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**ALTERNATIVES  
A SERIES**

"DEVELOPING THE SERVICE CONTRACT IN PRETRIAL DIVERSION PROGRAMS"

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SEPTEMBER 1978

NCJRS  
NOV 8 1978  
ACQUISITIONS

This publication is supported by Grant Number 0734-99-TA-78 awarded by the Law Enforcement Assistance Administration, United States Department of Justice. Points of view or opinions stated in this publication are those of the Pretrial Services Resource Center and do not necessarily represent the official position of the United States Department of Justice.

**SERVICES 1**

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## INTRODUCTION



This bulletin analyzes a relatively novel approach in the service delivery scheme of pretrial diversion programs—the use of the written contract. It also gives basic guidance on the application of the written contract to those counselor and administrators involved in day-to-day counseling.

The development of this bulletin is based, in part, in response to the increasing concern and criticism about the services being rendered to the pretrial diversion participant. <sup>1/</sup> Questions are being raised by practitioners which relate to the quality, amount and intensity of the services being delivered. Similarly, there is much concern about the level of accountability practiced by diversion counseling staff, *i.e.*, how decisions and evaluations are made regarding the defendant's progress through the program and on what and whose criteria priorities are defined and ranked. It appears that there exists little evidence of objectivity and consistency in counseling practices when determining specific obligations and opportunities for the diversion participant. Furthermore, according to most program descriptions, diversion counseling operations have experienced many difficulties since inception in the middle sixties. Much is still being done that is experimental and innovative. Counselors and participants must be able to perform many tasks and operate under stressful circumstances. Nonetheless, it should be remembered that because of the supervisory and potentially coercive nature of the diversion program, special procedures are needed to protect the human as well as the legal rights and dignity of the participant in the program.

While not attempting to provide a single solution to the problems which confront administrators/supervisors and counselors, this bulletin makes several assumptions about the written contract:

- that the contract is a technique that may be used to respond to the individual needs of the participant, aid the participant in learning problem-solving techniques, identify the mutual responsibilities and expectations of the counselor and participant respectively;
- that the contract may be used to provide structure for the counseling relationship and to focus the attention of the counselor on the processes designed to ensure the achievement of mutually agreed upon goals for the pretrial participant;
- that the contract serves as written evidence of the services actually rendered and as documentation for evaluation of various services provided; and
- that the contract can identify and help alleviate misunderstandings between the counselor and the participant early in the counseling relationship.

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<sup>1/</sup> Based on an informal survey of pretrial diversion agencies and discussions with noted authorities, diversion administrators and counseling staff, readings, and annual reports of various diversion agencies.

This bulletin includes the following components:

- an overview of the diversion process and an identification of questions raised by the services delivery system;
- a discussion of the fundamentals of the contract, its functions in the counseling process generally, and the contract's specific application to the diversion process;
- a practical guide for developing the contract, including a brief description of the counselor's role in this process; and
- an examination of several types of contracts.

Two issues should be noted. First, that the concept of contracting is not to be construed to be the same as the program's overall counseling approach or philosophy. The written contract in itself is not a treatment approach; instead, it is a specific intervention technique that may be used by counselors in their own general counseling strategy with participants. Secondly that the use of the written contract is not a standard practice in most diversion programs. <sup>2/</sup> Therefore, the illustrations provided in the text can only be offered as samples of the limited current practices. They are not suggested as preferred contract models. However, it is hoped that these illustrations will serve as a basis to encourage discussion and analysis of the various aspects of a program's administration and its delivery of services. <sup>3/</sup>

Although the primary focus of this bulletin is on contracting as a technique in the counseling process in diversion programs, the information included may be helpful to practitioners in other service professions. It provides introductory or reference material about the dynamics and issues of the counseling process in diversion programs, and may be appropriate as a training tool for supervisors to review counseling practices and uses of the written contract with their counselors.

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<sup>2/</sup> Generally, the contract has had wide application in social work practices. Examples are reflected in the literature; Perlman, in problem-solving approach to counseling; Rapaport, in short-term crisis intervention; Scherz, in family therapy; Thomas, with the behavioral modification approaches; and Hollis, in the psycho-social approach. Articles by these authors are compiled in Theories of Social Casework, Chicago: University of Chicago Press, 1970. (As cited by Marlow and Maluccio in "The Case for Contract", Social Work 19:1, January, 1974, p.30.)

The contract has also been utilized in group settings. See William Schwartz, "On the Use of Groups in Social Work Practice", in Schwartz and Serpio R. Zalba, eds., The Practice of Group Work, New York: Columbia University Press, 1971; and Alan F. Klein, Social Work Through Group Processes, Albany: State University of New York at Albany, 1970.

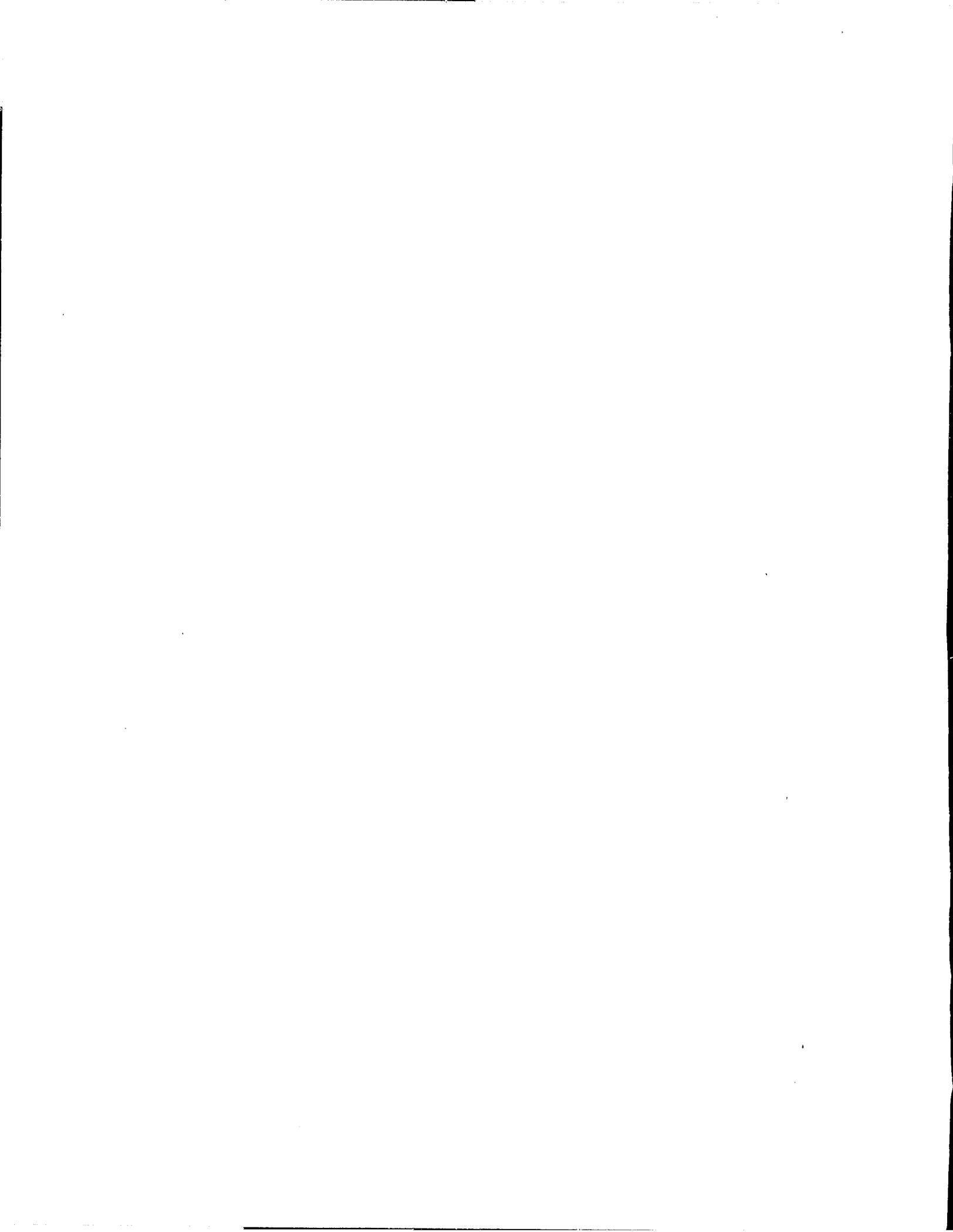
A number of diversion programs have utilized the written contract with relative success. An up-dated list of these programs is available from the Resource Center upon request.

<sup>3/</sup> Service delivery can really be assessed in two totally different modes: the direct delivery of services from counselor to client (which is the focus of this bulletin) and the management/administration of services by administrative and supervisory personnel. The latter is commonly termed case management. It is vital to highlight this distinction at the outset to avoid confusion.

Case management focuses on the issues of how services are administered: Supervisors and/or administrators (depending on staff size, etc.) are involved in the planning, managing and evaluation of services. For example, a supervisor's function may include; assignment of cases, including review and identification of different needs of client groups and assessment of the different capabilities of the staff, service as a resource to provide technical information support to counselors, etc.

SECTION I

THE CONTRACT: A CONCEPTUAL FRAMEWORK



This section provides a basic conceptual framework upon which the bulletin is premised. The written contract has no real significance unless it is viewed within the broader context of diversion and the counseling process generally.

The following topics are covered:

- overview of diversion and identification of the issues of service delivery;
- fundamentals of the contract and its function in the counseling process; and
- the application of the contract to diversion.

(Specific information on the diversion process is included in the Appendices.)

#### Overview of Diversion and Identification of the Issues of Service Delivery

Counseling is a major portion of the diversion program's service delivery system. <sup>4/</sup> Early in the history of diversion, the majority of programs' services focused on vocational, educational, and/or employment counseling. Various diversion programs' annual reports show that, generally, the participant was involved in weekly "rap" sessions with his designated counselor. As diversion practices evolved, programs developed substantial counseling components. <sup>5/</sup> Some programs emphasize an intensive counseling approach using professional treatment staff as service deliverers, and the adoption of various behavioral approaches to counseling. Because counseling services comprise the bulk of activities for diversion programs, these services are often used as a measure by which counseling staff determine the attitudes, motivation, and general progress of participants. <sup>6/</sup>

Diversion counselors generally have primary responsibility for maintenance and supervision of the participant during his/her enrollment in the program. In essence, the counselor is responsible for "helping" the defendant achieve positive behavioral and/or attitudinal change and, at a minimum, maintain a stable life condition during enrollment. It is the counselor who often coordinates the application to the program, identifies the needs of the participant, determines the participant's motivation to work on his/her identified problems and which services will be provided. In addition, the counselor is often instrumental in the decision to terminate the program of an individual participant. <sup>7/</sup> Obviously, the counselor is an important decision-maker

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<sup>4/</sup> See generally National Association of Pretrial Services Agencies "Performance Standards and Goals for Pretrial Diversion", Washington, D.C., September, 1978. (Hereinafter cited as "Standards".)

<sup>5/</sup> See "Standards" *supra*, Note 4. Also, some diversion programs emphasized extensive counseling services throughout the program's history. One of the earliest programs to develop counseling services aimed to enhance the participant's social and personal functioning (rather than emphasize manpower oriented services) was the Genesee County Deferred Prosecution Program, Flint Michigan.

<sup>6/</sup> Jeffrey Fagan and Wilfred Recker, "On Assessing the Impact of Treatment and Other Factors on Successful Completion of a Pretrial Intervention Program", paper prepared for National Conference on Criminal Justice Evaluation Panel Presentation on Pretrial Diversion/Intervention, 1977, pp.10-11.

<sup>7/</sup> *Ibid.*

in the diversion process. To be able to deal effectively with the diversion participant, counselors must be conscious of the processes involved in seeing that goals are specific and subsequently achieved. Thus, it is crucial that the interaction between counselor and participant be guided by a knowledgeable and ethical orientation.

Despite continuous efforts by diversion counseling staff and administrators to be fair and objective in addressing the needs of the defendant, diversion continues to receive a great deal of criticism. Much of this criticism is based on sound skepticism focused on diversion's service delivery system. 8/ The counseling process in diversion is often fraught with many difficulties and frustrations. It is also a more dynamic and fluid process than can be presented on paper. Counselors and administrators must try to balance a number of factors which relate to general service delivery strategies and to specific counseling concerns.

A review of the service delivery system in diversion reveals that the following issues remain problematic for the majority of diversion programs:

- *The dynamic tension between the orientation of the legal profession and the treatment system. 9/*

This dichotomy is exemplified in the following manner: the legal system entails a "diversion out" of the criminal justice system and advocates the safeguarding of the appropriate legal rights of the defendant/participant; the treatment system contemplates a "diversion to" an alternative social service structure with the hope that the delivery of services will prevent criminal behavior through early intervention. The goal of the treatment system is to "support and treat" the participant while the criminal justice system is committed to "supervising" the participant. Essentially, the diversion counselor is attempting to prevent the next arrest and the legal practitioner is trying to achieve a good legal disposition of the pending charge. These conflicting goals sometimes result in inappropriate referrals to the diversion program, waste of time for the participant and program misunderstandings between the legal practitioners and the counselor. As an illustration, a potential participant not referred on a first arrest and misdemeanor charge but referred later with felony charges and several priors may present problems for the program. Similarly, participants may be referred

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8/ Roberta Rovner-Piechenik, Pretrial Intervention Strategies: An Evaluation of Policy Related Research and Policy Maker Perceptions, Washington, D.C.: American Bar Association, 1974; Joan Mullen, Pretrial Services: An Evaluation of Policy Related Research, Cambridge, Massachusetts: Abt Associates, 1974; J. P. McGloin and J. S. Cariello, An Examination of the Effectiveness of "Role Model" Counseling on a Pretrial Diversion Population, New Haven, Connecticut: New Haven Pretrial Services, Inc., 1976; Michael Kirby, Findings 2, "Recent Research Findings in Pretrial Diversion", Washington, D.C.: Pretrial Services Resource Center, January 1978.

9/ This issue is highlighted by Norval Morris in a speech to attendees at the 1975 Pretrial Conference on Release and Diversion. He states "Conditional diversions too frequently tend to require support for, and supervision of the offender, and that is a possible conjunction of roles. The Supervisor-treater may be a dysfunctional relationship, ...the desire to help when coupled with a desire to control is totalitarian and that's a difficult problem." (For complete speech see Final Report, October 1975, National Conference on Pretrial Release and Diversion, p.21.)

Also see "The Defense Attorney's Role in Diversion and Plea Bargaining", National Legal Aid and Defenders Association, National Colloquium On The Future of Defender Services, Washington, D.C., 1976, pp. 967-1015.

to the program who are not in need of treatment. This forces the counselor into "supervising" the participant rather than supporting and treating him/her. Some counselors have indicated difficulty with this role because they feel that there is little likelihood of rearrest and that the program is being used only for those cases which do not have strong prosecutable merit.

In addition, to assure fairness and limit prejudice and discrimination, the legal profession has required that its practitioners rely on sound objective criteria to guide decision-making throughout the diversion process. 10/ Diversion service delivery staff have not been as critically scrutinized in their decision-making processes. Service delivery staff should be equally responsive and accountable to the principles of fairness, objectivity and consistency.

- *The lack of a unified theoretical, ethical, and practical approach to the delivery of services.*

Since its beginning in the mid-sixties, many programs have developed under the rubric of pretrial diversion. 11/ Similarly, many diverse practices and styles of administering programs and delivering services have proliferated. 12/ Counseling styles vary among agencies and among individual counselors.

Further, the limited amount of information about the actual services that are being rendered makes it difficult to know which service model is appropriate from a general counseling perspective. 13/ what the relative impact of the various services provided is, 14/ or what the appropriate role for diversion (to treat or to supervise) is. Conversations with diversion counselors reveal that it is a common practice for counselors to rely on an informal or verbal agreement with the participant (sometimes substantiated by notes in the participants' records) as an indication of the work to be accomplished in the counseling relationship.

- *The motivational level of the participant. 15/*

Participants are not prompted to enter the diversion program solely in order to obtain assistance or alleviate frustrations. Instead,

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10/ National Council on Crime and Delinquency, Abstracts, March 1978, "On the Issue of Dangerousness".

Also refer to Pretrial Intervention Legal Issues, published by Pretrial Intervention Service Center, American Bar Association, February, 1977.

11/ Refer to John Galvin, Instead of Jail: Pre- and Post-Trial Alternatives to Jail Incarceration, Volumes 1 and 3, Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, 1977; John Bellasai, "Pretrial Diversion: The First Decade in Retrospect", Annual Journal, Washington, D.C.: Pretrial Services Resource Center, 1978, pp. 14-37; "Standards" *supra* Note 4.

12/ See "Standards" *supra*, Note 4, Chapter 8.

13/ Refer to "The Defense Attorney's Role in Diversion and Plea Bargaining", National Legal Aid and Defenders Association, *op cit*.

14/ See Note 8 *supra*.

15/ This issue was identified at a workshop at the 1975 Conference on Pretrial Release and Diversion.

they are referred by prosecutors, the court, or defense counsel, because of an arrest and as a result they may lack motivation to actively participate in a counseling program. Thus, the participant may see the diversion option as a chance to "get by" and will attempt to do no more than is necessary until program participation ends. Consequently, counselors may coach certain participants along until they satisfactorily complete the program. <sup>16/</sup> Further, diversion participants often have multiple problems. It is sometimes difficult to decide, in light of the limited resources of the program, which problems to address first. The participant may not even be able to articulate his/her own needs. Decisions on how best to "help" the participant must be based on what is realistic and practical given the participants own resources, skills, and ability to adapt and mobilize them, and the limitations of the length of participation time, staff and community resources.

• *The weight and purpose of documentation at termination hearings.* <sup>17/</sup>

Obviously, not all participants complete the diversion program successfully. Those who do not are generally returned to the court for renewed prosecution. One agency's report indicates that 19 percent of its participants were returned to traditional processing because of rearrest, and 54 percent for general non-cooperation (including unsatisfactory attendance in a training or counseling program). <sup>18/</sup> The reasons for non-completion are varied. (See Appendix A: Diversion Process.) The diversion option may have occurred at the wrong time in the participant's life or may have been the wrong option. Failure may be as much a program's failure as a participant's failure. Nonetheless, the participant whose program is terminated must have an opportunity to challenge this decision to ensure that his/her legal rights are being safeguarded and that the counselor has acted ethically and fairly. <sup>19/</sup> The counselor should be able to verify what activities actually occurred and to explain the objective criteria on which the decision is based. Thus, the need to adhere to sound ethical procedures is further heightened.

In summary, the problems of the services system in diversion are manyfold and intertwined. The counseling relationship is difficult. However, once the participant has completed the initial legal procedures (*e.g.*, waiving of certain rights, signing acceptance/application forms where applicable), activity and participation in the program should be conditioned on the principles of the professional/participant

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<sup>16/</sup> Cariello and McGloin, An Examination of the Effectiveness of "Role Model" Counseling on a Pretrial Diversion Population, *op cit.*

<sup>17/</sup> With the exception of rearrest or flight "...the counselor is empowered to recommend that a defendant be terminated as unsuccessful at any point...", National Colloquium on the Future of Defender Services, p. 982. *Of particular note*, the New Jersey Supreme Court recently ruled in the case of State v. Lebbing, (158 N.J. Super. 209), that due process requirements must apply in termination hearings of a diversion client. Cited in Pretrial Reporter, Vol. II, Number 4. Implications may be significant for counseling staff.

<sup>18/</sup> As cited in Joan Mullen, The Dilemma of Diversion, Washington, D.C.: Law Enforcement Assistance Administration, 1975, p. 99.

<sup>19/</sup> See "Standards" *supra*, Note 4.

(treatment) relationship. The diversion program counselor must respond most carefully to the participant's needs and individuality as well as the demands made by society.

Fundamentals of the Contract and its  
Function in the Counseling Process

Although several diversion programs have implemented written contracts there seems to be general confusion about the precise meaning of the contract and its appropriateness in the diversion program's service delivery strategy. While the development of the written contract may vary with individual programs and counselors, there are some basic elements of the contract which are common throughout. Specifically, the joint interaction between the counselor and participant in developing the contract which results in a rational plan that defines the problem to be worked on and the services to be rendered, establishes objectives and goals, and specifies a plan of action. 20/

What is the contract? The legal definition of a contract suggests that it is "a promise, or set of promises, for breach of which the law gives a remedy or the performance of which the law in some way recognizes as a duty". 21/ Although the contract discussed here is not legally enforceable in the direct sense, 22/ principles of the legal definition are pertinent to diversion—mutual promise, and duty. The contract represents a "meeting of the minds" between the counselor and the participant. Therefore, a working definition of the contract should incorporate these elements. The following definition is posed by Marlow and Maluccio. Generally, the contract is the "...explicit agreement between the worker and the client concerning the target problems, the goals and the strategies of intervention and the roles and tasks of the participants." 23/ Although this definition was developed with particular relevancy for social work practitioners, it is equally applicable to the diversion field.

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20/ For full discussion of the concept of Contract refer to Beulah Compton and Burt Galaway, eds., Social Work Processes, Illinois: Dorsey Press, 1975, Chapter 8.

It is important to note that some practitioners argue that "contracting" represents a particular mode of counseling (see Richard Jones, "The Use of Contract Counseling in Corrections", *op cit*). Others argue that the written contract is inherent in various "treatment" approaches (e.g., behavior modification approaches). It is postulated that the contract represents an important phase of the counseling process and is the tangible product resulting from interactions between the counselor and the client during this phase. The counseling process is conceptually divided into three phases: the contact phase, the contract phase, and the completion phase. During the contact phase the initial meetings occur, the problem(s) is/are identified, data about the client and his/her situation is collected and the client is given general information about the agency and its activities. The final stage of the counseling relationship is the completion phase. This time is normally devoted to an assessment of the participant's progress during his/her enrollment in the program. Often, demonstrated behavioral and/or attitudinal changes and/or the completion of identified goals signal(s) the end of the counseling relationship. Presumably, the counselor has helped the client to overcome the problem(s) or crisis and has prepared the client to function adequately in his/her life situation without the need for further services from the counselor or the agency. For further discussion of the phases of the counseling relationship refer to Compton and Galaway, Social Work Processes, *op cit*, and Helen Harris Perlman, Social Casework: A Problem Solving Process, Chicago: University of Chicago Press, 1957.

21/ Samuel Williston, A Treatise on the Law of Contract, edited by Walter N. C. Yeager, Mt. Kisco, New York: Baker, Book Co., 1957, 3rd ed., Sect. 1, as cited by Anthony Maluccio and Wilma Marlow, "The Case for the Contract" in Social Work Processes, *op cit*.

22/ This contract is indirectly enforceable in that failure to comply could lead to termination. This issue is much debated in the diversion field. Some programs use the contract or rather breach of contract terms as justification for termination of the participant from the program. Others are vehemently opposed to using the contract ("treatment plan") which is developed as a result of the confidential negotiations between the counselor and the participant to terminate a person from the diversion program. In essence, the exact purpose of the contract and its accompanying legal implications are unresolved in diversion practices.

23/ Maluccio and Marlow, *supra*, Note 21, p. 329

In the diversion process, the development of the contract occurs after the participant has been interviewed by the screener or intake person, and/or after the participant is officially enrolled in the program. (See Section II, Current Practices.) Specific terms of the contract may be focused on either a problem that has been presented by the participant or on certain factors that have been identified in the participant's life situation that indicate that (s)he needs some additional structure in order to maintain a more stable existence. <sup>24/</sup> On the other hand, the contract may simply identify the program's requirements for the participant, *e.g.*, to maintain steady employment, attend counseling sessions, *etc.*

Broadly speaking, the salient features of the contract include mutual responsibility, explicitness, joint participation in the counseling process, accountability, and flexibility. <sup>25/</sup> Specifically:

- the conditions of the counseling relationship and respective responsibilities and limitations of the counselor and the participant are stated as explicitly as possible;
- the counselor and participant agree to work together to fulfill the terms of the contract;
- the participant uses his/her own skills and resources to enhance his/her motivation, investment, and self-esteem; the counselor provides support and guidance to the client; and
- the participant and counselor periodically evaluate the terms of the contract to verify and accommodate changing participant needs and achievements.

#### The Contract's Application to Diversion

The use of the written contract may be useful in the diversion counseling process for many reasons. The contract has specific value for the participant in the program as well as for the program and its counselors. It may:

- aid the participant in learning to identify, conceptualize, and clarify his/her problems/needs, implement the necessary steps to resolve the problem and/or satisfy the need, and to develop alternative solutions;
- be instrumental as a motivational tool for failure oriented participants to achieve a series of small successes through attainment of specified goals;
- at a minimum alleviate some of the existing suspicions about the arbitrariness of a given decision affecting the participant;

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<sup>24/</sup> See "Standards" *supra*, Note 4.

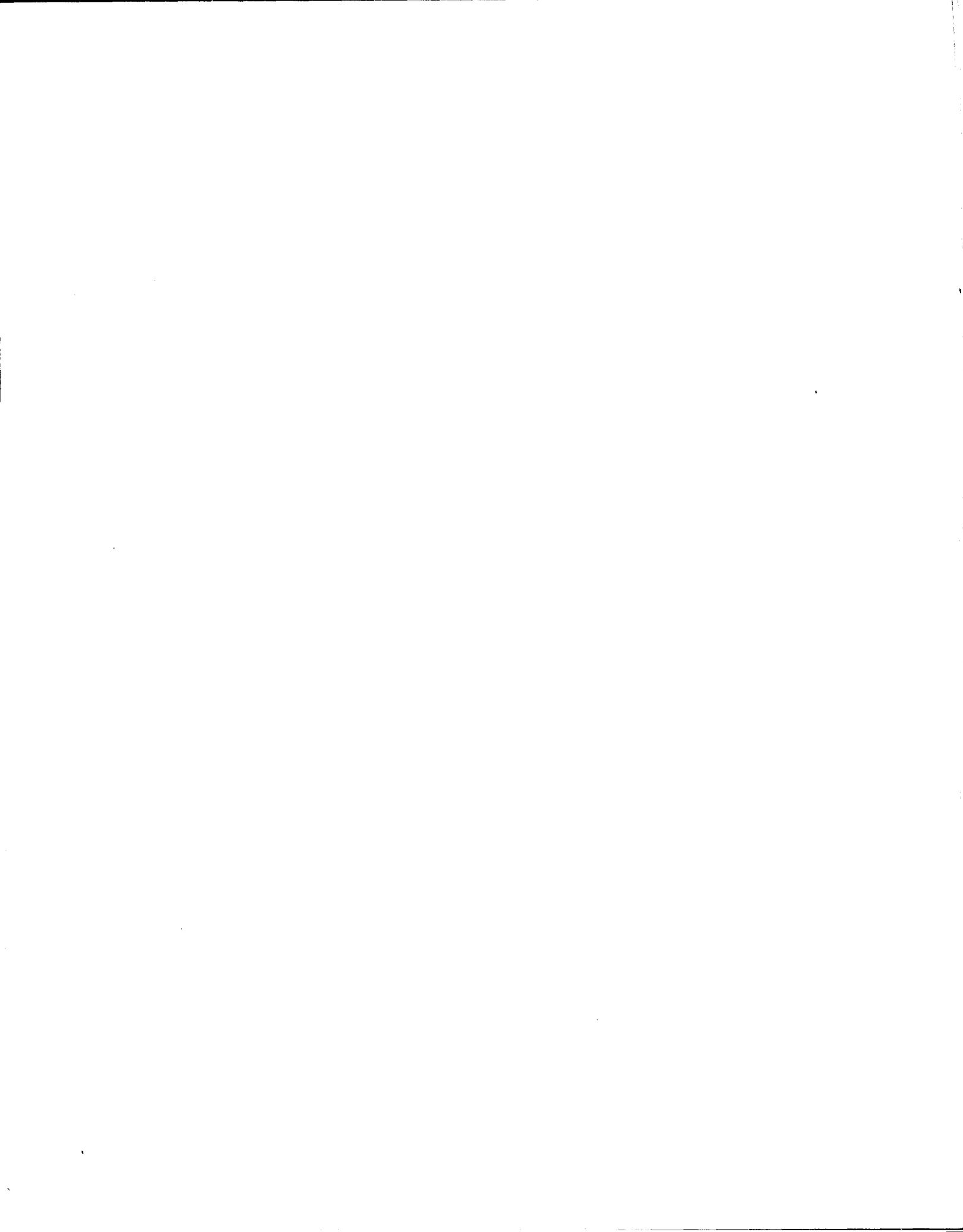
<sup>25/</sup> Based on characteristics of contract as explained by Maluccio and Marlow, *supra*, Note 21, pp. 329-330; Richard Jones, "The Use of Contract Counseling in Corrections", in Readings in Correctional Casework and Counseling, ed. by Edward Peoples, California: Goodyear Publishing Co., 1975, pp. 222-226; Allen Pincus, Anne Minahan, Social Work Practice, Illinois: F. E. Peacock Publishers, 1973, Chapter 9.

- reduce subjectivity on the part of the counselor and provide more consistency of judgement regarding the participant throughout the program; and
- provide important documentation in the event that termination decisions are challenged.

In summary, the contract represents a systematic scheme for working with the participant and allows an opportunity for counselor and participant to assess through a rather reliable method the progress of the participant through the program. Counselor and participant are given an opportunity to share their understanding of assistance available and to be rendered. A methodical way of approaching and exploring the situation of the participant will greatly increase a counselor's ability to assist him/her effectively. Thus, the participant is assured of his/her rights in the treatment relationship (as distinct from the legal rights pervasive in the criminal justice system) and can expect a *quid pro quo* relationship between the agency and him/herself.



SECTION II  
CURRENT PRACTICES



Two basic types of written contracts are used in diversion programs: the acceptance/participation contract and the service contract. Although this bulletin focusses on the second type, it is important to distinguish between the two. This section provides a discussion of these contracts and their function in the diversion counseling process.

Acceptance/Participation Contract (refer to Exhibit A below)

The acceptance/participation contract is essentially a predesigned application form that the participant signs, acknowledging acceptance of the diversion option. This contract outlines general obligations and parameters of behavior for the individual participating in the diversion program. More specifically, the acceptance/participation contract states for the defendant:

- what behavior is expected for successful completion of the program (*e.g.*, attendance at counseling sessions, *etc.*); and
- what behavior will result in non-completion of the program.

Exhibit A

(PARTICIPANT AGREEMENT)

The Diversion Project is a program of the Courts made available to you on a voluntary basis. Your successful participation may result in a recommendation that the charge(s) now pending against you be dismissed. In order to become enrolled as a participant, you must agree to the following conditions:

1. I understand that an application for postponement of my case for a period of \_\_\_ months will be made to the court and prosecutor. I voluntarily consent to this application and hereby waive my right to a speedy trial.
2. I understand that I may withdraw from participation in the program for any reason, and that my participation in the program may be terminated if I fail to live up to this agreement. If my participation in the program ends, I agree to return to court on the date set for my next appearance. I understand that, if I fail to return to court, the court may issue a warrant for my arrest.
3. I agree to participate in counseling sessions as often as required either at my home or the Pretrial Project offices, as directed by a counselor. I agree further to attend any other appointments as arranged by the Pretrial Project staff, or Vocational Service Center staff and to take any tests arranged for me by the staff.
4. I understand that if I am rearrested my participation will be terminated automatically. My counselor should be notified if this occurs.

Additionally, the acceptance/participation contract often indicates that the participant must take part in a "counseling" plan (refer to discussion below on service contracts) and abide by further guidelines set forth by the counselor or the program.

The signing of the acceptance/participation form by the participant signals the first official evidence of his/her entry into diversion.

Exhibit B

(PARTICIPANT AGREEMENT)

Name of Participant: John Doe Interviewing Counselor: Ted

In order for the Diversion Project to offer a recommendation to the Court regarding your case, you must participate in all activities that you and the interviewing counselor plan for you.

The following are the requirements of the Diversion Project:

- I. CONTACT YOUR COUNSELOR EVERY WEEK/EVERY 2 WEEKS FOR 3 MONTHS.
- II. Keep all your appointments with your counselor.
- III. Report to your counselor if you change your address or your job status.
- IV. Do not get arrested and convicted of any Penal Code violation.
- V. Do not misrepresent any information to the Diversion Project.
- VI. Attend all required counseling sessions including those on your involvement with the law
- VII. Comply with the following service plan (BE SPECIFIC):
  - A. Maintain current employment \_\_\_\_\_
  - B. Seek more gainful or different employment \_\_\_\_\_
  - C. Seek employment \_\_\_\_\_
  - D. Follow up on the Diversion Project job referrals \_\_\_\_\_
  - E. Attend Job Seeking Skills training sessions at the Diversion Project
  - F. Follow up on vocational training referral \_\_\_\_\_
  - G. Pursue/continue your educational program:
    - 1. High School \_\_\_\_\_
    - 2. College \_\_\_\_\_
    - 3. Adult Education School \_\_\_\_\_
    - 4. Business college \_\_\_\_\_
    - 5. English as a Second Language Course \_\_\_\_\_
    - 6. Apprenticeship Preparation Classes \_\_\_\_\_
    - 7. Work on acquiring GED take next round of tests at Marion College
    - 8. \_\_\_\_\_
    - 9. \_\_\_\_\_
  - H. Follow up on community agency referrals:
    - 1. Social Services Department \_\_\_\_\_
    - 2. Social Security Administration \_\_\_\_\_
    - 3. Department of Motor Vehicles renew driver's license
    - 4. Veterans' services Flower of Oregon for job referrals
    - 5. Cultural agency \_\_\_\_\_
    - 6. Vocational/career evaluation and/or counseling \_\_\_\_\_
    - 7. Vocational rehabilitation \_\_\_\_\_
    - 8. Psychological testing and/or counseling \_\_\_\_\_
    - 9. Substance abuse evaluation and/or counseling \_\_\_\_\_
    - 10. \_\_\_\_\_
    - 11. \_\_\_\_\_
  - I. Seek volunteer work \_\_\_\_\_
  - J. Keep a journal \_\_\_\_\_
  - K. Develop a budget \_\_\_\_\_
  - L. Pay restitution in the amount of \$37.50 by May 24, 1984 (date).
  - M. \_\_\_\_\_
  - N. \_\_\_\_\_
  - O. \_\_\_\_\_

If you keep all your agreements with the Diversion Project, the Court will normally agree to follow our recommendation that charges against you be dismissed. If you don't keep your agreement with the Project, or if you decide to quit the Project, you case will be sent back to Court for prosecution. I FULLY UNDERSTAND THE REQUIREMENTS GOVERNING MY PARTICIPATION IN THE PROJECT AND DO AGREE THAT I WILL ABIDE BY THIS SERVICE PLAN.

John Doe  
Participant's signature

8/22/84  
Date

Two points should be noted:

- Not all diversion programs use an acceptance/participation contract. If not used, acceptance of the diversion option by the participant is acknowledged by an informal or verbal agreement among the prosecutor, the courts, and the program. Thus, no formal document exists which verifies the participant's willingness to enter into and abide by the requirements of the diversion program.
- The acceptance/participation contract is many times used interchangeably with the service contract (see Exhibit B above). When this occurs, the service plan is usually included in the acceptance/participation contract. This practice indicates a more standardized approach to the delivery of services. In other words, a set scheme of services is routinely offered the defendant. This strategy affords virtually no flexibility for counselors to respond to the needs of the individual defendant. In fact, as indicated in discussions with various practitioners, it is their sentiment that if a participant has identified an area which is problematic and is personal in nature, the acceptance/participation contract is an inappropriate tool with which to analyze the problem or respond to the participant's individual needs. Often, the acceptance/participation contract is written in general terms. Moreover, this contract is more likely to become part of a public record or at least be reviewed by other criminal justice personnel (e.g., prosecutors judges) if it does not remain in the possession of these persons.

The Service Contract 26/ (refer to Exhibits C, D, and E below)

The service contract (commonly referred to in diversion as goal contract, performance contract, or intervention contract) is identical to the contract described in Section I. To reiterate briefly, this contract is a confidential agreement which facilitates counselor and participant interaction and is instrumental in ordering priorities and allocating time for attaining goals. 27/ This type of contract indicates a more individualized approach to service delivery thereby allowing the counselor an opportunity to tailor diversion services to the needs of the individual participant. The assumption is that the relationship begins with the participant's present situation and works toward goals (s)he has set for him/herself. Thus, emphasis is placed on the attainment of a (personal) condition or object sought by the individual to satisfy a need or want. The contract may also include attention to those factors which in the counselor's assessment will increase the participant's ability to avoid arrest situations through stabilizing the behavior and/or present situation. The development of the service contract usually occurs after the participant has signed the acceptance/participation agreement. (Also refer to Section III, Step 1.)

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26/ This term is consistent with terminology used in "Standards" *supra*, Note 4.

27/ Maluccio and Marlow, *supra*, Note 21, p. 329.

Practices of developing the service contract vary widely among individual counselors and programs. Accordingly, different features of the contract are stressed. The samples which are shown below indicate this diversity: from the relative vagueness of Exhibit C to the more detailed approach of Exhibit D to the very structured format outlined in Exhibit E. Exhibit C obviously emphasizes the identification of short and long term goals for the participant and specifies the counselor's obligations as well as the participant's responsibilities in the counseling relationship. One disadvantage is that the counselor may not differentiate short- and long-term goals adequately; thus, goals are vague and non-specific. Thus it would be difficult to determine if the goals identified have been achieved. Similarly, the counselor is given great latitude in deciding the basis for what constitutes appropriate behavior for the participant.

Exhibit C

Short term Goal(s): *I would like to complete the diversion program successfully; therefore,*

*a) I will attend individual counseling sessions every Thursday; and*

*b) I will actively pursue employment.*

Long range goal(s): *I would like to be able to get along better with my family, especially my mother.*

*I am not happy with my social life. I am not happy with my appearance. I would like to lose 20 pounds.*

I, \_\_\_\_\_, agree to, or have participated in the above goals.  
(client's name)

I will put forth as much effort as possible to accomplish these goals by \_\_\_\_\_.  
(date)

I, \_\_\_\_\_, agree to provide the following:  
(counselor's name)

1. *Keep all appointments with above client.*
2. *Monitor activities and progress of the client.*
3. *Provide technical information to client concerning problems/topics with which I am familiar.*

\_\_\_\_\_  
Client's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Counselor's Signature

Goal Achievement

Were goals met?

If not, why?

While the terms of Exhibit D are more specific and time-limited, this contract omits an explicit statement of the counselor's responsibilities. However, by having both the counselor and the participant sign the contract, the two parties (counselor and participant) are mutually agreeing to fulfill the obligations of the contract. It appears that the counselor will also need to make some subjective assessments about whether the participant actually accomplishes the terms of the contract.

Exhibit D

I, \_\_\_\_\_, hereby agree to participate voluntarily with \_\_\_\_\_ (program) for a period of up to one (1) year. During the term of this Contract I will do the following:

1. Meet with my counselor at least once every \_\_\_\_\_ beginning \_\_\_\_\_ or at any time that my counselor may feel necessary. After \_\_\_\_\_ we will re-evaluate our meeting schedule.
2. Pay at least \_\_\_\_\_ toward my Service Fee ( \_\_\_\_\_ ) on \_\_\_\_\_ with the balance of \_\_\_\_\_ to be paid by \_\_\_\_\_. To this date there is no restitution, but if at a later date there is any restitution claimed, I will pay the total amount forthwith.
3. I would like to become an apprentice plumber, so I will contact my friend from the Plumber's Union before \_\_\_\_\_ and follow through with all that he suggests. I will discuss that matter at appointments with my counselor.
4. In order to make a better decision as to whether or not I would like to join the military, I will contact Air Force and Navy Recruiters before \_\_\_\_\_ and bring this information to my counselor. I will also inform my counselor when I receive a reply from the Coast Guard.
5. I will take all the necessary steps to withdraw from the University of \_\_\_\_\_ before \_\_\_\_\_. If that isn't possible, I will make every attempt to bring my grade point average as high as possible and discuss this matter at appointments with my counselor.
6. I will maintain my present job at \_\_\_\_\_ until I find a better job and discuss any new job prospects with my counselor.
7. I would like to learn more about the Criminal Justice Process. I will observe the different proceedings in District Court and will discuss these experiences with my counselor.
8. I realize that the terms of this Contract may be renegotiated if circumstances beyond my control make it necessary.

I understand that by fulfilling the terms of this contract I am demonstrating that I am a responsible person and that further prosecution for this offense would not be necessary.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Counselor

In contrast, Exhibit E is based on the utilization of a point system. All participants are required to achieve a certain number of points during the period of diversion in order to receive a favorable recommendation from the program. Of course, participants may also lose points for each activity specified. Thus, this contract is inherently more restrictive than the others. The full weight in fulfilling the terms of the contract rests with the participant. For example, if a participant is five minutes late to an appointment because he was attending a funeral, the point system does not take into account the reason; therefore, the participant loses the appropriate points. This contract does, however, reduce considerably the amount of subjective decision-making necessary on the part of the counselor.

Exhibit E

I agree to the following in the 90 days I am in the pretrial program. I further understand that the point levels are subject to change without notice by the pretrial program.

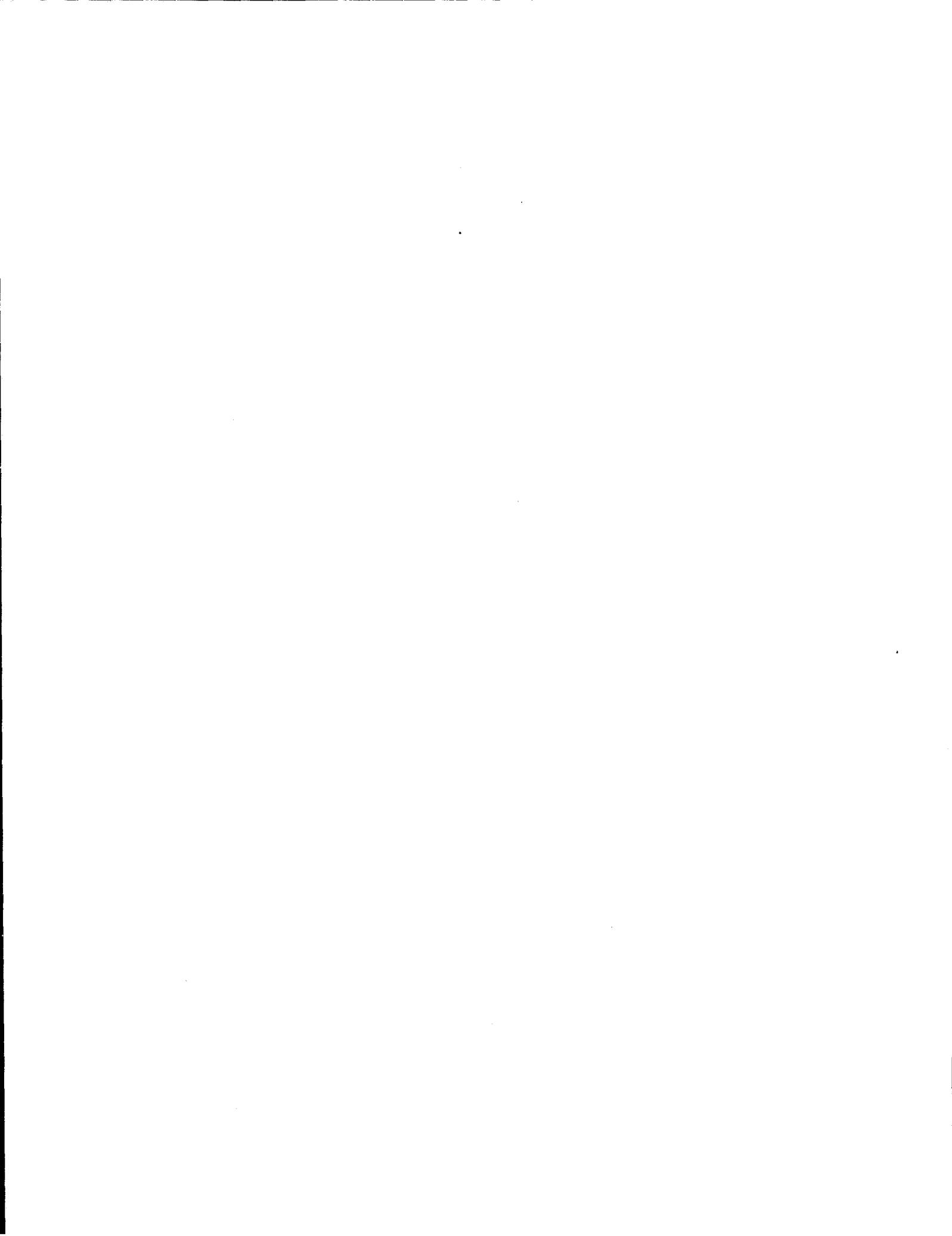
1. I will attend at least one (1) assigned meeting a week and will earn 30 points for this.
2. I will make the meeting at the assigned time and will lose 7½ points every 5 minutes I am late.
3. I will make at least one (1) assigned phone call to the office each week and will earn 10 points for this.
4. I will make the phone call at the assigned time and will lose 5 points every 5 minutes I am late.
5. I will earn 1 point for each hour that I work (30 hours/week) and lose 1 point for each hour that I miss.
6. I will earn 10 points for bringing in my pay stub once a week and lose 10 points if I don't.
7. I will earn 20 points for each appointment with the Career Developer and lose 5 points for each 5 minutes I am late.
8. I will earn 10 points for each training program I am sent to by the Career Developer and lose 10 points if I don't go.
9. I will earn 1 point for each hour that I work at the Army Reserves (16 hours/month) and lose 1 point for each hour that I miss.
10. I will earn 10 points for bringing in my pay stub once a month and lose 10 points if I don't.
11. I will earn 3 points for each hour that I volunteer time at the Veterans Hospital (3 hours/week) and lose 3 points for each hour that I miss.

It should be noted that this type of contract is developed in much the same way as contracts C and D (see Section III). A total number of points are assigned to each particular activity that is to be reinforced for the defendant. A different contract is developed for each participant and is reflective of his/her own needs, resources, etc.

The complexity of the contract may vary depending on the individual, his/her needs, and ability in formulating and using it. Some participants are necessarily limited by social, physical, and psychological considerations. Therefore, they are unable to formulate an explicitly written contract. <sup>28/</sup> These illustrations are neither recommended as models, nor are they suggested as examples of all types of contracts presently in use in diversion programs. They are representative, however, of the range of issues that need to be discussed when programs decide to implement contracts. Ostensibly an inherent difficulty with the application of contracts is that in most cases some of the decision-making regarding a participant still requires subjective assessments on the part of the counselor. Such assessments rarely are quantifiable. In conclusion, the type of contract developed will reflect a program's counseling philosophy, needs, staff capabilities, and available community resources.

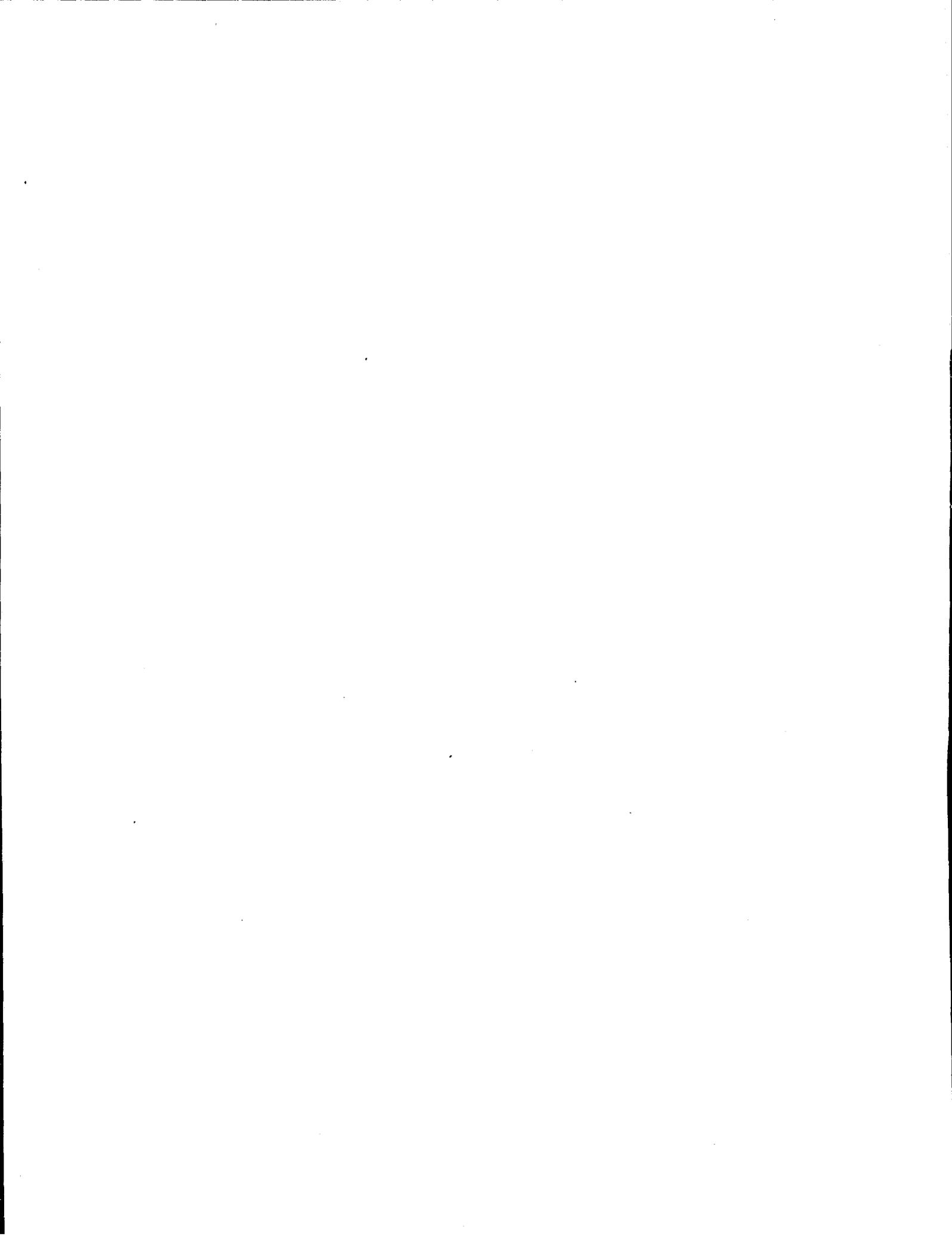
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<sup>28/</sup> *Ibid*, p. 327.



SECTION III

NEGOTIATING THE CONTRACT: A PRACTICAL GUIDE



The process of developing the contract (contracting) is divided for purposes of analysis into three basic parts: assessment, goal setting, and specifying intervention strategies. <sup>29/</sup> In practice, these steps often overlap. This section describes each phase of the contracting process and tells how they are translated into a realistic plan of action. A brief discussion is included on the role of the counselor. (Refer to Exhibits C, D, E, Section II, for illustrations of the contract.)

### Step 1: Assessment

The first stage of developing the written contract involves making a thorough analysis of the potential participant, and his/her capabilities. The assessment phase occurs after the participant and counselor have had initial contact. During the contact phase, the counselor and participant may discuss some preliminary goals for the participant, and the counselor collects relevant information about the participant. <sup>30/</sup> It is important to remind the reader that the actual development of the written contract may not, and probably should not, occur at the first meeting. But given the time constraints of the diversion program, the written contract should be developed as soon as sufficient information about the participant is obtained. For the diversion participant the assessment phase should result in answers to the following questions: <sup>31/</sup>

- What are the factor(s) that surrounded the participant's arrest, influenced his/her decision to engage in some form of criminal behavior; and are these factors causing problems in the participant's life in general?
- Does (s)he need services?
- What services would be helpful?
- Will (s)he make appropriate use of the services to be offered? (Is (s)he motivated?)
- Is (s)he capable of assuming responsibility for behavior?
- Can (s)he exhibit sufficient self-control in his/her specific situation? If so, under what conditions?

The personal interview is the primary medium through which pertinent information about the participant is gathered. However, counselors may rely on other sources such as observations, discussions with the family, a visit to the participant's home, information obtained from various tests (*e.g.*, psychological, aptitude) and/or other relevant documents containing facts about the participant. Some diversion counselors begin the interview with a prepared list of questions for the participant.

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<sup>29/</sup> Pincus and Minahan, *supra*, Note 25, pp. 163-193; Compton and Galaway, *supra*, Note 20, pp. 315-317.

<sup>30/</sup> Compton and Galaway, *supra*, Note 20, Chapter 7.

<sup>31/</sup> Some of these guidelines are suggest by Robert Nideffer, Ph.D., in an unpublished paper entitled "Psychological Assessment in a Pretrial Diversion Program", p.2.

This process yields detailed information about the participant's education and occupational background, resources, and personal interests and goals.

An interview may take anywhere from several minutes to several hours. Some participants have fewer needs/requests than others and are easily able to avoid situations which may lead to further crises or problems (e.g., rearrest). For example, a participant who is employed at the time of enrollment, is experiencing no unusual difficulties in his/her personal life, and who appears highly motivated may require only a minimal amount of the counselor's time. Others may have greater needs and the interview may necessarily be more involved and/or prolonged as the counselor tries to understand the situation being presented by the participant. As an illustration: a female participant's eight year-old daughter is raped by the mother's live-in boyfriend. The mother is charged as co-defendant in the case. The diversion counselor may spend a great deal of time trying to ascertain and explore fully how the mother is responding to the event(s), its impact on family members, etc. In short, depending on the needs or problems of the participant and his/her ability to communicate these needs, an interview may be short or quite extensive in duration.

The assessment process gives the counselor an understanding of:

- how the various elements of the situation are operating to produce or maintain the participant's present behavior;
- those factors which may impede the participant's ability to cope with his/her life tasks; and
- the seriousness or urgency of any problems that are presented.

In addition, the information obtained during this stage will allow the counselor to determine whether a referral to another agency (e.g., drug treatment, community mental health clinic, etc.) will be necessary for the participant.

#### Step II: Goal Setting

The counselor and the participant must now transform the participant's needs/requests into goals and objectives. The purpose of delineating goals is to determine and agree on the desired outcomes of the work to be accomplished. The terms of this agreement should be mutually acceptable to both participant and counselor. The basis for specifying goals should rest on the following principles. <sup>32/</sup>

- *Goals should be sufficiently specific and concrete to be measurable.*
- *Participants should have a reasonable chance of achieving the goals set within the standard diversion time frame.*

With reference to the first point, various authorities agree that to reach clear-cut outcomes, goals must be reduced to specific objectives that are measured by concrete observations. For example, a goal-setting scheme for a participant who wants to

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<sup>32/</sup> Compton and Galaway, *supra*, Note 20, pp. 316-317.

become a truck driver (but who has no driver's license) might be diagrammed in the contract in the following way:

Goal: I would like to get a job as a truck driver.

The primary objective may involve getting his driver's license and include the following activities as stated from the participant's perspective:

- taking the test for a temporary license on the Wednesday after my birthday;
- practicing driving and parking for one hour each day;
- studying the rules and road signs for one hour each day from 7:00 to 8:00 pm; and
- making an appointment to take the test one week before the period of my participation ends.

Another example: a participant may be experiencing some bitter feelings toward his recently divorced wife and begins to drink heavily. This affects his work productivity and he is receiving, in his estimation, undue pressure from his supervisor. His situation is further complicated by his inability to manage his personal financial affairs. Previously his wife performed this responsibility and he blames her for all his troubles. His goal may be to resolve these bitter feelings and assume more responsibility for managing his life.

To help improve the current situation the participant may decide:

- to have a meeting with the diversion counselor every Friday;
- to discuss at the second meeting with the counselor his angry feelings about his ex-wife and write them down on paper;
- to discuss on the third meeting with the counselor things that his wife did that made him feel good (all the good things about his wife) and write them down on paper;
- to attend alcohol counseling sessions twice weekly on Tuesday and Thursday; and
- to attend a party his friend is giving on Saturday to make new acquaintances.

To be able to better manage his personal financial matters the participant may want to be referred to a financial counseling center; or bring to his weekly meetings with the counselor his bills and checkbook so that the counselor can aid in teaching him better financial accounting methods.

Specifying goals that are achievable for this defendant will necessitate involved discussions between the counselor and the participant to discuss his problems and situation and to identify the critical factors that seem to be underlying his behavior(s). Obviously, the counselor may want to involve the participant in short-term goals as well as long-term goals. The participant and the counselor must guard

against setting limits (developing the contract too early) before sufficient information about the participant and his situation can be ascertained.

Often, counselors and participants will specify goals but will not explicitly spell out how these goals will be accomplished. Identifying the goal alone (*i.e.*, get my high school diploma, put son/daughter in nursery school) may be useless in guiding the defendant toward the steps necessary for its accomplishment. Whether the goals of the counseling relationship are "self awareness", obtaining employment, high school diploma or vocational training, the effort will only be successful to the extent that the counselor and the participant can specify what must be done to achieve the goals. For example, someone who wants to obtain a G.E.D. may need tutoring services or study for a specified period of time in order to pass the G.E.D. examination. In marital counseling, it is more effective for the husband and wife to state in writing that they will spend time together regularly (*i.e.*, at least one hour each week) rather than to state verbally they will "try harder". Also, the ability to measure adequately the attainment of the goals is sacrificed when objectives are non-specific.

In planning realistic goals with the participant the counselor must consider:

- his/her own personal and professional resources as well as those of the participant;
- the degree of resistance that may be encountered from the participant (*e.g.*, counselor refers participant to drug counseling center but the participant continually fails to keep scheduled interviews); and
- the degree of interest the client has in attaining the goals (*e.g.*, high school drop-out who wants to be an airline pilot but who doesn't want to return to school).

Finally, the counselor and participant will need to identify which goals will be given preference in light of the existing resources and needs of the participant. Of course, differences in perspectives and values should be discussed and negotiated. It is important that the goals set are not too ambitious for the participant. Unrealistic goals are likely to lead to frustration and decreased motivation.

### Step III: Developing a Strategy for Intervention

In this phase, counselor and client engage in dialogue to decide what steps are needed to attain particular goals. It is at this point the client verbalizes to the counselor the manner in which (s)he wishes to proceed (*i.e.*, what steps (s)he would like to take to achieve goals) and specifies in his/her own estimation, the contribution (s)he expects the counselor to make. Similarly, the counselor shares with the defendant his/her thoughts on how goals should be accomplished and what is expected of the client by the agency.

Clarification and explicitness of the respective roles of counselor and participant, the tasks to be performed, and of the conditions and limits of diversion are crucial to the effective implementation of the contract. Any differences that arise relative to these issues should be explored and negotiated.

The success of the contract will depend somewhat on how the decisions made by the counselor and participant fit together. For this reason, the counselor is a key

person in the contracting process. Just as participants bring an array of problems to the diversion agency, the counselor must have a variety of strategies that may be employed. 33/

#### The Counselor in the Contracting Process

The counselor's role is to "help the offender evaluate his/her progress, assist in formulating new plans, contribute technical information, and provide encouragement and support". 34/

The counselor must clarify for the participant the rules and regulations imposed on him/her by the court and the agency as well as be responsible for the interaction between him/herself and the client. A counselor's responsibility to the participant in the counseling relationship should be spelled out clearly. Examples of this responsibility include thoughtfulness in making appointments that are suitable to the participant, privacy in interviews, care in keeping appointments, ability to let the participant "do" for him/herself, and ability to be flexible in adjusting goals and methods. 35/

Two considerations for the counselor to remember are that:

- (s)he cannot make unlimited time available to the participant, nor should (s)he promise more than can be delivered; and
- (s)he should not engage in activity that calls for service beyond his/her skills, nor promise services that are beyond the scope of the agency. 36/

According to Robert Nideffer, a clinical psychologist who has worked with diversion participants, the diversion counselor must have special talents and knowledge. He states that:

"The counselor in a diversion program is charged with a difficult responsibility, to keep the defendant out of trouble until the program is over and to institute rehabilitative programs that will help him to stay out of trouble after he leaves the program. Those staff members who have primary contact with clients must have highly developed interviewing and interpersonal skills....The staff must have a broad knowledge of the community and of the resources of the community available." 37/

#### Limitations of the Contract

It is not the intent of this paper to advocate the contract process as a flawless method that will provide answers to all the complex problems encountered during the

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33/ Jones, *supra*, Note 25, pp. 222-223.

34/ *Ibid*, p. 224.

35/ For further reading refer to Annette Garrett, Interviewing: Its Principles and Methods, New York: Family Services Association of America, 1970.

36/ Compton and Galaway, *supra*, Note 20, pp. 317-319.

37/ Nideffer, *supra*, Note 21, pp. 1-2.

counseling process in a diversion program. Quite the contrary, many issues concerning the contract remain unresolved. The collective experience expressed by diversion practitioners in using the contract indicate that:

- The contract may not work well with all individuals. Noted authorities indicate that the contract works best with those individuals who have "behavioral problems involving a lack of either self-discipline, judgement or motivation". 38/
- Developing a contract for each participant may be time consuming for staff. First of all, the general interaction between staff and participant can be prolonged. Counselors may devote a great deal of time in ascertaining participant's needs and desires, his/her motivational capacity to achieve goals, *etc.* Secondly, the counselor may spend an equally long period of time conceptualizing and reducing the participant's desired behavior into specific objectives. For example, a counselor may have difficulties stating in writing his/her perceptions of the participant's problems (bad attitude, poor self-concept, "can't relate to authority figures", *etc.*). In these instances a counselor may want to isolate the particular behavior for further study. A participant who has problems relating to authority figures may be asked to chart his/her specific responses to various persons in authority positions (mother, older brother, police, *etc.*). The counselor should contrast the participant's responses with the observed general behavior/demeanor of the participant. This exercise may reveal that the participant either has or does not have a problem with authority figures but is instead making excuses for his/her bad behavior.
- Because not all individuals have the same levels of motivation or the same abilities of perceiving long- and short-term goals, intermediate rewards and punishments may need to be included in the contract for those participants who appear marginally motivated or difficult to work with. Several things should be noted:

Each goal in the contract carries with it an answer to the question "What happens if I achieve this (or do not achieve this)?" Thus, achievement of a particular goal carries with it a reward, lack of achievement carries a penalty. The most tangible of the rewards that can be offered a participant in diversion is dismissal of the charge against him/her. Meanwhile, during program participation, participants may be asked to perform a number of certain tasks each of which are tied to the ultimate goal. Normally, the most punitive sanction that is imposed on the defendant for violations is termination from the program (*i.e.*, return to court for formal processing).

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38/ Jones, *supra*, Note 25, p. 224.

Two considerations should be remembered by the counselor in developing a system of sanctions.

—Rewards and sanctions need not be elaborate, rather they should be simple and explicit.

—Sanctions generally have strong symbolic impact.

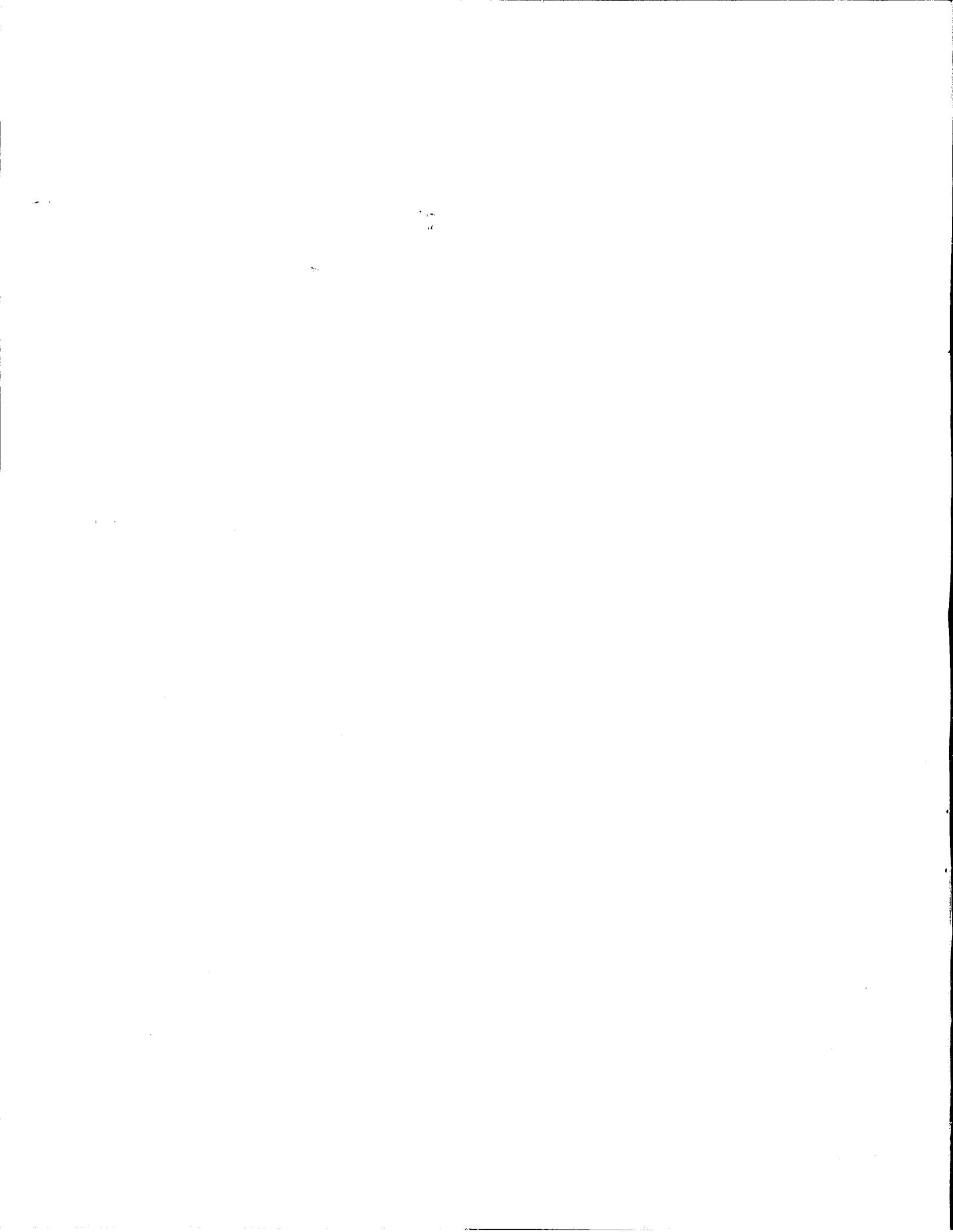
For example, the counselor may use the different levels of services provided by the agency as positive reinforcement for the participant. If a participant prefers to be in the group sessions, the counselor may start him in individual counseling and later (pending improvement in behavior, *etc.*) graduate him/her into group sessions. An alternate way to offer short-term rewards to the participant for appropriate behavior is to have the participant report to counseling sessions frequently at first and decrease the number of attendances for the participant later on. In case of outstanding participation, the program may also consider an early (successful) termination for the participant.

- As counselors become more familiar with the principles and use of the contract, there may be a tendency for contracts to gradually reflect a general format. Counselors begin to develop contracts that require the participant to perform based on the agency's expectations rather than on the participant's own needs. Individualized service contracts are no longer the standard practice. Similarly, counselors may impose the contract without fully understanding its essence (using the contract to impose stricter requirements on the participant). Suffice to say, these situations highlight the necessity to have the contract reviewed periodically by supervisory personnel.

One final note: It is unrealistic to assume that the contract may modify or drastically alter the behavior of the participant. The general time frame of diversion may be too short to evidence any permanent changes in behavior. The participant may or may not be rearrested; (s)he may decide to leave the program on his/her own volition before participation ends. Counselors must remember that the diversion participant has had a disproportionate number of years in which to learn and unlearn certain behaviors, and short-term intervention cannot be expected to result immediately in an alteration of all dysfunctional conduct.



## SUMMARY



The purpose of this bulletin has been to review some of the salient issues in the service delivery strategy of diversion programs, the contract and its appropriateness in the diversion setting. In addition it has described existing practices of using the contract and attempted to offer a practical guide for those interested in using the contract. Limitations of the contract have also been noted. The need for objectivity and consistency in service delivery practices has been demonstrated. The counseling relationship, particularly in diversion, is a difficult process. The counselor must respond to the individual needs of the participant and, at the same time, the demands of society. These and other problems require careful attention.

It is difficult to know the precise implications of the use of the contract in diversion. An assessment of the field reveals that the state of the art is incomplete in this area and that current practices will continue to be modified and refined. As was noted in the introduction, it is hoped that this publication will stimulate others to consider the various developments and issues of service delivery and to begin implementing practices that ensure that the delivery of services is predicated on fair and ethical principles.



APPENDIX  
THE DIVERSION PROCESS



The information below details a typical diversion process.\* It is not to imply that all diversion programs adhere to each of these practices. Yet this should give the reader a general view of the diversity of diversion processes.

### Definition

Programs which offer adult participants an alternative to the traditional criminal justice proceedings and which are voluntary, occur prior to adjudication, are capable of offering services to the "divertee", and result in a dismissal of the charges.

### Goals

- Pretrial diversion should provide the traditional criminal justice system with greater flexibility and enable the system to conserve its limited resources for cases more appropriately channelled through the adversary process.
- Pretrial diversion should provide eligible participants with a dispositional alternative that avoids the consequences of regular criminal processing and possible conviction, yet insures that participants' basic legal rights are safeguarded.
- Pretrial diversion should advance the legitimate societal need to deter and reduce crime by having an effect on arrest-provoking behavior and by offering participants opportunities for self development.
- Pretrial diversion should achieve the aforementioned goals in the most efficient, economical and non-duplicative manner possible.

### Process

Diversion occurs after the individual has been arrested and (preferably) after the prosecutor has screened the case to insure that it is prosecutable. Court-based diversion program counselors usually screen potential participants at the preliminary hearing stage. If the defendant accepts the diversion option, a brief hearing is held before the bench; with the concurrence of the prosecutor, the judge approves diversion and continues the court date for a specified period of time. On the other hand, diversion programs operating under the prosecutorial model of diversion rely on the prosecutor, or his assistant, to screen cases and select those individuals who appear to be eligible for the diversion option. Those cases are then referred to the diversion program. If the defendant accepts diversion, the prosecutor agrees to hold the charges in abeyance for a specified period of time.

\* Refer to the National Association of Pretrial Services Agencies "Performance Standards for Pretrial Diversion", and Paul Johnson "Pretrial Intervention: The Administration of Discretion" in National Association of Pretrial Services Agencies National Conference on Pretrial Release and Diversion Working Papers, 1977, Arlington, Virginia.

The length of program participation is generally a minimum of three months and a maximum of two years. During the period of program participation, prosecution is deferred and a range of manpower and/or supportive services are delivered to the participant. The participant is assigned a counselor who discusses with the participant his/her needs and problems, and the possible services that can be provided by the program. The participant's satisfactory fulfillment of the program's requirements (steady employment, attendance at counseling, *etc.*) can result in a favorable recommendation to the court requesting dismissal of charges, or, in the case of prosecutorial programs, that the charges are dropped.

### Services

Diversion programs have employed a wide range of services to address the needs of its participant population. Counseling is the primary focus of the majority of diversion programs' service delivery strategy. The goal of counseling is to help the participant enhance his/her personal growth and development. Generally, participants are required to attend one individual session per week, and/or one group session, or be employed or involved in an educational/tutorial program. Counseling styles and services vary depending on the program's philosophy, available community resources, and nature of the participant population. Diversion services include: employment, vocational training, individual counseling, group counseling, family counseling, financial and consumer counseling, services for populations with specialized needs such as addicts, women, and juveniles.

### Completion

The determination of what is acceptable behavior for termination from the diversion program is based largely on the participant's verbal behavior, attendance record at various counseling sessions and on his/her ability to avoid further criminal activity during program enrollment.\*\* For successful candidates, the counselor recommends termination from the program and indicates to the Project Director that the participant has fulfilled the obligations of the program satisfactorily. The Project Director then routinely approves termination and submits a communication to the court and/or prosecutor recommending dismissal of the charges. Not all participants complete the program successfully. Unsuccessful terminations typically occur if: a) there has been a rearrest, b) if the participant absconds, c) if the counselor adjudges that the participant has been uncooperative. The unsuccessful participant may be given a hearing prior to actual termination by the program (although this practice is not standard for all diversion programs). Unsuccessful participants are returned to the court for formal proceedings.

\*\* Fagan and Recker, page 10.





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**END**