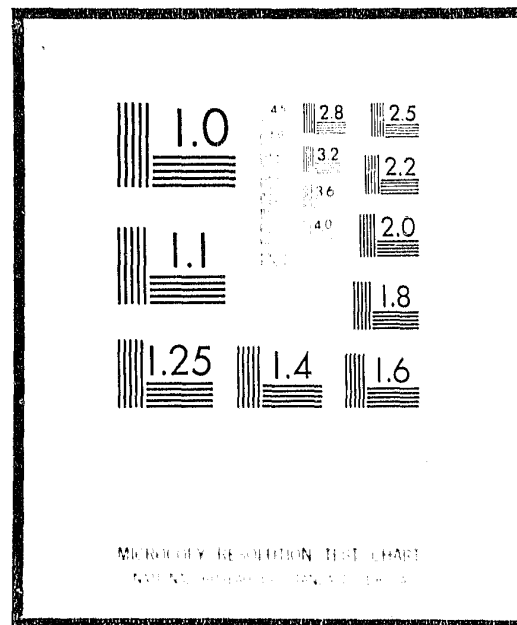


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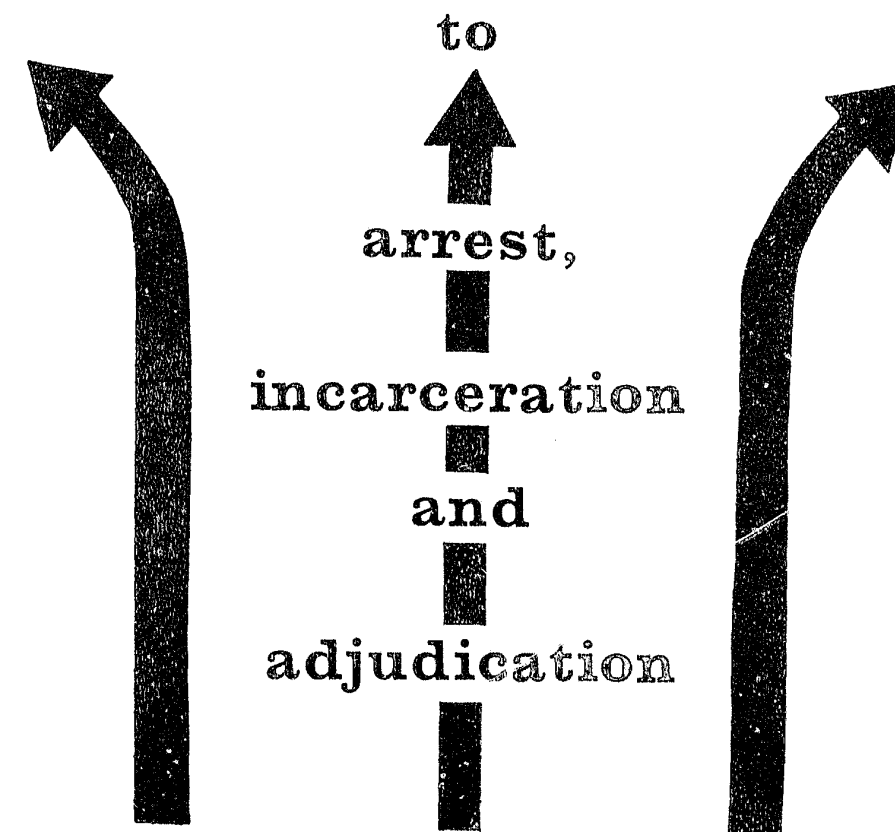
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LOCAL ALTERNATIVES



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LOCAL ALTERNATIVES TO ARREST
III
INCARCERATION AND ADJUDICATION

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FORWARD

Statistics have shown that our criminal justice system is failing to rehabilitate those who are convicted of committing a crime.^{1/} Recent LEAA statistics indicate that we are not even doing a good job of catching the perpetrators of crime.^{2/}

The National Association of Counties strongly believes that one of the primary causes of this breakdown is an overburdened system. Criminal justice agencies are expected to meet human needs far beyond the scope of what any single system reasonably can be expected to accomplish.

The police are asked to be all things to all people. They must settle family disputes, provide emergency medical aid, deal with alcoholics, addicts, the old, lost and wandering of a city, provide emergency shelter for the young, etc. In a number of cities, they still take the dog census and check voter registration! Similarly, corrections must face not only the accused and convicted criminal, but the alcoholic, the mentally ill, the vagrant and an assortment of others who present problems for which there is no community service.

The criminal justice system with justification may be called the "dumping ground" of our society for problems for which we do not have solutions or do not want to face up to. However, referral to the criminal system is at best a temporary relief and, more commonly, no solution at all. The criminal system cannot deal successfully with social and medical problems. What is of equal importance is that involvement in the criminal system is expensive and diverts energies from crime prevention and the apprehension of criminals.

The role of general county government in reform of the criminal justice system will be crucial - if reform is to succeed. In addition to having major responsibilities for pretrial detention facilities, prosecution, defense, courts, probation and juvenile justice, county government also administers most of the government supported health, mental health, welfare, manpower and educational

1

Stan Simon and William Cockerham, "States' Prisons Fail to Deter or Help Most Criminals," The Hartford Courant, 1974 (Reprint).

2

U.S. Department of Justice, Crime in the Nation's Five Largest Cities, Advance Report, April 1974, pp. 1-5.

services at the local level. It is these and similar agencies which must act to deal with social problems which now fall to police, courts and corrections.

What can be done? This pamphlet contains a number of short descriptions of programs to release the arrestee when possible or to provide alternative programs to incarceration. These programs can help the individual remain or become a useful member of the community. The pamphlet concerns itself only with pre-trial programs and is intended to give the elected official an idea of what his basic options are in the areas of pretrial release and diversion.

The descriptions in this pamphlet are for the purpose of giving a broad outline of how the program operates. In most cases, each program will have to be custom tailored to fit each community. Differing laws and regulations as well as variations in social and political values prevent the wholesale adoption of any one existing program. Additional information on any program can be obtained from the director of the program or from NACo.

Bernard F. Hillenbrand
Executive Director

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INTRODUCTION

The criminal justice system at the local level is characterized by a failure of coordination. There is only the vaguest realization within the system of the relationship between police, pre-trial detention, bail, prosecution, courts and corrections. There is almost no realization of the relationship to other non-criminal justice agencies. This lack of coordination is one of the prime causes of the breakdown of the criminal justice system and overcoming it is one of the keys to reform.

The absence of coordination has resulted in the inability to transfer people who do not belong in the criminal system to more appropriate agencies. Police and other agencies of the system must deal with health, mental health, welfare and other problems that lie far beyond the "law enforcement" function. Enforcement of laws dealing with alcoholism, drug addiction, vagrancy, loitering and the use of criminal justice processes to deal with family fights, wandering children, neighborhood squabbles - all bring people into the criminal system who will benefit little, if any, from incarceration, prosecution and guilty plea. Yet, in many cases, arrest and incarceration are the only available community response once individuals have become enmeshed in the criminal system.

Another problem facing the criminal justice system, and one that stems from inertia as much as isolation, is the large number of individuals who are incarcerated prior to trial. According to a survey of adult detainees, carried out by the Bureau of the Census and LEAA, 52 percent of all individuals incarcerated in local jails were of pretrial status.¹ However, programs such as those noted below have indicated that many of these pretrial detainees can be released safely.

The vast majority of detainees are in jail because they cannot post bond. In a few cases, bail has been purposely set high because of the seriousness of the charge or the fear that the suspect will commit further criminal acts upon release. For most, however, bail is set on the basis of the offenses charged. If bail is posted, it is usually from a bail bondsman. When the accused cannot raise the bondsman's premium (usually 10 percent of the bond), or if the bondsman considers him a bad risk, he remains in jail. The consequences

1

U.S. Department of Justice, 1970 National Jail Census, (Washington, D.C.: Government Printing Office, 1971), p. 1.

of this system are that pretrial detention is based on the ability to raise bond rather than consideration of community safety. In addition, those who have sufficient resources to raise bond may still be unable to do so because of the financial drain of hiring defense counsel.^{2/}

Such incarceration is expensive. It is expensive to feed and house prisoners and these expenses will increase with state and court mandated jail standards becoming the order of the day.

In Texas, it has been estimated that pretrial incarceration costs \$12.50 per day.^{3/} In Illinois, the figure ranges from \$3.50 to \$8.50.^{4/} Over a 90 day period, the cost of incarceration of an inmate in these two states would range between \$215.00 and \$1,125.00 with most jails having a rate nearer the \$1,000 mark. These figures, of course, are comparable to those in other states. The cost of building new jails is also expensive - about \$20,000 per cell.^{5/}

Pretrial incarceration often results in the loss of employment by the accused. With no income, the family is soon forced to seek governmentally supported social service assistance. Of course, each of these setbacks makes the problem of re-integration into the community more difficult - even if the arrestee is not convicted of anything!

The criminal justice system falters because it is isolated - there is no overall approach to human problems of which crime and the apprehension of criminals is only one facet.

Realizing this fact, the National Association of Counties' Criminal Justice Project is focusing on how to improve the coordination between agencies of the criminal system and other governmental and private programs. As part of this effort, NACo in October 1973 held a workshop on the concept of intake diagnosis. This program explored the alternative approaches to providing health, mental

2

Charles Friel, Speech before the Western Region Dist. Conference of the National Association of Counties, Anchorage Alaska, May 15, 1973.

3

Ibid.

4

Hans Mattick and Ronald Sweet, Illinois Jails: Challenge and Opportunity for the 1970s, (Chicago: Ill. Law Enforcement Commission, 1970), p. 249.

5

Friel, Speech.

health, vocational, educational and other similar information to the criminal justice decision-maker. These sources of information and recommendations can be used to determine other, more appropriate, agencies to which to refer arrestees. It can also be used for decisions on release pending trial.

As an outgrowth of this conference, we felt it necessary to develop brief descriptions of the basic forms of pretrial release and diversion strategies. This paper, then, is an outline of some of the basic options open to local governments desiring to initiate pretrial release or diversion programs. For further information on any of these programs and for help in getting them going, contact the Project Director, Criminal Justice Project, NACo, 1735 New York Ave., N. W., Washington, D. C., 20006.

PRETRIAL RELEASE

As noted in the introduction, there are many individuals incarcerated solely because they cannot raise bail money. No system exists in most jurisdictions to determine whether those individuals who remain in jail would be good risks if released. Certainly, the inability to make bond is not conclusive evidence that the arrestee will not return for trial or that he will commit further crimes while on release. Since there is a definite value, both for the individual and for local government, in releasing those individuals who will return for trial and who will not commit further crimes, this section focuses on how this end may be accomplished.

A. Oakland, California Field Citation Program.

The first point at which release decisions can be made is the immediate post-arrest period. While still under the custody of the police, release of a minor offender by the issuance of a summons can be effected much more quickly than if formal booking and bail are required. Also, since more formal release programs often focus on the more serious offender, citation programs such as Oakland's help assure the release of minor offenders.^{1/} In California, the release of those misdemeanor offenders who pose no threat to society, was spurred by the enactment of legislation which authorizes the issuance of a citation to individuals charged with misdemeanor offenses. The Oakland, California Police Department has employed this technique to release some 18,000 individuals who normally would have been booked and potentially incarcerated had the program not been in existence. In Oakland, it is the stated policy of the department that "misdemeanor citations shall be issued in lieu of arrest and incarceration whenever it is possible to do so." The officer in the field, however, has the discretion not to issue a citation:

- 1) when physical force is required to make an arrest;
- 2) when there is a "reasonable likelihood" that the activity that leads to the arrest would continue;
- 3) when the misdemeanor cannot properly identify himself;

¹
Pretrial Release Under California Pretrial Release, Section 853.6: An Examination of Citation Release, California Law Review, LX, (1972), p. 1135.

- 4) when release would endanger the prosecution of a case;
- 5) when a "reasonable likelihood" exists that the released will fail to appear or if a warrant exists;
- 6) when the accused demands to be taken before a magistrate or refuses to sign a citation;
- 7) when the arrestee requires medical aid or is unable to care for himself.^{2/}

Procedurally, after making an arrest, the officer determines whether the accused fits into one of the excluded categories. If he does, the officer must indicate why a citation was not issued. If the arrestee is eligible for release, the officer issues a citation, much as a traffic citation is issued, and the accused is released on the spot. Unlike a traffic citation, however, the misdemeanor must return to the station within 24 hours for formal booking.

Even if the citation is not issued immediately, the accused may be released by the jail supervisor. In a number of cases, the circumstances that lead to the officer's refusal to issue a citation will have changed by the time the individual is brought in for booking. In these cases, the jail supervisor will issue a field citation, identical to those issued by the police.

If the arrestee still does not qualify for field release, he still may be eligible for the jail release program. This program uses as its criteria the accused's stability in the community and follows closely the Vera model discussed below.

For those arrested misdemeanants, 53 percent have been released using jail or field citations in the period from February 1970 to December 1973. The rate of non-appearance has declined since the program's inception and for May 1973 was 4.5 percent.

B. Release on Recognizance.

One of the oldest and most basic forms of pretrial release is release on recognizance (ROR). According to a 1973 study by the Office of Economic Opportunity, there are approximately 100 such programs operating in the United States.^{3/}

²
Oakland Police Department, General Order 70-1, (October 20, 1970).

³
Office of Economic Opportunity, Pretrial Release Program-Working Papers, p. 3.

These programs provide an avenue for the release of an individual incarcerated prior to trial without the need to post bond. In most states, the power to release without bond has existed for a long time: However, it has not been used.

In 1961, the Vera Foundation established the Manhattan Bail Project to test the hypothesis that many of those incarcerated could safely be released into the community and would return for trial or other disposition. The primary criterion that the project employed for determining eligibility for release was whether the arrestee has stable ties in the community. This criterion was employed since it was felt that with such ties, the individual was less likely to flee the jurisdiction. In order to establish eligibility under the criterion, the project formulated a checklist that assigned a point value for length of community residence, frequency of family contacts, employment and criminal record (see Chart I). If the arrestee has the requisite number of points, and he has not been charged with murder or rape, then the project recommends his release. Generally, except for letters and other forms of written communication informing the individual of required court appearances, these programs do not involve any counseling or supervision.

One of the most successful implementations of the ROR concept has occurred in Des Moines-Polk County, Iowa. This project, started in 1964, interviews all arrestees except those charged with public intoxication, failure to appear, federal offenses, or minor traffic offenses. Juveniles are also excluded.

Interviews are held every day and a point scale similar to the Vera model is used. At this meeting, the interviewer obtains the names of persons who can verify the information given by the prospective client. If the defendant has obtained the requisite number of points, the interviewer checks the information by phone. The police records are also checked. If the verification confirms that the defendant has obtained the requisite point total, the project recommends release without bond. The final decision in Des Moines, however, rests with the judge.

Between 1964-1970, 6,787 individuals were interviewed by the project staff and 5,176 or 77 percent were qualified for release. Of all those interviewed, 68 percent were released by the court. Fifty-one percent of those released were charged with felonies.

If the defendant fails to appear, the project tries to determine whether or not the absence was an attempt to avoid prosecution. In most cases, failure to appear resulted from unavoidable circumstances. In these cases, the defendant's appearance is re-scheduled and he is continued on bond. If this is not the case, a warrant is issued

CHART I

Point Scoring System - Manhattan Bail Project

This scale, developed as part of the Manhattan Bail Project, is used by the Des Moines project as well as most other pretrial release programs.

To be recommended, defendant needs:

1. A New York area address where he can be reached and
2. A total of five points from the following categories--

Prior Record

- 1 No convictions.
- 0 One misdemeanor conviction.
- 1 Two misdemeanor or one felony conviction.
- 2 Three or more misdemeanors or two or more felony convictions.

Family Ties (In New York area)

- 3 Lives in established family home and visits other family members (immediate family only).
- 2 Lives in established family home (immediate family).
- 1 Visits others of immediate family.

Employment or School

- 3 Present job one year or more, steadily.
- 2 Present job 4 months OR present and prior 6 months.
- 1 Has present job which is still available.
OR Unemployed 3 months or less and 9 months or more steady prior job.
OR Unemployment Compensation.
OR Welfare.
- 3 Presently in school, attends regularly.
- 2 Out of school less than 6 months but employed, or in training.
- 1 Out of school 3 months or less, unemployed and not in training.

Residence (In New York area steadily)

- 3 One year at present residence.
- 2 One year at present or last prior residence OR 6 months at present residence.
- 1 Six months at present and last prior residence
OR in New York City 5 years or more.

CHART I (continued)

Discretion

- 1 Positive, over 65, attending hospital, appeared on some previous case.
- 0 Negative--intoxicated--intention to leave jurisdiction.

Source: Programs in Criminal Justice Reform, Vera Institute of Justice, Ten Year Report, 1961-1971, (New York: Vera Institute of Justice, 1972).

for his arrest and bail is revoked. In the nine years since the program began, only 1.8 percent of the defendants have failed to appear when required.^{4/}

Additional discretion is often given to programs to release individuals without judicial supervision. Such a program exists in Santa Clara County, California. Under general state enabling authority, the program releases misdemeanants who attain the required number of points on the Vera Scale without the need for judicial approval. In felony cases, however, the program still acts in an advisory role to the judge. This increased discretion has not resulted in an increase in failure to appear rates. The rate of "no show" remains below that of those who post cash bond.^{5/}

C. Supervised Pretrial Release.

The program in Des Moines also provides a means of releasing some of those individuals who do not qualify under the objective point system while still protecting the safety of the community. This program, called Supervised ROR, was begun in 1970 to provide a means to release individuals who are good risks, but who do not meet the objective criteria.

The names of all persons who do not qualify for ordinary ROR are referred to the staff of the Supervised ROR program. These individuals are seen by the staff during a second interview covering past history, alleged offenses, stability in the community, and attitude. Acceptance into the program is a subjective decision and is influenced strongly by the attitude of the police and courts toward the individuals as well as verification of information about residence, employment, family ties, etc.

The final decision rests with the director, the assistant director and the interviewer. The decision is based on the determination that the program can help the client obtain probation if convicted and that the client will cooperate with the program. If the committee decides in the affirmative, the staff recommends to the judge

⁴ U.S. Department of Justice, A Handbook of Community Corrections in Des Moines, (Washington, D.C., Government Printing Office, 1973), p. VIII.

⁵ Santa Clara County Pretrial Release Program, Pretrial Release Program in an Urban Area, 1973, p. 12-13.

that the client be released into the program.

However, unlike ordinary ROR, clients entering the supervised program immediately are assigned to a counselor. A full series of tests are administered and from the test data, interviews and other data sources, the client and the counselor develop an individual program. Specific problem areas are identified and the program addresses itself to these areas. Of initial concern to the counselor is the provision of food, clothing, shelter and medical treatment where required. The programs themselves tend to focus on employment problems, although they are not limited to these problems. In fact, services available to the client include drug counseling and therapy, alcohol counseling and treatment, job training and vocational rehabilitation, employment, psychiatric counseling, remedial education and medical care.

Each client has regular meetings with his counselor at which his problems and progress are reviewed. As problems arise, the program of the client is modified to meet these new situations.

According to the project's staff, the cost of the program is \$670 per client. Rates of crime committed while on release and failure to appear at trial are both less than that of bailed offenders.^{6/}

D. An Organizational Structure: The Santa Clara Custody Classification Preprocessing Center (CCPC).

The Preprocessing Center has been a major development in coordinating criminal justice and social agencies concerned with the defendant at the pretrial stage. Located in a trailer adjacent to the main pretrial jail, the Center houses representatives from the Santa Clara County Sheriff's Office, the San Jose Police Department, an Assistant District Attorney, an ROR specialist and a social worker.

As detainees are brought into the county building for booking, they are funneled through the Center. After entering the trailer, the arresting officer fills out an Arrest Activity Record which contains basic identification and charge information. The officer, the police or sheriff's supervisor and the Assistant District Attorney then review the circumstances of the arrest, the evidence and the charge. During the first three months of operation, the law enforcement

supervisor and the Assistant District Attorney recommended the dropping of 360 charges and the addition of 134 other charges. The arresting officers, who retain the power to make the charges, filed some 754 charges after review.

It is clear from the above statistics that the CCPC is serving an important "quality control" function in the process of making a formal charge. Where evidence will not support the charge, or where another charge is more appropriate or where procedures have been faulty, the Center acts to correct those initial errors. As a secondary benefit, the officer on the street, by participating in the discussions with the Assistant D. A. and his own supervisor is becoming more conversant with the penal code and more aware of the problem of prosecution. When a charge is modified or dropped, because of a procedural error, the error can be explained by the Assistant District Attorney. Where such communication does not exist, modifications go unexplained - often resulting in friction between the police and the prosecutor.

While the conference on the charge is being held, the arrestee is interviewed by the ROR specialist. The role of ROR is particularly important with respect to misdemeanants. In California, as noted above, the law permits the issuance of a citation to almost all misdemeanants. The Center's existence has resulted in the increase in field citations by officers as well as in the Center. For all cases, felony and misdemeanor, the ROR specialist was able to recommend release in 54 percent of the cases.

Finally, there is also housed within the trailer a social worker to provide immediate assistance in crisis situations. This individual attempts to elicit information on referral needs or on situations in need of immediate attention such as housing, child care, etc. If follow-up is needed, referral is made to a supervisory social worker. In some cases, referrals are made to appropriate social agencies.

In addition to the expected referral function, a number of additional situations have arisen in which a social worker has played an important role. In a few cases, victims have been referred by the social worker. Victims who seem in need of help are now contacted by this service.

The police are also using the social worker to deal with problems when they cannot come up with appropriate solutions. Being available 24 hours, police have phoned the Center and occasionally brought people in to receive referrals to appropriate agencies.

The Center, then, performs three functions. First, it is a mechanism to insure the "quality" of charges prior to booking. However, this is not an adversary process, rather it involves the police and the District Attorney coming to an agreement as to what charges the state wants to make. Secondly, it acts as an early point of contact for Release on Recognizance programs. Finally, it is an important link between the pretrial agencies of the criminal justice system and other social and governmental agencies.^{7/}

Each of these programs, when measured against a reduction in the pretrial jail population, is inexpensive to operate. In fact, statistics seem to indicate that such programs result in a net savings to the local government. The use of citations reduces the jail population with little additional cost. The Des Moines program figures the cost per ROR client to be \$52.00. The cost per Supervised ROR client is \$670.00.^{8/} This cost compares favorably with the almost \$1,000 per prisoner cost of incarceration. In addition, these expenditures for release permit the individual to remain in the community, to pay taxes and to support himself and his family.

⁷ American Justice Institute, "Custody Classification Preprocessing Center Quarterly Report" (Mimeograph), April 1974.

⁸ Handbook of Community Corrections in Des Moines, p. VIII, 11.

ALTERNATIVES TO ARREST AND PROSECUTION

"Diversion" has been defined by the National Advisory Commission on Criminal Justice Standards and Goals as:

...a discretionary decision on the part of an official of the Criminal Justice System that there is a more appropriate way to deal with the particular defendant than to prosecute him.^{1/}

Diversion, however, is not new. There is much evidence to indicate that the process has been occurring informally for a long time. What is new is the formalization of the process and with it the conscious attempt to employ governmental and community agencies.

The establishment of a diversion program creates vital linkages between criminal justice agencies and health, mental health, vocational, educational, social services and other agencies in the community.

The process of diversion, however, raises two important collateral issues: How much discretion should be given to the program? and how to assemble community resources.

Deferred prosecution-diversion programs intervene at various stages of the post-booking, pretrial period. Most of them depend heavily on the discretion of the prosecutor to defer criminal process in lieu of an alternative program and to drop charges when the accused successfully completes his program. Because these programs are susceptible to abuse, a number of legal issues have been raised concerning their operation. The National Legal Aid and Defender Association has raised issues such as:

- 1) Can an admission of guilt or responsibility be required of the subject before entering a diversion program?
- 2) What is the effect of a speedy trial waiver?

¹ National Advisory Commission on Criminal Justice Standards and Goals, Courts, (Washington, D.C.: Government Printing Office, 1973), p. 27.

- 3) At what point should defense counsel participation be required?
- 4) How does the program account for constitutional rights to privacy?
- 5) Can a defendant be placed in a rehabilitation program prior to a determination of guilt or innocence?

All of these issues, however, relate to the central problems of the extent of prosecutorial discretion. If the process of diversion begins prior to formal charge, then prosecutorial discretion is maximized. Properly used, this early intervention rapidly can refer an arrestee to alternative programs. It also can prevent the development of a criminal record which can later, long after disposition, be detrimental to the individual. However, in spite of these very real benefits, there is always a danger that the alternative program could become a means to deal with "bad cases" (i.e., those cases for which there is insufficient evidence to obtain a conviction). A defendant, faced with pretrial incarceration, uncertain trial outcome or bargaining negotiations, and a threat of an inflated charge or series of charges might be under strong pressure to plead guilty and be released into an alternative program, whether or not he is guilty of the crimes charged.

The alternative of waiting for a formal charge may or may not reduce prosecutorial discretion - depending on the jurisdiction. Certainly, in many cases, it will begin the process of involving the courts in the diversion process. However, such a process will require more time. The accused might have to remain in jail while a formal charge is made. He might have to wait for a grand jury indictment. If diversion is the intent of the prosecutor, and if he has a valid case, then the added expense and time of formal charge or indictment is unnecessary. In addition, a formal record is established which may damage his long term interests as much as they protect his contemporary ones. Yet, a formal, presumably independently, validated charge may assure that the case has legal merit before the accused is considered for diversion.

These complex legal and political issues are far from resolved. Many have yet to be tested in the court. Others are political problems that each community will have to resolve for itself once it makes the decision to begin a pretrial intervention program. One safeguard that may help alleviate many of these problems is the involvement of defense counsel in the procedures which determine whether an arrestee will be referred to a diversion program.

Two types of program strategies seem to be developing with respect to diversion. The first is the development of one or more programs

each of which deals with only one problem. Court Employment, Drug and Alcohol programs usually fall into this model. Such an approach is characterized by the lack of inter-relationship between programs - they often have independent diagnostic and screening units and many operate their own independent rehabilitation program. Another format uses a central diagnostic and referral agency to accomplish the goal of determining an individual's needs and referring him to appropriate community services. Where necessary it operates its own program or stimulates other agencies to do so.

A. The Court Employment Model.

Employment projects are generally operated by independent or quasi-independent agencies. The philosophy of these programs is that the inability to gain and hold useful employment helps explain why the individual committed the crime. Rehabilitation, therefore, must focus on these employment related problems.

Typically, the program's screening unit surveys all of the previous day's arrests to determine which meet its criteria. Generally, these criteria include a lack of serious prior criminal record, a lack of chemical addiction, the need for vocational type assistance and a willingness to participate in the program. Eligible clients are given a complete vocational diagnosis and this information along with a proposed program is presented to the prosecutor or the judge. Usually, the accused is not required to plead guilty before referral, although this is not always the case.

Once officially referred to the program, the client has access to all services available through the program.

In Dade County, Florida, the pretrial intervention project has been in operation since early 1972. This project, which is funded primarily with money from the U. S. Law Enforcement Assistance Administration, accepts men and women 17-25 years of age charged with misdemeanors or minor felonies. In addition, if both the police and the victims consent, the project will accept those charged with more serious felonies. The criteria for entry is that the accused must be "in demonstratable need of vocational, educational and psychological assistance...as evidenced by unemployment or underemployment and difficulty in school."

The director of the agency attends daily bail bond hearings at the Dade County Court. The information derived from this hearing plus information from jail interviews, defense attorneys, states attorneys and the police is assembled. With this information available, a meeting is held with the client, his family and the program staff

to establish a rehabilitation plan and to determine the project services required.

A description of the plan along with recommendations is then circulated to the Assistant States Attorney who is assigned to the pretrial unit. They review the program. If they, along with the victim and the arresting officer approve, the accused signs a waiver of speedy trial and is admitted to the program. Experience has been that the arresting officer and the victim seldom object to the client's involvement.

The Dade County program provides three to six months of intensive vocationally related services. Other resources are also available from governmental and community agencies. Contact is made with the client at least twice a week and counseling sessions are held once a week.

Since the inception of the program, 232 participants have been terminated by the project. One hundred ninety three or 83 percent were terminated after successful completion of the program. Of this group, only three percent have become involved in subsequent criminal activity after release. The cost per participant is \$695 compared to \$804 for probation and \$1,401 for those incarcerated.^{2/}

B. Public Intoxication.

According to FBI statistics for 1972, almost 20 percent of all known arrests were for public drunkenness or related offenses.^{3/} These arrests clog the courts and the other agencies of the criminal justice system. What is worse, criminal processes do little to help the individual suffering from alcoholism.

The magnitude of the problem that the alcoholic presents can be seen in a study in Erie, Pennsylvania, which indicated that 30-40 percent of police time was spent in dealing with public inebriates. Many other police agencies probably spend a similar amount of time on these problems. Probably more than any other problem, alcoholism and the legal responses to it represent the misuse of the criminal

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American Bar Association Commission on Correctional Facilities and Services, Descriptive Profiles of Selected Pretrial Criminal Justice Intervention Programs, Washington, D.C., April 1974.

3

Clarence M. Kelly, Crime in the United States, 1972 (Washington, D.C.: Government Printing Office, 1973), p. 119.

justice system. Alcoholism is simply not a crime: it is an illness that afflicts some nine million Americans.

Where public intoxication remains a crime, however, the cases are handled in a routine, almost assemblyline manner. In addition, many alcohol diversion programs divert at the police level. Questions of prosecutorial discretion relating to charge, adequacy of evidence, etc. are not of direct consequence. What is important for dealing with alcoholism is how to assemble the appropriate community resources and to have them accept their responsibility to provide aid and therapy to the alcoholic. The problem of the availability of community resources exists even where public intoxication has been decriminalized for the police still must have some form of shelter and care available for the alcoholic.

As a result of the large, but unproductive, expenditures of criminal justice resources on the alcoholic, a number of metropolitan areas have established alternative means to provide care for people suffering from this disease. Usually, these programs have an outreach component which takes referrals from the police and other agencies as well as "cruising" skid row areas to find those in need of emergency assistance. The outreach team typically contains a recovered alcoholic who attempts to encourage those in need of treatment to enroll in the program.

This outreach team is the critical link to law enforcement for through it the police have ready access to a formal mechanism geared to providing care and rehabilitation for the alcoholic.

Five major categories of assistance comprise a comprehensive alcoholism program.

1- Medical evaluation and sub-acute detoxification

This service provides an initial diagnostic service as well as short term psychological and medical treatment. This agency must have close ties with hospital facilities in order to deal with those suffering from the more acute consequences of alcoholism.

2- Shelter

This facility provides immediate food, clothing and shelter to alcoholics during the initial stages of rehabilitation.

3- Intermediate care facility

These facilities focus on the more acutely affected alcoholic, providing him with a longer term residential facility away from the skid row environment. Medical care, treatment and counseling are all available from these facilities.

4- Community residential facilities

Facilities to ease the process of returning to society are also important. Such agencies provide both the continuing formal services that are required and the kind of environment that is supportive of continued rehabilitation efforts.

5- Aftercare

Aftercare facilities provide on-going medical care as well as a means to reinforce the commitment to refrain from returning to alcohol.^{4/}

According to the National Institute on Alcohol Abuse and Alcoholism,^{5/} these categories of assistance can best be provided by existing community resources. Medical expertise is available in existing hospitals and neighborhood health centers. Community mental health centers have experience with outpatient and supervised halfway-house programs. Generally, emergency shelters exist in communities.

The critical problem, therefore, is not the establishment of new, specialized programs. It is, rather, the "opening up" of existing facilities which are capable of providing service. With these services available, the diagnostic program can draw on a whole range of resources to deal with the entire complex of medical, social, psychological, employment, marital and other problems associated with alcoholism.

4

Charles W. Weis, Diversion of the Public Inebriate from the Criminal Justice System (Washington, D.C.: LEAA, 1973), NCJRS #010946.

5

National Institute on Alcohol Abuse and Alcoholism, Developing Community Services for Alcoholics, DHEW Publication 72-9128 (1971).

One of the oldest alcohol diversion programs is the Manhattan Bowery Project. This project was begun in 1967 after a one year organizing effort which involved "affirmative decisions and actions...by a total of eighteen separate governmental departments at the city, state and federal levels."

The program utilizes two-man teams - a recovered alcoholic and a plain clothes police officer to patrol the Bowery section. Patrols are out from 8 AM to 7 PM seven days a week. When a team spots someone in distress, they offer him the services of the project. If he is in grave medical danger, the police officer can call for an ambulance.

If he chooses to accept the program, the alcoholic is taken to the men's shelter where he is given a medical examination and care. The patient is observed closely for up to three days in order to ascertain whether there are any medical or psychological complications. Usually, by the end of the three day period, the patient can be referred to a "recuperative ward." This ward provides institutional living facility and it is during this period that the patient and the caseworker attempt to map out a plan for rehabilitation.

The project has available to it approximately 25 aftercare programs. Based on the needs of the individual as outlined in the rehabilitation program, the caseworker identifies the most appropriate program. He then attempts to have the patient admitted to the program.

The Manhattan Bowery Project has found that surprisingly large number of alcoholics will accept treatment services when they are offered. A second discovery was that many alcoholics suffer from a variety of mental and physical illnesses.

One of the most effective tools in the long-term rehabilitation has been vocational training. Project Renewal, which was established in 1970 and funded by New York City Manpower and Career Development Agency, provides sheltered work for recovered alcoholics. Under this program, outpatients have undertaken to repair and keep up 35 playgrounds in the city. The fact that the men live together seems to provide additional support for some alcoholics.

As a result of the project, alcoholic arrests in the Bowery have declined 80 percent. Seventy-five men a week are being kept out of prison and involvement with the criminal justice system because of this program.^{6/}

6

Vera Institute of Justice, Programs in Criminal Justice Reform, New York, 1972.

C. Narcotics.

Narcotics represent a similar problem to alcohol in that the basic malady involves a chemical dependency. However, there are two important distinctions. One is that the chemical involved is tightly controlled and those involved in use are often involved in sale, possession or other illegal acts associated with narcotics. Secondly, because of the high cost of narcotics, crime and particularly property crime, becomes a way of life for the addict. In fact, a major portion of property crime is committed by drug dependent persons.

The problem, of course, is that the drug dependent individual is little affected by the criminal justice process. Arrest, adjudication, imprisonment and parole do not deal with the problems of drug dependency. As a result, the cycle of chemical dependency, arrest and incarceration occur again and again. In Washington, D. C., for example, 33 percent of arrestees showed a positive urine test and of 3600 addicts arrested in New York, 98 percent had prior arrest records.

The Treatment Alternatives to Street Crimes (TASC) program attempts to break this cycle. This program, operated by the Special Action Office for Drug Abuse Prevention (SAODAP), the Law Enforcement Assistance Administration (LEAA) and the National Institute of Mental Health (NIMH) provides assistance to local communities to identify and treat arrestees who are chemically dependent.

The TASC program provides much room for local policy decisions and at the same time provides an overall set of program guidelines.

Typically, the program has access to all arrestees in the pretrial lock up. Those who show physical signs of drug involvement, have previous arrests for drugs or who are currently under arrest for drug related offenses are interviewed by the project staff. The program is explained and if the potential client wants to participate, a urinalysis sample is taken and a complete history of his drug involvement is obtained. Based on the interview and urinalysis, a report is developed and sent to the prosecutor, the court and the defense counsel.

If based on locally identified criteria the potential client qualifies for the program, two alternatives are open to the court. His case may be held in abeyance for a stipulated period of time. If treatment is successful, charges against the client are dropped. In more serious cases, the criminal process continues. If the client is convicted, the program will make recommendations based on its experience with the client.

In Alameda County, California, the TASC program, administered by the Probation department, has been operating since January 1974. Clients are accepted from the Oakland City Jail and the Alameda County Jail. Referrals of people who are already in the criminal justice system are also accepted from probation officers, defense counsel, and judges. About one half of all clients are new arrestees.

For new arrestees, the program must seek clearance from the defense counsel. The district attorney must also screen cases for the program and he generally screens out most cases involving violence or major property crimes. For those cases that are approved, the prosecutor goes before the court to request a week's delay in order to carry out a complete diagnosis. If the judge agrees, the case is postponed and the program carries out a diagnostic procedure to determine desire for treatment and to identify which treatment options offer the greatest likelihood of success. Community based programs that are available include methadone maintenance (operated by the county health department), outpatient counseling and residential treatment (both operated by private corporations). The TASC program seeks admission to the program for the client and, if the judge approves, he is formally admitted to the program.

While in treatment, the TASC program supports the individual in the program and pays the program for services. They also monitor the case and report to the court on a regular basis. If the client successfully completes his treatment program, the TASC program staff reports this fact to the court. If the client is eligible for diversion, the staff recommends that charges be dropped. If the prosecutor insists that the case be tried, then, if the client is convicted, the program recommends probation.

If the accused leaves the program for more than 24 hours, then the court is notified and the individual is returned to the criminal justice system.

D. A Comprehensive Approach.

Another type of deferred prosecution or diversion program, and one which rests on a more broad based referral and counseling service - is the Citizen's Probation Authority of Genesee County, Michigan. This program was begun in late 1965 as a function of the prosecutor's office. However, because the prosecutor felt that the intake service components of such a program should be independent, the Citizen's Probation Authority (CPA) became a separate department of county government. The program, however, still depends on the exercise of prosecutorial discretion to refer clients to it.

The prosecutor in Genesee County has established a policy that all felony offenders who are residents of the county and who have not committed a crime of violence or exhibited a continuing pattern of anti-social behavior are automatically referred to the Citizen's Probation Authority. Since this policy is public and known to the police, a procedure has developed that permits referral before formal arrest in about 80 percent of all cases. The Genesee County Prosecutor considers this to be a particularly important component since it prevents the development of a criminal record which later can be used to the detriment of the client.

Unless an individual is caught in the act or insists upon arrest or is uncooperative, the police do not formally arrest him. Instead, when probable cause is established, the police take the individual to the prosecutor's office. The prosecutor's office screens the case to assure that the evidence is sufficient and that it meets the criteria for referral. If it does, the individual is referred to the CPA intake unit and an appointment is set up for the prospective client. At the intake unit, the individual's constitutional rights are explained and a waiver of speedy trial is obtained and he has an opportunity to consult with defense counsel. After he accepts the basic requirement of the program, including acceptance of moral responsibility for his acts, an appointment is made with the counseling staff who begin to work on the individual's problem areas.

Within two weeks after apprehension, the program staff and the client begin working on a treatment plan in the community. Individuals with major problems of chemical addiction are referred directly to a drug diversion authority by the prosecutor's office.

All clients coming to the CPA begin their rehabilitation with a "one-to-one" relation with a counselor. Forty to fifty percent of the clients are referred to community programs as the client advances in the program. A full range of community resources are available to the program including community mental health, employment, family counseling, as well as alcohol and drug programs.

As soon as the "one-to-one" relationship is no longer required and if the client is successfully carrying out his treatment plan, the program recommends to the prosecutor that any pending criminal actions be dropped.

The program receives about 100 referrals a month and the violation rate for clients has averaged under five percent with many of these being technical violations. An additional impact has been on the percentage of individuals placed on probation after trial. Prior

to the existence of the CPA a majority of convicted offenders were placed on probation. In 1970, a majority were sent to prison. These figures seem to indicate that many cases that would have been processed through the courts, with the time and disruption that this process involves, are now being processed by the Citizen's Probation Authority.^{7/}

⁷ National District Attorney's Association, Screening of Criminal Cases, (NDAA:ND).

CONCLUSION

In a complex society such as our own, all of the ramifications of any new program are difficult to perceive, let alone quantify and measure. Yet, with the emphasis of the Law Enforcement Assistance Administration on evaluation, we are beginning to see data developed on the effectiveness of these programs. Some conclusions, although quite tentative, can be drawn from the experience of existing programs.

- ROR programs cost much less than expenditures for maintenance in jails.
- ROR releasees seem to fare better in court than those who are incarcerated.
- ROR and Diversion programs can reduce jail populations.
- Diversion programs seem to be successful in reducing recidivism and they clearly reduce the case burden of criminal justice agencies.

In addition to these statistically based measures of effectiveness, there are broader consequences which, although difficult or impossible to measure, cannot be ignored.

Release and diversion programs are simply more humane. Incarceration for the purpose of retribution, deterrence and segregation is the most severe punishment available in the American criminal justice system. Yet, statistics indicate that over one half of all individuals in local jails have been convicted of no crime. We are, in effect, using our most severe sanction against many individuals who have been convicted of nothing. In addition, programs such as those discussed in this study seem to indicate that many people presently incarcerated can be released safely and economically pending final disposition.

Diversion also may be the first step in the development of a more rational approach to dealing with crime and other disruptive social problems. Certainly, there are many who willfully violate the law for whom punishment by incarceration is justified. For others, such as the alcoholic, the addict or the mentally disturbed, punishment is clearly irrelevant. The hope of the concept of diversion is that it will establish that there are many individuals in the criminal justice system who do not belong there and for whom there are, or should be, other more effective programs.

APPENDIX

The following is a list of addresses of programs discussed in this pamphlet.

1- Oakland Police Citation Program

Chief of Police
City of Oakland
455 Seventh Street
Oakland, California 94607

2- Des Moines Community Corrections

Director, 5th Judicial District
Department of Court Services
610 College
Des Moines, Iowa 50314

3- Santa Clara Pre-Processing Center and Pretrial Release

Santa Clara Criminal Justice Pilot
Program
106 East Gish Road
San Jose, California 95112

4- Pretrial Intervention

a- Employment

American Bar Association
National Pretrial Intervention
Service Center
1705 DeSales Street, N. W.
Washington, D. C. 20036

Court Employment Project
261 Broadway
New York, New York 10007

Dade County Pretrial Intervention
Project
Office of the State Attorney
1351 N. W. 12th Street
Miami, Florida 33125

b- Alcohol

Alcoholism and Alcohol Abuse
Project
National Association of Counties
1735 New York Avenue, N. W.
Washington, D. C. 20006

Office of the Director
National Institute of Alcoholism
and Alcohol Abuse
5600 Fishers Lane, Parklawn Bldg.
Room 16C10
Rockville, Maryland 20852

Manhattan Bowery Project
Vera Institute of Justice
30 East 39th Street
New York, New York 10016

c- Drug Abuse

Carl Hampton, Director
Treatment Alternatives to Street
Crimes
11400 Rockville Pike
Rockville, Maryland 20852

Peter Regner
Narcotics and Drug Abuse Coordinator
U. S. Dept. of Justice/Law Enforcement
Assistance Administration
633 Indiana Avenue, N. W.
Washington, D. C. 20530

James D. Callahan, Chief Probation
Officer
400 Broadway
Oakland, California 94607

d- Genesee County Citizen's Probation
Authority

Robert Leonard, Prosecutor
400 Courthouse
Flint, Michigan 48502

For any additional information, contact:

Donald Murray, Director
Criminal Justice Project
National Association of Counties
1735 New York Avenue, N. W.
Washington, D. C. 20006

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