing it! Hippocrates, man. They've got the cover--a pretty good cover."

"It shouldn't be any socially dangerous drug--because it just isn't! It seems to make me more social as far as getting along with people. It seems like you can get more involved. It's not somethin' that can drive you made like they had in that movie-- they went wild! The system seems to say like the good things, they say is bad, but the bad things they say it's legal--it's good. They say alcohol is cool--it's good; but it kills you. But they still sellin' it."

"In this country, from the time you're this big (knee-high) everybody looks at that guy in that blue or tan uniform and says he's the almighty powerful individual and I'll answer anything he'll ask me and let him do anything he wants to."

"Then you know what the judge says? Just like he did so many times in court today. He says, 'I think the issue is not whether you should have been searched--the issue here is the fact that you did have it on you.'"

"The county won't release your arrest report, even to your lawyer, until after your preliminary hearing--sure he can look at it but he can't even get a copy. That's a lot of time for you and a waste of time for him and for the court."

"In practice the arrest report is what the court listens to--what you say has no effect--no matter what."

"Everytime I earn a dollar or spend a dollar, part of that money goes back into arresting me for what I chose to do in private and supports them arresting my friends too--I don't like any of it."

"The cop pushed his way in the door---wasn't asked in, we even said to stay out but he pushed his way in and said they were lookin' for an escapee from jail. Then they started diggin' in books, pillow cases, under the mattress and in the refrigerator--everywhere. They found a little dope and hauled us in. They never had a warrant or anything. They did all that lookin' in envelopes and stuff sayin' they were lookin' for a body--it was all wrong but they won."

"How can you be charged with two crimes--this was driving--I was supposed to have made an illegal left-hand turn and was said to have been driving seven miles an hour over the limit. Has--when as far as the officer was concerned he charged me with both and he thought I was guilty--how can I be guilty of one of the offenses and have them drop the other? How does the law do this juggling?"

"I think when you take your rights in your hand--what you're doing is taking your life in your hand as far as having a cop there to tell his side of the story. He's got a gun and you've got your rights and he'll win everytime."

"The minute you say 'you keep your hands off me--I haven't done anything', the minute you do that they arrest you for resisting arrest and you haven't done anything but keep your rights."

"You know there's a presedent there--ideally, the police officer has no reason to lie because after all he's just a neutral party that's enforcing the law and you have a reason to lie because you're being arrested for something you might have done. Somehow--it all works in their favor--you're fighting a steep up hill battle the minute you walk into court."

"There was also a charge that I didn't have my car registration--alright he had put that charge down there that I didn't show my registration."

They dropped that one for the lack of evidence because I had shown him my car registration--so that was dropped. So if he was going to lie about that then he lied about all the rest of the B.S. too. Why can't a judge take that into consideration?"

I'll tell you what the whole thing did to me-- I have always been one of the greatest respectors of law and order of anybody in the world and I've raised six kids with that thought, but now I think they're the dirtiest, low-down bunch of bastards that I have ever known in my life because I really didn't believe that the law of the United States could hold that much control over the people that pay the taxes."

"The average innocent stupid idiot who knows nothing about the details of the court proceedings, who goes out in the park to smoke a joint naturally would rather spend six-months on this program than to put out big money to fight a felony. He maybe wasn't stupid because he might have listened to the systems reports stating, 'We're out to get the pushers' and he felt like an innocent babe in the woods until he got busted."

Conclusions

The expression of diverttees opinions and their credibility is not purely scientific or maybe openly refutable by persons who require credence of professionalism, but, we sought out this informal study to give a complete picture of the application of P.C. 1000 not just the present status of official functions of the legal system in the process of diversion. This being the first known study of this nature in the state, it is quite probably incomplete and we acknowledge certain failures in academic procedural process. But, we believe it's purpose is well served and our evaluation will lead to future, more intense studies in order to develop a better diversion program from the standpoint of the functional county organizations, the programs handling diverttees and for all future diverttees within our county.

DIVERTEE PROFILES

During 1973, the first year of P.C. 1000, 986 persons were diverted in Santa Clara County. In the course of their suitability interviews certain data was obtained concerning employment, ethnic background, sex, and age. This information was not published in the APD Diversion Report. One member of the evaluation team prepared a summary of that data as follows. (The indication of "No Data" indicates that the information was not available in that number of instances.) The racial and ethnic categories are those used by the Adult probation Department.

MALE - EMPLOYED - AGES 18-22

Caucasian	229
Black	10
Chicano	37
Oriental	6
No Data	62

MALE - EMPLOYED - AGES 23-40

Caucasian	135
Black	15
Chicano	35
Oriental	1
Native Amer.	1
No Data	32

MALE - UNEMPLOYED - AGES 18-22

Caucasian	123
Black	12
Chicano	27
Oriental	1
Native Amer.	1
No Data	22

MALE - UNEMPLOYED - AGES 23-40

Caucasian	41
Black	10
Chicano	4
No Data	11

Divertee Profiles Cont.

FEMALE - EMPLOYED - AGES 18-22

Caucasian	36
Black	3
Chicano	6
No Data	5

FEMALE - EMPLOYED - AGES 23-40

Caucasian	33
Black	3
Chicano	7
Oriental	2
No Data	6

FEMALE - UNEMPLOYED - AGES 18-22

Caucasian	15
Black	3
Chicano	3
No Data	5

FEMALE - UNEMPLOYED - AGES 23-40

Caucasian	24
Black	4
Chicano	9
No Data	7

SECTION VII

1. Summary of the Evaluation
2. Recommendations of the Santa Clara County Drug Abuse Commission

P.C. 1000: THE PROCESS AND THE PEOPLE

Summary and Afterthought

In late Spring of 1974, the Santa Clara County Board of Supervisors requested that an evaluation be performed of the process of court diversion for minimally involved drug defendants as it operates under the statutory provisions of California Penal Code Section 1000 (a). The impetus to perform such an evaluation originated with the County's Drug Abuse Coordination Commission.

Support for court diversion programs such as those authorized under P.C. 1000 was indicated to be one of the top action priorities of the Commission for 1974-75. As stated in the Santa Clara County Drug Abuse Plan: "One particular area of interest and concern was with court diversion programs for both juvenile and adult offenders. The County has large programs in both areas. The Task Force on Secondary Prevention and the Commission adopted a strong recommendation to support the continuation of these programs, and to develop more and broader intervention programs for the adult defendant diverted by the court. Major emphasis in 1974-75 will be to evaluate the adequacy of the existing program, with a modified or expanded program to be developed depending upon the outcome of the evaluation. Special attention will be given to making recommendations for the continuation of this program through appropriate legislation."

By the beginning of Summer a plan had been developed for the evaluation and five student interns had come forward to participate. At the outset no funding for the evaluation had been planned other than a substantial investment of staff time. However, when the scope of the evaluation was viewed realistically, it was decided that enlisting the help of student interns would be the best course of action to follow, and while the interns were willing to invest their time and energy over the Summer without a promise of compensation, it was felt by staff that an effort should be made to secure some financial support for the evaluation. After a frustrating search, the modest sum of \$3,500 was made available through the State Office of Narcotics and Drug Abuse with the help of Kenneth Budman, Ph.D., the State Diversion Coordinator.

The initial plan for the evaluation was highly ambitious and was divided into three components: an examination of the role and function of each of the criminal justice agencies responsible for the conduct of P.C. 1000 diversion, a review of the community-based programs to which drug defendants are diverted along with a compilation of divertee experiences, and thirdly, a statistical component which was to be a comprehensive presentation of statistical data to include recidivism, cost data, workload shift, and other information. However, due to a combination of factors including the lack of research expertise of the evaluation staff and a corresponding lack of cooperation from the criminal justice agencies in making information available, the size of component three had to be considerably scaled down.

A major disappointment was the inability to obtain a priority rating in order to make use of the County's computerized Criminal Justice Information System (CJIC) as a source of data. In addition, once permission to develop a set of questions to ask CJIC was obtained we would still have been faced with a lack

of funds for the data processing and programming expense necessary to write the program and run it.

Such a preface to this summary is in no way an attempt to make excuses for a second rate evaluation. Despite criticism from the Criminal Justice System of the preliminary draft, the evaluation team feels that a unique and highly useful document has been created. The use of student interns instead of professional evaluators has enabled the County to obtain a report which has a bright, fresh approach. It is an evaluation that concentrates on people, and the effects of the process upon them, rather than with numbers and their relationships with other numbers. While we do not discount the essential nature of 'hard data', we contend that this analysis of the process of drug diversion provides an approach to P.C. 1000 evaluation which is not duplicated elsewhere and thus can be of use statewide.

A survey of the diversion literature from sources throughout the State has indicated that, while P.C. 1000 is a statute with specific provisions and parameters, its implementation has varied considerably in the counties of California. It was our hypothesis that the attitudes, beliefs, prejudices, and previous experiences with drug offenders of those responsible for implementing and operating P.C. 1000 was the most important variable in determining the tenor and product of the process. The next most important variable as a determinant of the characteristics of the process was seen to be the size of the county in which the law was implemented. With respect to size as a variable, we can observe Sonoma County which is relatively small in population and note that the officials in the criminal justice agencies and the staff of the Drug Abuse Council work together on a friendly, first-name basis. Whereas, in Santa Clara County, with a population upwards of 1.5 million,

P.C. 1000 diversion process proceeds in machine-like fashion with little opportunity for the persons responsible for the operation of the process to discuss together their concerns or ideas for improvement. With each agency merely fulfilling its own responsibility in the absence of any coordination or inter-communication, the divertee, for whom this process was enacted, can be expected to express feelings of confusion, hostility, and disrespect for the criminal justice system.

Proceeding upon the above hypotheses, the evaluation team began its interviews with members of the criminal justice system and with the staff and clients of diversion programs in early June. The purpose for opening a window to allow the process to be seen as a whole, as it actually occurs, and to document the statements of the principal actors in the process was so that those wishing to either improve, modify, expand, scale-down, or eliminate altogether P.C. 1000 drug diversion would have enough information of substance to proceed with that task. It is up to the reader to decide if we have done so.

The goals of the law itself, as recently verified by the State Supreme Court in Morse vs. Municipal Court, are to eliminate the stigma of a criminal conviction on the occasion of first offense and to provide meaningful intervention services to the minimally involved drug defendant with the goal of reducing the possibility that he will return to the system on similar or more serious charges. We feel that this evaluation has provided the necessary information from which the reader can make a judgement as to which segments or aspects of the process need modification or improvement. This report has reached certain conclusions based upon the research that was conducted and

many recommendations for change have been made, however, the attitude of the evaluation team as we approached our task was not one of finding fault or affixing blame, but rather we felt that there was a definite need to document what was occurring with respect to P.C. 1000 so that all involved might understand the entire process. In view of the fact that for so many years California's attitude towards the drug offender has been punitive in nature, P.C. 1000 represents a positive step in the direction of improvement of the handling of drug defendants within the criminal justice system. Therefore, any faults which are found to exist with the functioning of the statute should be approached in this spirit. From that standpoint, efforts to make drug diversion a more positive, productive experience for all involved will have a greater chance of succeeding.

Let's attempt to return to the beginning and make a brief review of what the evaluation data has revealed. The first section of the evaluation contains a schematic diagram of the diversion process which shows that what occurs with P.C. 1000 is not diversion from, but rather is no more than another route through the Criminal Justice System. We note this point at the beginning because it often impacts on the outcome of the process in terms of oftentimes laying the groundwork for an overall negative experience for the divertee.

Our data has indicated that throughout the entire process the defendant is, in most cases, uninformed about his status within the system and unaware of the alternatives which lie before him as he faces his journey through that system.

Concerning the role of the District Attorney, our interviews and questionnaires revealed that the DA feels an obligation to fulfill only the statutory obligations mandated under P.C. 1000 and nothing more. In other words if a defendant meets all of the eligibility requirements of the law, then the recommendation is that he be diverted.

In charging drug offenses, the DA routinely reduces the felony to a misdemeanor under Section 17 of the Penal Code if the amount confiscated is less than an ounce. The DA's office specifically made the point that this charging reduction occurs one time only, and that any subsequent possession offenses are charged as felonies unless plea bargaining occurs in lieu of trial.

Concerning the changes in workload in the DA's office as a result of P.C. 1000, the amount of paperwork has increased. However, the number of trials and hearings for pre-trial motions such as 1538.5 motions has declined. Diversion has streamlined the processing in the DA's office of drug cases involving a first offense. The DA is not now required to spend time building his case.

Numerically, diversion affects half of all drug arrests in the County of Santa Clara. In 1973 there were 2671 felony drug arrests. Out of these, 1307 were judged to be eligible under P.C. 1000 and referred to the Adult Probation Department. Therefore we can conclude that P.C. 1000 has freed DA resources to more fully pursue the prosecution of the heavier drug cases.

While the DA complies with the provisions of the statute, the stance taken towards P.C. 1000 is less than positive. During a second interview following the release of the preliminary draft, one senior member of the DA's staff

indicated that it would be better to change the drug statutes so that the P.C. 1000 offender never enters the Criminal Justice System rather than to create an elaborate system for the processing of such defendants.

The DA feels that it's role in the P.C. 1000 process is wholly the mechanical one of checking the defendants record and profile against the eligibility criteria. There is considerable doubt on the part of the DA that any treatment programs can be effective in curtailing drug abuse.

The DA takes a strong stance against record sealing or expungement upon successful completion of diversion. They stated that, "diversion is a big enough benefit as it is without adding complete expungement of records to the concept." However, the DA's, despite their feelings that the law is ill-conceived, did not state that they would prefer to see P.C. 1000 removed from the books.

Concerning the role of the Public Defender's Office, the most common practice among attorneys comprising the staff of the PD's office is to recommend that a client choose diversion whenever a guilty plea appears as the most feasible alternative. Conversely, if a "not guilty" plea appears correct then the Public Defender does not recommend diversion, and the case goes to trial.

The staff of the PD's office sees their role as one of explaining and clarifying the ramifications of accepting diversion to the client and then allowing the client to decide for himself whether diversion will settle the case in a manner satisfactory to him. The Public Defender feels that the DA sees the purpose of the statute as one of clearing the court calendars, whereas the Public Defender feels that the aim is to relieve first time defendants from the stigma of a criminal conviction.

Once the defendant is judged to be eligible for diversion and is referred to the Probation Department for suitability screening, both the DA and P.D., or private attorney (whichever is the case), effectively bow out of the proceedings. On the part of both the prosecution and the defense, there is very little specific knowledge as to the actual programs to which divertees are eventually referred.

The same situation seems to exist with respect to the judges of the Municipal Court. In responses given to a questionnaire submitted to them, the judges, admitted to have only general knowledge of diversion programs. Many were quite candid and stated that they had very little knowledge of programs. Only one judge out of eleven responding indicated that he had visited one of the programs. Concerning whether or not the diversion programs met their "statutory" goals, the judges stated that they were dependent upon the Probation Department's information that such is occurring. Two judges did indicate, though, that they felt that the diversion programs were not meeting their goals.

As explained earlier, the APD is responsible for submitting a recommendation to the court regarding the defendant's suitability for diversion. Suitability means that the individual is sufficiently motivated to benefit from a program of treatment, education, or rehabilitation. However, it is the judge that renders the decision to divert or not divert. Questionnaire responses demonstrated that they very nearly always followed the recommendation of the

APD and they felt that the choice of the particular program was entirely up to the Probation Department.

The judges were unanimous in feeling that counsel for the defense should be obtained or assigned and that counsel should play a role in the diversion process, though at least two judges stated that they would allow the divertee to represent himself In Pro Per in certain circumstances.

Regarding the filing of pre-trial motions such as a 1538.5, the responses were mixed, positive and negative concerning whether the filing of such motions benefited the diversion process. There was unanimous opinion, though, regarding the expungement of the diversion record. Most felt that the most appropriate time was immediately following satisfactory termination from the program.

When asked about the benefits of P.C. 1000 diversion, the responses were varied and interesting. The answers were not that it saves court time as many had expected the judges to feel, but rather that the process benefits the defendant. Throughout all the questionnaires it was evident that the judges have a real concern for providing alternatives for fines and other penalties for the drug defendant. The judges are, however, uninformed as to many of the realities of the drug scene and of the programs operating in the community to assist those with drug-related problems.

The major problem of P.C. 1000 in the courts has been one with its source unrelated to the diversion statute itself. In the San Jose Municipal Court, the largest judicial district in the County, has thirteen departments. The calendar coordination problems have been monumental. On any given day one could find one department packed to overflowing for a pre-trial conference appearances or arraignments and find another department vacant. The confusion, overcrowding and lack of organization affected all defendants, not just those eligible for P.C. 1000 dispositions.

This situation, though, is in the process of changing. A new Courts Administrator has been hired. She has acted quickly to infuse some rationality and order to the flow of cases through the various departments of San Jose Municipal Court. These actions should go a long way towards improving the confusing and often times frustrating experience of appearing in court which had added to the already nebulous predicament of the divertee as he was being processed.

With respect to increased or decreased workload as a result of the advent of P.C. 1000, the Clerk of the San Jose Municipal Court has indicated that one additional full-time clerical position was added to the clerks staff to handle the increased paperwork which has resulted from P.C. 1000. Actual court time has decreased due to P.C. 1000. There are less trials, pre-trial motion calendar appearances, sentencing hearings, and other appearances on the criminal calendar due to P.C. 1000.

If the eligibility screening of the DA could be streamlined and a greater proportion of defendants were to know by the time of arraignment about their P.C. 1000 eligibility status (currently 27% have this information by

arraignment), the process could save the court and the defendant even more time and cost. This would allow the potential diverttee to by-pass the pre-trial conference which is usually scheduled six weeks subsequent to arraignment.

Shifting now to the role of the Adult Probation Department in P.C. 1000 Diversion, we find that it is quite extensive. They have the responsibility for determining the suitability of each potential diverttee to participate in a program of treatment, education or rehabilitation and of monitoring the programs to which diverttees are referred.

It was the Probation Department, back in early 1973, that took the initiative to set up the network of programs that now exist. Within the Adult Probation Department, a Drug Diversion Unit has been established with funds provided by the County rather than S.B. 714. The Unit is staffed by one Supervising Probation Officer, five deputies, two clerical staff, and one community worker.

Upon referral to the APD, an interview is conducted covering the topics listed in the law, i.e. defendant's drug history, work experience, family background, previous arrest record, etc. Through this interview the Probation Officer must also determine whether or not the defendant is sufficiently motivated to benefit from diversion. If this is the case, then the officer will recommend a program or class that appears to fit the defendant's needs and budget, since there is a fee charged for all classes.

In this County, diversion usually does not continue beyond the six month minimum. Throughout this time the probation officer receives reports of the diverttee's satisfactory (or unsatisfactory) performance in the program. This usually amounts only to attendance at all sessions and of course, punctuality at all sessions.

The role of the Drug Diversion Unit differs from the Probation Department's standard drug offender caseload in that diverttees are usually involved less seriously with drug abuse and the fact that they have not been convicted of any offense, the Department does not have the same authority over the diverttee as it does in the case of a convicted offender. However, in our interviews with diverttees, they often assume from their experiences that they are "on probation."

The Probation Department feels that P.C. 1000 Diversion is a beneficial program and well worth continuing. In the Supervisor's interview it was indicated that the six month minimum is not really necessary and could be eliminated. Regarding the expungement of records, it was indicated that the record of completion of diversion should be kept for the purposes of the criminal justice system only and should not be revealed in cases where a record of having gone through diversion would impair a person's chances of getting employment, etc.

The collecting and recording of diverttee experiences was perhaps the most interesting aspect of the evaluation. Upon reading this portion one may conclude that diversion is a negative experience for most persons; however,

there were many diverttees who did not wish to respond to our questions but rather wanted to complete their program with the minimum amount of hassle.

The negative response about diversion gained from diverttees were generated, in most cases, not by the community program to which they were assigned, but rather with the experience of being processed through the Criminal Justice System.

The most common feeling was a mixture of confusion, hostility, and resentment. Unfortunately the target of these feelings is the diversion class instructor who has nothing to do with causing them.

The evaluation team feels that this negative attitude on the part of diverttees, because it is so prevalent, is the biggest single factor working against the success of P.C. 1000 Diversion. Many of the Drug Commission's recommendations for change which accompany this evaluation are centered around improving the processing within the Criminal Justice System so as to avoid this occurrence.

The programs themselves represent a wide range of alternatives, from basic drug education to intensive individual counseling. Many of the class leaders were able to overcome the hostility of the diverttees as the class progressed. A visit to a program on the first session was a completely different experience than a visit on an evening towards the end of the sequence. The atmosphere changes and becomes more open and lively as the weeks progress. A majority of the group leaders felt that the basic drug laws require change in order for their programs to perform the functions for which they were established and until such a time, they would only be handling cases after the damage had been done without being able to influence the cause of that damage.

The evaluation team found a wide range of programs capable of dealing with a great variety of drug related problems. However, the data shows that the criminal justice processing of P.C. 1000 defendants is counter-productive to the success of those programs. More often than not, if a person refrains from the use of illicit drugs as a result of participating in drug diversion it is because he does not wish to undergo another such experience at the hands of the Criminal Justice System and not because he has realized that the use of drugs may damage his physical or mental health.

It is not the purpose of this section to make recommendations for change. The Santa Clara County Drug Abuse Coordination Commission has proposed a set of recommendations which are attached to this evaluation; however, in closing we wish to make one final point of importance.

The most urgent need with relation to P.C. 1000 Drug Diversion in this County is to begin meaningful communication among all of the agencies and community programs that are involved in the process. Most of the problems which have been generated to date are the result of the lack of communication among the various agencies. While realizing that each may have a separate function with relation to P.C. 1000, that can not be a justification for further delays in

creating a means for initial and ongoing communication.

The communication is essential in order that all of the participating agencies develop a mutually agreed upon purpose for P.C. 1000 drug diversion in this County and then work together to accomplish that purpose. If this evaluation helps in any way to initiate this essential dialogue, then it has been successful.

P.C. 1000: COURT DIVERSION FOR FIRST TIME DRUG OFFENDERS

RECOMMENDATION OF THE SANTA CLARA COUNTY

DRUG ABUSE COORDINATION COMMISSION

Intent

The drug offender diversion statute, Penal Code Section 1000 is variously held to have a threefold intent. These intents are expressed as follows:

1. To spare the first time offender (for simple possession of illicit drugs) the stigma of a criminal conviction by diverting the defendant from the criminal justice system prior to trial into a program of education, treatment, or rehabilitation. Upon successful completion of the prescribed diversion program the charges against the defendant are dismissed.
2. To reduce the court workload
3. To provide education, treatment, or rehabilitation to first time drug offenders.

However, in the course of Santa Clara County diversion evaluation it was observed that, given the current P.C. 1000 process, none of the three purposes of the law are being realized. The evaluation data suggests two reasons for this lack of success. The first is that the process itself is much too complicated and cumbersome to allow the goals of the statute to be accomplished and that, in addition, certain key features needed to achieve success are lacking. The second is that the three intents of the law are somehow incompatible and cannot be realized simultaneously.

By examining the process from the point of view of each intent, it is easy to see the ways in which its purposes are not being met. In examining the process to determine the areas in which it does meet the intent, it will be helpful to refer to the attached schematic diagram of how defendants are processed under P.C. 1000 in Santa Clara County.

When we study the process from the standpoint of the first intent, which is commonly referred to as giving the diveree a "second chance", we find two significant factors negating that purpose. If part of intent number one is to actually divert the defendant from the criminal justice system into a community program, a brief survey of the schematic demonstrates that he is, in reality, merely being processed through a different route in the system rather than being diverted from it. As can be seen, the diveree is placed into a program of education, treatment or rehabilitation, but only after a lengthy journey through the system involving many court appearances. This would seem to be contrary to the stated intent of P.C. 1000.

Throughout the entire process until actual completion of diversion, the defendant can always be returned to trial if he fails to perform satisfactorily. However, the supposed benefit of this complicated process is that the diverttee is spared the stigma of a criminal conviction by virtue of his fulfilling all of the requirements of his diversion. But even this benefit is doubtful.

Upon satisfactory completion of the required term of diversion the charges against the diverttee are dismissed; however, the diverttee continues to have a record that he was involved with the criminal justice system for an alleged drug offense. First, there is the arrest record which is kept on file, and secondly, in the diverttee's C.I.I. file it is noted that he has completed drug diversion under the terms of P.C. 1000.

In several written documents and in a recent California Supreme Court decision (Morse vs. Municipal Court, SF 23115) it is stated that P.C. 1000 intends to save the first time offender from the burden of a drug conviction for what might have been a single act of indiscretion. The concept behind this is that the diverttee will not be hindered later from enrolling in school, applying for employment, or otherwise attempting to improve the quality of his life because of some behavior in the past which was committed without full awareness of the consequences. But as the law currently is implemented, both the arrest record and the C.I.I. information are tantamount to a conviction in the eyes of a large segment of society.

In addition, the common use of the term "first offender" to describe the defendant diverted under P.C. 1000 is itself an indication of the way society views such an individual. "Offender" implies that the individual has committed the offense for which he is diverted. In fact, no conviction has been made, the offense is alleged, and the individual's innocence must be assumed in our justice system. We should avoid any implication that the individual participating in the P.C. 1000 diversion process is guilty, and specifically, we should avoid use of the term "first offender".

To summarize the effects of the current process as it applies to the first intent of the law, there is ample evidence to suggest that it is not being realized. First the defendant is not actually being diverted but is being shunted through an alternate route in the criminal justice system. Secondly, upon successfully completing diversion, the individual is not actually receiving the benefit of avoiding a criminal conviction based upon the current record keeping system.

Examining drug diversion with respect to the intent of reducing the criminal justice workload, several faults and inconsistencies can be observed. As in the previous discussion, one can examine the schematic diagram to determine if the goal is actually being realized. In many respects the issue is much the same as before, the defendant is not being diverted from the system but simply through another route. From the standpoint of the number of trials being held, P.C. 1000 has reduced that bottleneck, but in nearly all other areas, court resources are being used to the extent that they were previously to P.C. 1000. In fact, in some areas of the system the workload has increased.

In the Adult Probation Department, for example, the Drug Diversion Unit which employs seven full time officers to investigate cases and monitor programs was funded for approximately \$100,000 and implemented exclusively to handle the P.C. 1000 caseload. As indicated in the evaluation, out of the 986 cases diverted in 1973, only a small percentage would have involved significant probation department time had P.C. 1000 not been in existence.

To give further evidence to show that drug diversion has not reduced court workload, we have learned that prior to the inception of this statute, the great majority of the first time drug possession offenses were settled with a guilty plea. This form of adjudication negates the need for a trial as does P.C. 1000. The usual disposition was a small fine and seldom involved a jail term for the first offense. However, with the implementation of P.C. 1000, which has for all practical purposes replaced the guilty plea in popularity, the judicial process for drug possession offenses has become incredibly complex and lasts much longer.

But even if the goal of "unclogging" the courts had been achieved, there is serious doubt that this would be consistent with the other purposes of the law. In fact, in the State Supreme Court decision in Morse vs. Municipal Court referred to above, the ruling was that P.C. 1000 was not intended to save court time but to provide meaningful services to assist diverttees with problems that they might have. This is logical since if the law intends to provide education, treatment, or rehabilitation to persons which have been brought into the criminal justice system for certain alleged offenses, then that same system should make available its full resources to accomplish that goal rather than undermine it with another goal of reducing its own workload.

Assessing the degree to which the third intent of P.C. 1000, that of providing helping services to diverttees, has been accomplished is a complicated matter with several variables. The Santa Clara County evaluation did not make use of sophisticated pre/post testing to measure change as a result of participation in diversion programs. However, by recording in great detail the entire process in order to document the environment in which the diversion program is being conducted, a great deal was learned which gives an indication that the goal of treatment, education, or rehabilitation is not being realized.

The schematic diagram does not adequately convey the real experience to which the diverttee is subjected. From the outset he remains uninformed of the alternatives open to him as he faces his journey through the criminal justice system. In effect the defendant receives a double message about the offense which he has committed.

Since possession of even a small amount of such illicit drugs as marijuana is a felony in California, the arrestee is booked as such. Later, however, the charge is reduced to a misdemeanor by the DA under the provisions of Section 17 of the Penal Code. Following this, criminal proceedings under the normal court process are instituted against the defendant. The message here is that the defendant is to be treated as a law violator and he must suffer the consequences of his actions.

When at a later date after several court appearances the potential diverttee learns of his eligibility for diversion, a great deal of confusion and frustration may be generated. At this point the message is that the court wishes to offer him a second chance and to make available to him treatment or rehabilitative services. This frustration is often compounded by the fact that often the diverttee has to pay an attorney a fee to obtain diversion for him when, in fact, diversion is automatic if he meets the specific eligibility criteria of P.C. 1000.

Many times the judicial process will proceed up to the stage of the pre-trial conference before the diverttee begins to get any idea about the details of the provisions of the diversion statute. Often the defendant will attempt to plead guilty at arraignment, and the judge will have to explain to him that he may be eligible for diversion and to enter another plea. Once eligibility is determined and the defendant indicates that he is interested in pursuing the matter, his case is shifted to the probation calendar where several more court appearances and an extensive probation department investigation are required in order to determine suitability. Finally the defendant is "diverted" to one of several community programs. Our interviews with diverttees have adequately demonstrated that very few individuals approach their court-mandated program with a positive attitude about what they might receive.

The conclusion indicated by the data in the evaluation is that the environment created by the current diversion process, beginning to end, is that it is wholly counterproductive to the goals of treatment or rehabilitation. An education of sorts does occur. Most diverttees are educated, if nothing else, to the realities of the criminal justice system. It would seem that if the intention of the law is to actually help diverttees from becoming further involved with drugs or the law, then several modifications of the existing implementation of drug diversion must occur. It is our purpose in the next section to propose some specific changes in order to accomplish that goal.

Recommendations

Based upon the data obtained in the diversion evaluation and the time spent reviewing the evaluation by the Task Force on Secondary Prevention of the Santa Clara County Drug Abuse Coordination Commission, the following recommendations are proposed for change in drug diversion.

Some of the proposed changes will require modification by the legislature of certain provisions in the statute, others will only require modification of the process as it currently operates in Santa Clara County. The recommendations are structured in terms of the major areas of concern which have been identified by members of the Drug Abuse Commission at a special workshop held to study the results of the evaluation.

I Information Provided to Diverttees:

It is recommended that at the point of entry into the criminal justice system, preferably at booking, that the potential diverttee be informed of all of the alternatives open to him in the system. This will prevent the defendant from making premature choices which may later prove to jeopardize his standing with the courts.

Based upon the recent Morse vs. Municipal Court decision of the State Supreme Court, the defendant should be advised that he will be allowed to file pre-trial motions such as a 1538.5 motion to contest an illegal search and seizure prior to opting for diversion.

II Education, Treatment, and Rehabilitation Services Provided to Diverttees:

This is a recommendation which covers several areas of concern. There is a concern by the Drug Abuse Commission about the merging of the treatment and rehabilitative services as exemplified by the assistance provided to clients by mental health agencies and community programs with the criminal justice system which occurs during court-mandated treatment. Members of the mental health profession express the doubt that treatment or rehabilitation can be effective in an environment where the client knows that his progress must be reported to agencies within the criminal justice system. Therefore, to alleviate this problem and to satisfy the needs of the criminal justice system, it is recommended that the current investigatory and monitoring role of the Adult Probation Department be replaced with a brief, well conceived, orientation seminar for diverttees in order to inform them about drug laws and the consequences of a second offense. In addition to this seminar the diverttee will also have the opportunity to undergo a diagnostic screening by a health agency such as the intake process which will occur at the Central Intake Unit.

Upon attendance at the orientation session, which itself would be mandatory, the diverttee will be judged from a legal standpoint to have satisfactorily completed P.C. 1000 drug diversion. At this point charges against him will be dismissed. However, the diverttee may enter an education or treatment program based upon the results of his screening by the health agency. At that point all of the drug abuse related services of the community will be available to him.

III Records of Diverttees:

In order to fully implement the intention of P.C. 1000 to free the diverttee from the stigma of a criminal conviction, the current procedure of maintaining records about the diverttee must be modified. Both the arrest record and the C.I.I. record, unexpunged, function at this point to subvert the purpose for which the statute was enacted. It is recommended that both the arrest record and the C.I.I. disposition record be expunged, and that the only records which should be maintained are those which will be consulted to determine future eligibility for diversion. Access to diversion records, which should be maintained in a special limited file, will not be for any other purpose on the part of law enforcement or potential employers.

IV Inter-Agency Communication Regarding the Operation of Diversion:

Perhaps the most glaring deficiency discovered during the evaluation was the lack of communication and coordination among those agencies in the County responsible for the implementation and operation of drug diversion. This lack of communication and coordination has resulted in a compartmentalized

process in which each agency has little knowledge of the problems of another. Currently the Adult Probation Department is having a problem with the number of second time offenders which are slipping past the District Attorney's eligibility screening process. However, very little effective communication is taking place to settle the matter. There are many other areas in which communication among the agencies will benefit the overall process of diversion. The central benefit of such communication will be that those responsible for diversion will reach some mutual agreement as to the goals and purposes of P.C. 1000 diversion in Santa Clara County rather than relying on vague directives which each agency received at the inception of the law two years ago. To this end, it is recommended that there be established some formal mechanism of communication and coordination under the auspices of the Drug Abuse Coordination Commission which would include representatives from all criminal justice agencies and representatives from the treatment community on a regular basis to discuss all issues related to the operation of P.C. 1000 in Santa Clara County and would be able to work towards modification of the process in the County, within the limits of the law, so as to best accomplish its goals.

VIII

DIVERSION '74

DIVERSION '74

<u>Month</u>	<u>Referrals</u>	<u>Diverted</u>	<u>Rejected</u>	<u>Terminations</u>	
				<u>Unsatisfactory</u>	<u>Satisfactory</u>
January	120	86	34	16	82
February	90	66	24	14	36
March	130	99	31	17	56
April	125	84	31	23	79
May	138	120	18	19	58
June	119	97	22	19	72
July	101	83	18	16	95
August	151	120	31	10	45
September	126	99	27	17	66
October	173	126	47	23	23
November	119	92	27	10	83
December	133	101	32	13	67
Year Total:	1525	1173	342	197	762
1973 Total:	1307	996	321	89	337

Cases still in process on 12/31/74: 745

Cases still in process on 12/31/73: 556

END

7 abbas/anna