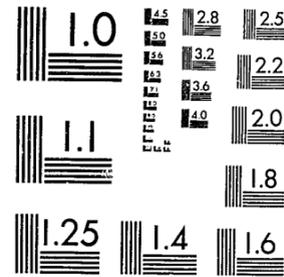


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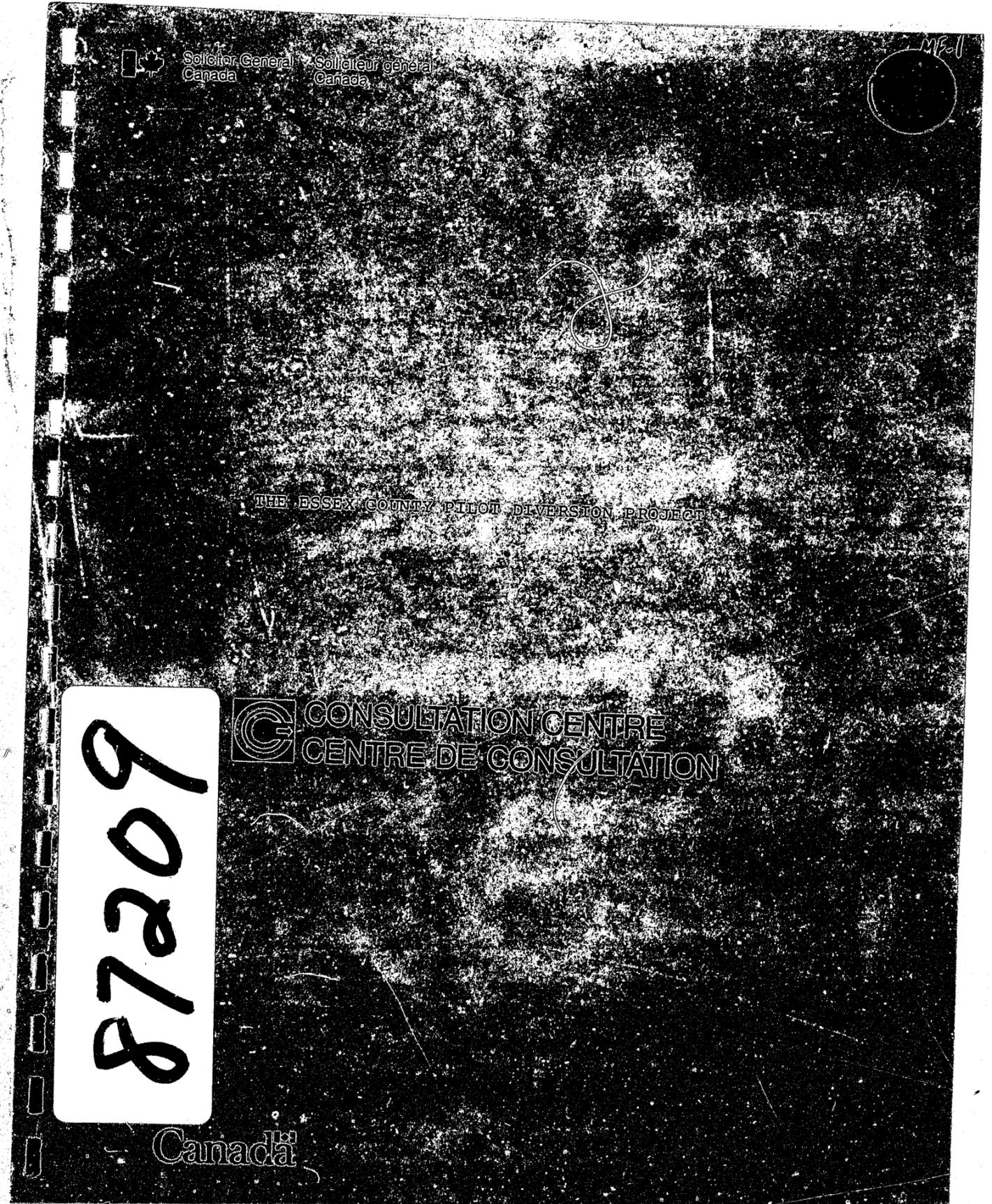
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THE ESSEX COUNTY PILOT DIVERSION PROJECT: A MODEL PROJECT REPORT

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PART A - INTRODUCTION

1. Purpose of this Report

The purpose of this report is:

- 1) To document the history, development and processes of the Essex County Pilot Diversion Project.
- 2) To provide useful information to groups interested in developing community-based alternatives to the official juvenile court process.

2. Methodology

In order to obtain the information presented in this report, all documents and reports written on the Essex County Pilot Diversion Project were consulted. The material was used specifically in Part B of this report, the descriptive account of project operations. In addition, two on-site visits to Windsor were organized; the first lasted four days and the second, three days. A list of the persons contacted and interviewed is provided in Appendix A. No formal questionnaire was used, but a number of points were covered in all of the interviews to permit a freer discussion of the Essex County Diversion Project. The writer also attended two meetings of the Diversion Committee and observed juvenile court proceedings for part of one morning. This was done to obtain a better understanding of the regular court process and thus situate the alternative that is the diversion program.

The second part of this report entitled "Reflective Analysis" is a compilation of issues and commentaries from interviews, or as a result of the material presented in its entirety.

The total time span for this study was eight weeks.

3. A Project Summary

The Essex County Pilot Diversion Project is a post-charge, pre-court diversion program for juvenile offenders. Philosophically, it recognizes that the juvenile justice system is not the only method of dealing with juvenile offenders. It provides an alternative to the traditional court process through the use of several basic concepts.

Central to the program's philosophy is the concept of responsibility for one's own conduct and for harm caused. It is important that juvenile offenders coming to the project learn that they must become responsible for their own behaviour. The project encourages interaction among the young person, the parents, the victim and the diversion worker. Through this process a formula is developed for the young person to repay for the harm caused by doing work in the community.

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Generally, non-violent first offenders are eligible for the diversion program. Those offences which are excluded from the program include murder, rape, armed robbery and assault causing bodily harm. A six-month pilot project has been undertaken with repeated offenders but the project has concentrated on first offenders.

The Project Administrator scrutinizes the charges laid and selects those that meet the program's eligibility criteria. A letter is sent to the parents and to the young person stating that the youth qualifies for the diversion program. If the diversion program's secretary has not heard from the parents within 48 hours of when it is anticipated that they should receive the letter, a telephone call is made to the parents. If the parents and/or young person are not interested in diversion, the matter proceeds to court.

Once the diversion office is contacted by the parents, an "intake" interview is arranged with a diversion worker. At that interview a duty counsel is also on hand to advise the parents and young person of the legal implications of both the diversion program and the court process. Once the implications are clear and the parties understand the diversion program, they are able to choose how they would like to proceed.

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If the parents and young person choose the diversion program they are asked to sign a general admission of facts and a release of information. One of the conditions of entry is acceptance of responsibility for behaviour alleged in the charge. The release of information gives the diversion worker authority to obtain information about the young person and family.

The diversion worker may return the young person to court at the conclusion of "intake" if he/she judges that it is essential to the well-being of the young person. This is done if the youth refuses a social service referral or a placement recommendation regarded as essential, if the juvenile's behaviour is generally out of control, or if a voluntary placement cannot be arranged because of resistance from the placement resource.

The diversion worker then prepares a social profile which outlines the young person's relationships with his/her parents and siblings, his/her school and his/her community. Based on this social profile, it will become clear if a child is experiencing problems which may require a referral to a social service agency for more intervention.

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The diversion worker will phone the victim of the offence to find out if the victim would like to meet with the juvenile and participate in working out a compensatory task agreement. If the victim refuses, then, arrangements are made for the youth to work in a community setting.

The compensatory task agreement is a restitution plan where work values for offences are developed based on actual monetary cost to the victim and community (police time) and the young person's age and work capacity. If the victims choose not to participate they are asked to suggest a community setting where the young person may work.

The diversion worker remains in contact with the youth, the placement resource and social agency if a referral was made.

The charge remains pending until he/she fulfills the requirements of the agreement. Agreements can never exceed nine months or include more than 40 hours of work. When the young person has fulfilled his/her agreement, and upon recommendation of the diversion worker, the charge is adjourned sine die. The process is thus completed, and a closing letter is sent to the police officer who laid the charge, to the young person and to the social service agency if there was one.

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PART B - THE ESSEX COUNTY PROGRAM MODEL

1. Historical Development

The momentum for the Essex County Diversion Project began in February 1975 when Judge T. Docherty of the Provincial Court, Family Division in Windsor, attended a National Council of Juvenile Court Judges Conference in New Orleans, Louisiana. Tapes of this conference were brought back and Judge Docherty invited probation representatives and interested individuals to listen to the tape on pre-court diversion programs. At the same time, the John Howard Society of Windsor had already demonstrated an interest in diversion and was particularly interested in the Law Reform Commission's Working Paper on Diversion.

At this point, there was agreement that the court process was not always appropriate for dealing with certain classes of offences and that an alternative must be sought.

To further development of a project model, a planning group was called together which included Judge T. Docherty, the Executive Director of the John Howard Society, a representative from juvenile probation, a representative from the Windsor Police Youth Branch and a case worker from the John Howard Society.

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The Area Supervisor from probation and Judge Docherty then organized a trip to Toronto to discuss the possibility of seconding a probation officer to manage the project on a full-time basis. Negotiations continued until it was decided that probation would indeed support full time involvement.

Gradually the planning body came to grips with the project model, and although they were at first willing to include minor offences only, the idea evolved to include practically all except violent offences. They developed the eligibility criteria, and agreed that the program should operate at the post-charge level. As the charge was seen as the first formal point of entry into the justice system, this seemed to be the most appropriate moment to intervene. It was decided that an adjournment sine die would dispose of the charge once the diversion program was successfully completed. Thus there would be no finding of delinquency and no final disposition.

As these points were being worked through, those involved in the planning process increasingly supported the idea of diversion. It was reported that there was some reluctance on the part of the probation service initially, as there was a great reluctance on the part of the police. This was based on the rationale that there already was some informal diversion in existence and therefore no need to create a formalized project.

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Any formalized project would only be an interference in the judicial process. However, both these groups became supportive of the need to use a new approach with respect to juvenile offenders during the planning process.

A basic model was then approved that incorporated the concepts of a "compensatory task" agreement, a format for a social profile and plans to build up a network of social service referral agencies.

For information-gathering, a social profile outline was developed that would help the diversion worker obtain pertinent information for the program.

The "compensatory task" agreement had been suggested as a concept to be tested in diversion projects by the Law Reform Commission. The idea of a contract signed by the young person was one that was fundamental to certain types of social work practice. In keeping with this rationale, learning theories seemed to point to the need to incorporate the concept of responsibility for one's actions and thus help people to understand the consequences of certain types of behaviour as delinquent behaviour. All of these concepts contributed to using the "compensatory task" agreement as a major part of the diversion project.

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For young persons who demonstrated a need for more help than the diversion program could offer, the incorporation of a social service referral into the diversion agreement was accepted in the model. Families experiencing problems could profit from their involvement with a social service agency. This would also help to engage agencies in developing priorities for young persons who were in conflict with the law.

With the program model developed and accepted, a probation officer was seconded and the Essex County Diversion Program became operational June 18, 1975.

Throughout the first year of operations, negotiations were continued with all of the county police forces, and liaison with social service agencies was begun both for referral and for possibilities of developing community service work placements. The first year was very developmental and soon introduced a diversion committee to oversee program operations and policies. There was much enthusiasm in being involved in a pilot diversion project at a time when few initiatives in this area had begun.

After the first year of operation, three master of social work students at the University of Windsor completed a study on the Essex County Pilot Diversion

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Project. This thesis focused on the perceptions of the young persons diverted to the project and made some interesting conclusions and recommendations. More references to this study will be made later in this report.

The rest of the program process is documented in other sections of this report.

2. Philosophy and Concepts

The Essex County Diversion Project was born of the philosophy that the juvenile justice system is not the only method of dealing with juvenile offenders. Further to this, it is not always in the best interest of either society or the juvenile to follow the traditional justice process. According to labelling theories, those juveniles who are identified by the courts as delinquent have a greater probability of getting into trouble again than do those who are dealt with in other fashions. There are young persons who are processed through court that could be dealt with through alternative means. In addition, the criminal justice system is like a web, in that it is difficult to remove oneself once the process is started.

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The idea of the project was to provide an alternative at the earliest possible point, e.g. the point subsequent to charging and prior to the first court appearance.

In keeping with this general philosophy, a number of basic concepts were identified as the foundation for a good working alternative.

The concept of a "compensatory task" agreement is integral to the program. Central to this is the notion that a young person must be held responsible for his/her actions. Any time an offence is committed, the offender has a responsibility to the victim for the harm done. The "compensatory task" agreement provides an opportunity for the young person to work off indebtedness for the harm caused. In addition, in situations where the offender does meet the victim, there is an interchange of the two people's feelings and attitudes as they look at each other on opposite sides of the fence. This process helps the two individuals to see each other as two people and therefore become acquainted on a human level. In situations where the victim refuses to meet the juvenile, other work arrangements are made with community work placements.

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The possibility of social service referral was also built into the program for those juveniles who need on-going intervention or more specific help such as counselling.

The following is an excerpt from the Essex County Diversion Project Revised Program Brief of June 24, 1977, which sets the goals of the diversion program:

The process of Diversion encourages interaction and involvement between the delinquent young person, the parents, the victim, and the Diversion worker. This interaction is designed to attain the following goals:

- 1) To allow the young person to be actively involved in undoing his wrong.
- 2) To involve the victims of delinquent acts in the resolution of the problem, i.e. confrontation and compensation.
- 3) To provide an informal means of solving problems involving delinquent acts of young people.
- 4) To offer assistance to young persons on a voluntary basis without court intervention.
- 5) To give immediate attention to the problem in order to protect the community from a young person's continued delinquent behaviour.
- 6) To engage parents in formulating and carrying out a plan to deal with their young person's behaviour.
- 7) To elicit the participation of community groups and institutions in response to the young person's behaviour which enhances the young person's self-concept.
- 8) To instill the concept of responsibility for conduct and to de-emphasize the classical concepts of punishment.<sup>1</sup>

1. Essex County Diversion Project (Revised Program Brief)  
June 24, 1977, pg. 7

The basic intervention strategy is stated in a program report to be "casework" based upon "behavioural contracting".

### 3. Program Description

#### a) Administration

Funding for the diversion program is provided by the Ministry of Community and Social Services and by the Ministry of the Attorney General of the province of Ontario. This funding is roughly broken down into a 57.5% contribution by the Ministry of Community and Social Services and 37.5% by the Ministry of the Attorney General. The Attorney General's contribution provides for office space and facilities for the project, whereas the Ministry of Community and Social Services contributes the Project Administrator's salary and contracts with the Catholic Family Service Bureau for provision of services. It is roughly estimated that the total cost for the project from these sources over a 12-month period is approximately \$55,000.

The services that the John Howard Society of Windsor provides to the diversion project are made possible through a grant of approximately \$3,090.00 from the United Way. This grant roughly covers the salary of

one John Howard worker and for the supervision of the worker by the Executive Director of the John Howard Society. This contribution represents 5% of the total budget.

The diversion program is directed by a full time Project Administrator, seconded by the Ontario Ministry of Community and Social Services, Probation and After-Care. In addition the Administrator carries a small probation caseload of about eight.

The diversion workers include two John Howard Society case workers, one of whom works for two days a week and the other for one day a week. The Executive Director of the John Howard Society supervises these two workers and also acts as a consultant to the diversion project in general.

One diversion worker works two days in the diversion project and the balance of the week in the detention home. Two social workers from the Catholic Family Service Bureau work two-and-a-half days each. In addition, a varying number of students work an average of two days a week from September to April and full time during the summer. Excluding the students there is an equivalent of two full time workers on a part-time basis.

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The Project staff are accountable to the Project's Administrator who is in turn accountable to the Diversion Committee.

The Diversion committee was instituted in April of 1976, to "scrutinize and control" the diversion program. Its purpose is described in the Program Brief:

As the Committee is cognizant of the well being of the community, its purpose is:

To scrutinize and amend the administration, policy, program, procedure, documentation, and practice of the Pilot Diversion Project of the Juvenile Court of Essex County.

To hear complaints regarding the Project from the young persons participating in it, from the parents and representatives of those children, and from citizens in the community.<sup>2</sup>

Further to this, the minutes of May 26, 1976, of the committee meeting outlined its purpose in the following terms:

- 1) to manage the diversion program;
- 2) to guide against abuses of the program;
- 3) to obtain feedback from the community about the diversion project and to give the community feedback on diversion;
- 4) to be representative of the community.

2. Ibid, pg. 6

...16

In addition to those roles, individual committee members reflected on their experience on the committee and added the following list of functions:

- The committee offers a mechanism for practical feedback through the police representative;
- there was more involvement in scrutinizing and controlling in the early stages; now discussions are more of policy and procedural matters;
- the committee is a hiring body of staff, generally;
- the committee is very involved in funding and discussing strategies for obtaining funding;
- the committee plays a general advisory role;
- the committee brings back information from the community on program;
- the committee also becomes involved in staffing problems, i.e. where there has been inter-agency conflict.

The composition of the committee is as follows:

- a lawyer who is the chairperson
- a psychologist
- a representative of the Social Work Department of the University of Windsor
- a labour representative employed in Public Works
- a principal of a high school
- an Inspector of the Youth Branch, Windsor Police Department
- the Project Administrator who is a voting member
- an accountant
- a businessman
- a county representative
- the Executive Director of the John Howard Society (as a consultant, not a member)

#### Physical Organization

The Project Administrator works out of the probation office which is in the same building as the juvenile court. Interviewing rooms are available for diversion interviews on the same floor as the juvenile court. There are two offices for those who work on the diversion program also on the same floor as the juvenile court.

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One is allocated to the Support Services Program which is the prevention component; the other is shared by the diversion workers and students.

#### b) Eligibility Criteria

The following eligibility criteria are listed in the Program Brief:

The following cases are to be diverted:

- 1) An offence allegedly committed by a young person who has not previously appeared in court.
- 2) Offences where the Crown does not insist on court intervention.
- 3) Offences where the young person and the young person's parents elect Diversion.
- 4) Offences where the prosecutor's case will not become stale or unprovable through the lapse of time.
- 5) Offences attributed to children who have not been placed in detention by the police (Offences of murder, rape, armed robbery and assault causing bodily harm, must proceed to court process and are not divertible).<sup>3</sup>

In addition, a six-month pilot project has been undertaken with repeaters. Eligibility is on a case-by-case basis depending on:

- seriousness of offence
- attitude of young person
- whether the person completed the program successfully the first time if he/she was diverted

or

- if the young person has been through the court process where the charge was dismissed or withdrawn

3. Ibid, pg. 7

c) Procedure

About once or twice a week, the Project Administrator goes to the Clerk of the Court and scrutinizes all of the charges that have been laid in the City of Windsor and Essex County. These charges are compared to the Program's eligibility criteria. If the criteria are met, a letter goes out from the Court inviting the young person and parents to attend an appointment with a Diversion worker. A pamphlet outlining the diversion process is enclosed with the letter. This pamphlet describes the program and outlines the rights and responsibilities of the person entering the diversion program. The text of this pamphlet is included in Appendix B.

i) Intake

At the first meeting of the young person, parents and the diversion worker, an explanation of the program and its options are given. The concepts of the compensatory task agreement and referral to a social service agency are also explained. When it is established that the young person has a clear understanding of the charge alleged against him/her, the diversion worker leaves the family and is replaced by

the duty counsel. The duty counsel reviews the charge and assists the family with the legal implications of the decision. Once the young person and his/her family understand all possible actions -- going through the court process or being diverted -- they can come to a decision on how to proceed. It is also part of the duty counsel's function to read the Crown brief and to advise the family if the offence is a provable one. If it is not, duty counsel advises the diversion worker of the young person's decision and advises the family to refuse diversion. If the charge is provable and if the family chooses diversion, they (the parents) will be asked to sign, on the young person's behalf, a general admission of facts and a release of information (see Appendix C). This document states that legal advice was obtained, that there is no quarrel about the facts of the incident, and that the parent agrees to give the diversion worker authority to obtain information about the child and family.

At this point, the duty counsel leaves and the diversion worker returns to review with

the parents and young person the pamphlet outlining the young person's rights and responsibilities throughout the diversion process.

This is the same pamphlet sent earlier to the parents. All the details of the diversion program are explained more specifically.

ii) Return to Court After Intake

At certain times, it may become obvious that it is essential to the young person's well being that he/she should be returned to the court process at the conclusion of the diversion intake.

To return a young person to court at the conclusion of intake one of the following criteria must be present:

- 1) The young person is generally out of the control of his/her parents (comes and goes as pleases; whereabouts often not known) and requires the impact of formal court proceedings.
- 2) The young person or parents refuse to accept a social service referral which the diversion worker regards as essential to the well being of the young person or essential to the prevention of the young person being involved in further conflict with the law.
- 3) A placement recommendation obtained from psychological or psychiatric assesment is not accepted by young person or parents.

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4) A placement recommendation cannot be effected on a voluntary basis due to resistance based on financial or other considerations of the placement resource.

Procedure:

No young person can be returned to court at the conclusion of intake until the worker processing the case has had a conference on the case and obtained concurrence from the Administrator. If concurrence is not obtained from the Administrator and the diversion worker still feels the case should be put in court process, the case is to be brought to the Diversion Committee for consideration.<sup>4</sup>

If the Project Administrator agrees with the recommendation to return the young person to the court process, and if the parents and young person object to this recommendation, they must be informed of their right to appeal the decision to the Diversion Committee.

(iii) The Diversion Process Begins

Within the following two weeks, the diversion worker meets with the parents, young person and school officials to determine how the young person functions in everyday life. The victim of the offence, unless it is a victimless offence, also is contacted by the worker and asked whether he/she is prepared to participate in the process of working through a "compensatory task" agreement. The attitude of victims to

4. Ibid, pg. 14

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this suggestion range from being very willing, to refusing to meet altogether. If the victim refuses to meet with the young person, the worker at least tries to find out if he/she has any suggestions as to the type of community service preferred or number of hours to be considered. When a meeting can be arranged between the victim and the child, the victim is included in working out the details for the "compensatory task" agreement. Meanwhile, the diversion worker prepares a social profile of the young person, which helps to determine whether a social services referral is desired and/or necessary. The standard information for the social profile is found in Appendix D. Also included in Appendix D is a case example of a social profile.

iv) The Oral Caution

In situations where the offence committed by the juvenile is minor and where there are no other problems a diversion worker can decide to caution the young person orally with no further action. The criteria that were developed as policy for the oral caution are as follows:

- 1) The young person resides in a stable home and family situation.
- 2) The parents (by their response to the offence thus far) have demonstrated their ability to cope with the young person's behaviour and needs.
- 3) The offence behaviour is an isolated incident rather than a continuing pattern.
- 4) The young person demonstrates an attitude of remorse or distress regarding the behaviour and a clear intent not to be in further conflict with the law.<sup>4</sup>

v) Referral to a Social Service Agency

After the social profile is completed and if it indicates that there is a need for more intervention and counselling, the young person, his parents and the diversion worker meet to identify an appropriate agency. They also discuss the length of time the involvement with the agency should last. This involvement is written into the diversion contract and the young person receives a copy of the agreement. A list of the social service agencies used for referral is included in Appendix E.

vi) Compensatory Task Agreement

The following excerpts from the Program Brief explain in detail both the purpose of the

4. Ibid, Page 13

"compensatory task" agreement and how it is negotiated.

Purpose:

To afford a young person charged with an offence for the first time an opportunity to voluntarily compensate the victim of the offence.

Goals:

1. To acquaint the young person and victim personally with each other, thereby personalizing their appreciation of each other beyond the experience of the offence.
2. To have young people do productive, useful work which is beneficial either to a citizen or to the community at large and to the young person.
3. To provide a means by which young people are given the opportunity to assume responsibility for their own behaviour.
4. To involve victims and juveniles with members of the community in the process of dealing with the offence, fostering an inter-personal response to delinquent behaviour.

Formula for the Development of a Work Value for an Offence

(a)	Property Damage or Value of Articles Stolen ÷ number of young persons involved	=	Dollar Value
(b)	Company Time Spent Dealing with Offence (Including Security Officer's Time)	=	\$2.40/hr. (or more)
(c)	Police Time Spent in Investigation of Offence and Taking Statements	=	\$8.00/hr. per Officer
	Sum		Total Dollar Value
	Total Dollar Value ÷ Minimum Wage	=	Number of Hours to be worked

Caution:

Formula is to be used as a guideline and not a rigid rule. "Compensatory Task" Agreements are individualized and tailored to the capacities of the young person and the needs of the victim or the community. In offences that have an exceptionally large dollar value, and therefore an exceptionally large work value, common sense is to prevail and excessive long-term demands not to be made on the young person's time. Work Values in these offences, however, should be sufficient to reflect the seriousness with which the community regards such behaviour.

Determining the Beneficiary of the Young Person's Work

In all cases where Compensatory Task Agreements are being developed, the Diversion Worker contacts the victim of the offence to solicit the victim's participation in the Contract. In those instances where victims choose not to, or are unable to participate, a Community Service Contract is developed. In a Community Service Contract, the beneficiary of the young person's work is the community at large. Charitable, municipal and provincial institutions and agencies are solicited as participants.

In the case of Community Service Orders, it is desirable for the Diversion Worker to personally accompany the young person to the place of work to introduce the young person to the adult who will be providing work instructions and equipment. It is desirable that the Diversion Worker provide the adult participant with receipts which the adult issues to the young person at the end of each work period as proof of work done. When the contract is completed, the young person returns the receipts to the Diversion Worker and the process is completed. The Diversion Worker also contacts the adult for whom the young person worked and ascertains that adult's impressions of the young person's attitude and work. These are fed back to the young person at the conclusion of the work period.

When, upon initial contact by the Diversion Worker, the victim chooses not to participate, it is desirable that the Diversion Worker set up a personal meeting with the victim, to assure that he/she has a thorough understanding of the Diversion Process.

#### Financial Compensation

Consideration is to be given to the appropriateness of the young person doing financial restitution when the young person has a source of income that is an allowance or a part-time job, and when he/she chooses this option. Contracts are entered into whereby the young person chooses to make a given monthly payment for a specified number of months not exceeding nine. Cheques are made payable to the victim and mailed to the Diversion Worker. A xerox copy of the cheque is placed in the young person's file and the cheque is mailed on to the victim. A receipt is issued to the young person for each payment received.

#### Maximum Amount of Voluntary Work Time, to be Contracted for in "Compensatory Task" Agreements

##### Preamble

Whereas it is realized that the expectations for compensation of some victims of juvenile offences will exceed the young person's capability, and whereas it is believed that excessive demands on a young person's time and energy will ultimately generate frustration and hostility in the young person; the Diversion Committee determined that there should be a maximum expectation that cannot be exceeded.

##### Policy

No young person will be expected to do more than 40 hours of voluntary work in compensation to the victim or victims of his/her offence or offences.

##### Policy; Financial Restitution

When it is appropriate for the young person to make financial restitution -- the dollar value equivalent of 40 hours of voluntary

work will constitute the maximum amount of financial restitution.<sup>6</sup>

Note: Task Agreements are usually for less than 40 hours although social service referral contracts may last for longer periods of time.

##### vii) Follow-Up

When a compensatory task agreement is developed, the diversion worker remains in contact to make sure that the restitution agreement is being upheld. If there are any difficulties between the young person and the adult supervisor, the diversion worker will mediate any inter-personal difficulties.

In situations where a referral is made to a social service agency, it is requested that the agency send a feedback outline to the diversion project at one, three, six and nine months (if applicable) from the original referral date. Again if there are any difficulties, the diversion worker will step in to mediate. The form for the referral outline is included in Appendix E.

##### viii) Closing Option

The charge against the young person remains pending until he/she meets the requirements of the agreement.

6. Ibid, pages 14-17

This period cannot exceed nine months. If, at any time, the young person fails to live up to the terms, or indicates a lack of cooperation, the charge is activated and the young person must appear in Court. When the young person has met the requirements of his/her agreement, and upon recommendation of the Diversion Worker, the charge is adjourned sine die. The process is thus completed without the young person having had a formal court appearance or ever having been adjudged delinquent.

At any point in the Diversion program (when the worker is assured of the young person having attained satisfactory social adjustment), a recommendation for sine die adjournment may be made and the contract regarded as having been completed. At the point of sine die adjournment, the case is closed. A closing letter is sent to the police officer who laid the charge. A copy of the closing letter is sent to the young person and to the Social Service Agency (if such an agency has been involved with the young person).<sup>7</sup>

d) Insurance Liability/Workmen's Compensation

Because the young person is doing work voluntarily and is not actually an employee of any corporation where there is work service, negotiations were held to clear up matters in respect to insurance liability, workmen's compensation, the Child Labour Law and the

7. Ibid, pg. 11

Industrial Safety Act. The Department of Labour in Toronto was approached as were the City Council of Windsor and individual unions. Letters of non-objection were obtained from the appropriate unions. The City of Windsor passed a by-law allowing the concept of work service for young persons to operate. With regard to insurance liability, the corporation's liability in the case of accident or injury would be the same as the case of any citizen who suffered accident or injury while on the corporation's premises.

Since the young person is doing voluntary work and is not an employee, the young person's work is not subject to Workmen's Compensation and the Child Labour Law.

e) Court Records/Diversion Information in Court

If the young person and his family decide to go to court rather than opt for diversion, no mention of this is made at the court hearing.

No information that a young person was in the diversion program is made available to the Court until the young person has gone through the process of hearing and he/she has been found guilty of a delinquency.

When the diversion worker returns the case to court at the conclusion of intake, the social profile specifically the section "Identified Needs and Service Recommendations" will spell out the worker's rationale for this decision. This is made available to the Court after a finding of delinquency and before a disposition is made.

When the young person has successfully completed a diversion program (the charge being adjourned sine die) and the young person is charged and convicted of a subsequent offence, the completed diversion file is available to the probation officer and/or the Court.

When the young person is actively engaged in a diversion program and is subsequently charged with an offence or is returned to court process by the diversion worker for not meeting his contract commitments, the diversion worker will update the section in the Social Profile entitled "Identified Needs & Service Recommendation" and make this information available to the probation officer and the Court after a finding of delinquency and before a disposition is made.

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4. Support Service for the Windsor Police Youth Branch

Although the Support Service for the Windsor Police Youth Branch is not a part of the diversion program, it is mentioned here because it has grown out of the diversion program and uses all of the same concepts. It also falls under the aegis of the Diversion Committee and is administered by the same Project Administrator as the regular diversion program. It is based on the philosophy that a number of young persons would not enter any justice process if there was early intervention as soon as there is a history of police contacts. Intervention is therefore not based on charge and indeed young persons who are referred to this program would not be charged with an offence.

The project is defined as a support service to the Youth Branch because it provides social assessment, referral and "compensatory task" services for young persons referred by the police. In this way, the service increases the number of alternatives available to the police when they know that a certain young person is exhibiting behaviour that will eventually lead to more serious trouble.

The Program Model Brief explains the program in the following manner:

...32

In August, 1977, the Windsor Police Youth Bureau adopted the Sellin - Wolfgang Index for measuring delinquent behaviour as its criteria for screening decisions. Essentially, the scale measures the harm done to the community by the delinquent behaviour. Upon the accumulation of five (5) points within a two-year (2) period, young persons are automatically charged. Upon the accumulation of four (4) points within a two-year (2) period, the decision to charge or employ an alternative measure is discretionary. Upon the accumulation of three (3) or less points, the officer does not charge but employs an alternative measure.<sup>8</sup>

The project's existence offers the following options to the police officer:

<u>Points</u>	<u>Options</u>
1 and 2 points	a) oral caution - no further action
3 points	a) referral to Windsor Police Youth Bureau Support Service Project (voluntary social assessment which may lead to referral - "compensatory task")
4 points	a) referral to Windsor Police Youth Bureau Support Service Project for voluntary Social assessment leading to recommendations as to whether to charge or employ an alternative measure.  b) charge and possibility of eligibility for diversion program.*

8. Support Service for the Windsor Police Youth Branch - A program model to assist members of the Windsor Police Youth Bureau in making appropriate disposition re: the young persons with whom they have contact. 1978 pg. 1

\*At five points a charge is automatically laid.

Objectives: for three (3) point referrals

Short-Term

- a) To provide the Windsor Police Youth Branch officer and the young persons who have accumulated three (3) points with an additional social service resource not presently existent in the community.

Option-Compensatory Task which may be used as an alternative measure.

Short-Term for Four (4) Point Referrals

- a) To provide the Windsor Police Youth Branch Officer with a social service resource (social assessment and disposition recommendations) before disposing of a case where a young person has accumulated four (4) points.
- b) To provide Youth Branch Officer with an innovative social service option-Compensatory Task which may be used as an alternative measure.

Objectives-Long-Term

- a) By the second year of the two-year demonstration period, to reduce the percentage of charge dispositions made by the police on any contact with a young person.
- b) By the second year of the two-year demonstration period, to increase the percentage of referral dispositions (rather than court referral) made by police on any contact with a young person.

The procedure for intake, developing compensatory task agreements and/or social service referral are the same as for the regular diversion program. A statement of general admission of facts is made to the police officer before a referral is made.

Because there is no possibility of charge or court process, participation in this program is voluntary with no consequence if agreements are not fulfilled.

9. Ibid, pages 2 and 3.

In situations where there is a lack of cooperation and the young person does not live up to the terms of his agreement, this information is fed back to the police officer who made the referral. This fact is recorded by the police officer and no further action is taken. When the young person and family have met the requirements of their agreement, the case is closed and a closing letter is sent to the police officer who made the referral.

More information on the Sellin - Wolfgang index used by the Windsor Police Youth Branch is included in Appendix F.

Further references to this program will be made in Part C of this report.

5. Statistical Information

The statistical information presented in this section is broken down into four parts. The first is a compilation of actual project data for a three-year period from June 1975, to May 31, 1978. The second part consists of a comparison between the total number of children appearing in juvenile court for a one-year period prior to the program's existence, and for the first year after the beginning of the diversion

project. Thirdly, numbers on probation caseloads were collected over a four-year period. Finally a chart representing the flow of juvenile offenders in Windsor was designed to give an overview of the juvenile justice system up to the court appearance.

a) Essex County Diversion Project - Statistical Information For June 1975 to May 31, 1978.

Because the first year of operation began June 18, 1975, the statistics for the first year are minus a two week period. The other yearly statistics run from June 1 to May 31.

1. Number of informations scrutinized by Project Administrator:

'75 - '76	341
'76 - '77	332
'77 - '78	362
Total	1,035

2. Number of offences meeting diversion criteria:

'75 - '76	189
'76 - '77	187
'77 - '78	182
Total	558

Therefore 53% of informations scrutinized were diverted.

3. Number of families who didn't respond to diversion letter:

'75 - '76	5
'76 - '77	2
'77 - '78	0
Total	7

1% of families did not respond.

4. Number of remaining families who did respond:

'75 - '76	184
'76 - '77	185
'77 - '78	181
Total	<u>550</u>

(1 who did not have initial intake interview in 1978)

5. Children Proceeding to Not Guilty Plea:

'75 - '76	24
'76 - '77	28
'77 - '78	13
Total	<u>65</u>

11% of total young persons proceed to not guilty plea.

6. Remaining numbers:

'75 - '76	160
'76 - '77	157
'77 - '78	168
Total	<u>485</u>

1.8% of total young persons were returned to court at conclusion of intake.

7. Number of young persons returned to court at conclusion of intake by diversion worker:

'75 - '76	5
'76 - '77	3
'77 - '78	1
Total	<u>9</u>

1.8% of total young persons were returned to court at conclusion of intake.

8. Oral Cautions:

'75 - '76	3
'76 - '77	6
'77 - '78	6
Total	<u>15</u>

3% were orally cautioned.

9. Number of youths accepted in diversion:

'75 - '76	155
'76 - '77	154
'77 - '78	167
Total	<u>476</u>

85% of eligible candidates were accepted in diversion.

10. Number of youths charged with new offences after completing diversion intake or diversion program:

'75 - '76	39
'76 - '77	16
'77 - '78	24
Total	<u>89</u>

18.7% of young persons were charged with new offences.

11. Number of youths returned to court for not fulfilling compensatory task or referral contract:

'75 - '76	2
'76 - '77	4
'77 - '78	3
Total	<u>9</u>

12. Total non-success rate - 20.6% (non-success of program = combination of new offences + non-successful program)

b) Number of Young Persons Appearing in the Juvenile Court of Essex County from June 1, 1974 to May 31, 1975 and June 1, 1975 to May 31, 1976.

June 1974	- 27
July 1974	- 40
August 1974	- 41
September 1974	- 37
October 1974	- 43
November 1974	- 49
December 1974	- 32
January 1975	- 40
February 1975	- 28
March 1975	- 31
April 1975	- 31
May 1975	- 64

The Essex County Diversion Project begins on June 18, 1975.

June 1975	- 21
July 1975	- 37
August 1975	- 15
September 1975	- 32
October 1975	- 28
November 1975	- 17
December 1975	- 18
January 1976	- 12
February 1976	- 12
March 1976	- 13
April 1976	- 30
May 1976	- 15

Average decrease of intake into juvenile court to May, 1976 - 43%

These figures were collected by the Project Administrator after the first year of operation. Unfortunately, no further data has been collected, and it was judged to be too time consuming for the limits of this study to examine subsequent years.

These figures do indicate a reduction of young persons appearing in the Juvenile Court after June 1975.

c) Probation Caseloads from July 1, 1974 to July 1, 1978

The following figures represent the average caseload for a probation officer in a twelve-month period.

Even though there are considerable seasonal fluctuations in probation caseloads, the yearly average will represent a better figure for observation of the effect of the diversion project on the yearly caseload. The figures do not include aftercare cases and therefore do not represent the total caseload of a probation officer.

The assumption would be that because the diversion program is channelling off youths who would normally have been processed through court, there should be a reduction in probation caseloads. A lesser flow going into court should mean a lesser flow receiving probation as a disposition. Of course, this assumption is not absolutely true because one could argue that before minor offences were diverted, these same youths could receive conditional or absolute discharges. Because the information on disposition patterns proved to be too time consuming to obtain for this study, the effects on probation do however prove interesting.

The figures are as follows:

July 1, 1974	-	June 30, 1975	-	20
July 1, 1975	-	June 30, 1976	-	17.7
July 1, 1976	-	June 30, 1977	-	11
July 1, 1977	-	June 30, 1978	-	15.3

As the diversion project began June 1975, one notes a decrease of 2.3 for the first year of operation on the probation caseload of July 1, 1975 to June 30, 1976. A further decrease of 2.3 is noted for its second year of operation on the caseload of July 1, 1976 to June 30, 1977. This represents a total decrease of 9.

However, for the year July 1, 1977 to July 1, 1978 an increase of 4.3 is noted. An explanation for this phenomenon was offered by several persons working close to the Family Court. The Family Court of Windsor was presided over by one judge until the late spring of 1977 when an additional judge was appointed. The additional judge may be responsible for a higher use of probation as a disposition. In any case, it would certainly be appropriate to assume that an additional judge would change the previous disposition patterns for the court as a whole.

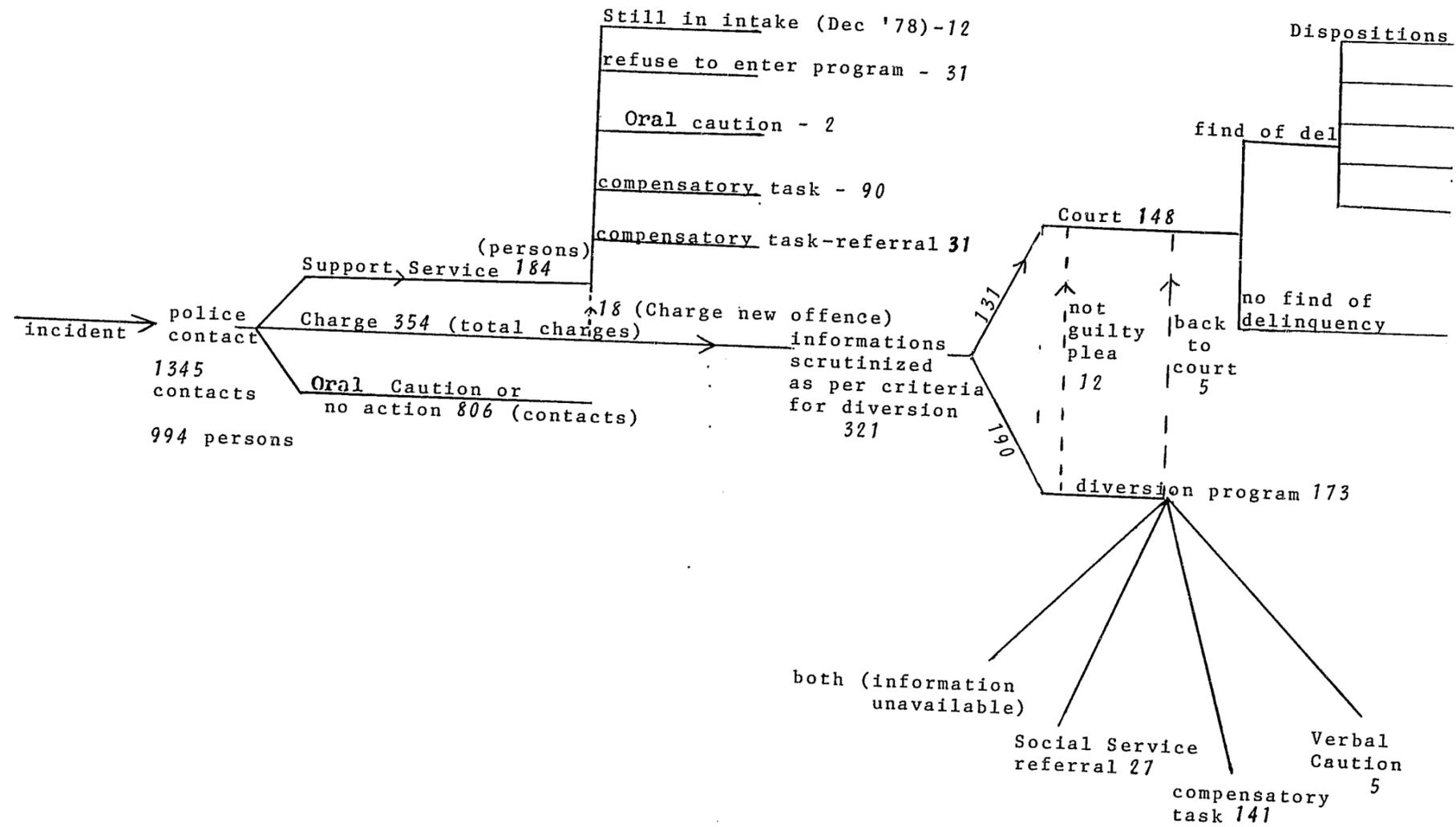
In spite of this, between June 30, 1975 to June 30, 1978 there is a total decrease of 4.7 in probation caseloads.

d) Flow Chart of Juveniles in Windsor

This chart gives an overview of flows for juveniles in Windsor for the period of January 1, 1978, to December 31, 1978.

The figures for police contacts represent both numbers of contacts and numbers of persons in contact with the police. However, it proved difficult to obtain figures on numbers of persons charged or orally cautioned after the first police

FLOW OF JUVENILES IN WINDSOR  
 Jan. 1, 1978 to Dec. 31, 1978



contact. Therefore charges represent total charges (as there may be more than one charge per person) as do cautions represent numbers of cautions given rather than number of persons cautioned. The numbers for referrals to the Support Service program are of persons referred; these statistics were available from the Support Services program.

The figures on the chart for the Support Services Program represent its actual case flow for the calendar year 1978. However, figures on the chart for the diversion program are less precise. The Diversion project collects its data on a yearly basis, starting on June 1. To obtain data for the calendar year 1978, it was necessary to calculate the case flow for the period January 1, 1978, to May 31, 1978, after determining the average monthly case flow for the period June 1, 1977, to May 31, 1978. This five-month total added to the actual figures for June 1, 1978 - December 31, 1978, should closely approximate the actual number of persons processed during 1978.

Unfortunately, it proved impossible to complete the further flow of this chart i.e., court statistics, because the collection of this data would be time consuming as it is not readily available.

PART C - REFLECTIVE ANALYSIS

1. Discussion

"Diversion is like religion, if you believe it, you don't need an explanation, if you don't believe it, no justification can be given." To a large extent, this comment made by Judge T.L. Docherty at a recent diversion committee meeting does capsule the two opposite approaches to the view of diversion. However, it is hoped that information such as this report on the Essex County experience can help to balance off the extremes by pointing out what has been learned and problems encountered in this pilot project.

The following section is a collection of information and perceptions obtained from various persons interviewed during a visit to the project in Windsor. It is intended that Part C of this report reflect issues and thoughts about the procedures and impact of the Essex County Diversion Project in Windsor.

The "Discussion" section is primarily a synthesis of the perceptions of the persons involved with an analysis of the problems raised. The first part of the "Discussion" is concerned with pointing out the benefits of the program; the latter part discusses the problems encountered.

In September of 1976 a social work thesis submitted to the University of Windsor entitled, "An Exploratory Descriptive Study of the Essex County Pilot Diversion Project" focused on perceptions of the young persons after their experience in the program. Although this study (which was referred to in the Historical Development section of this report) was undertaken only a short time after the project began operations, it made some interesting conclusions about the "client" perspective.

The research question of this study was stated as "Do young persons in conflict with the law in the Essex County Pilot Diversion Project perceive the administrative approach as minimizing their involvement in the traditional justice system and maximizing their opportunity for problem settlement?"<sup>10</sup>

The findings to this question revealed that 36% (N = 18) perceived the diversion program as meaning that they did not have to go to court; 34% (N = 17) of the sample felt that the diversion program had helped towards the resolution of their problems and an avoidance of getting into future conflict with the law; 10% (N = 5) felt that

10. An Exploratory Descriptive Study of the Essex County Pilot Diversion Project; Reynolds, N.; C.L. Tyler; J.L. Vanderswet, September 1976 Windsor, pg. 202

diversion was punishment; 6% (N = 3) of the youth felt that the diversion project meant less formality than court and that the diversion process was easier than proceeding to Court. Finally, 12% (N = 6) of the population sampled indicated that they did not know what the diversion program meant to them. The total sample was 50 (N = 50).

Therefore 70% (36% + 34%) of the young persons interviewed had positive perceptions of the meaning of the program, and 34% were definitely positive about the effect of the program in their personal lives.

The study proceeded further to make conclusions and recommendations about the theoretical assumptions of the project, its organizational structure, its intervention strategy and many other aspects of its operation. Many of these points were incorporated in modifications to the project in subsequent years.

The statistical information provided earlier in this report does also indicate that the project has a capacity to provide a viable alternative to the court process. There has been a definite reduction in court flows. Further research for the full three-year period could better isolate the real effectiveness of the over-all project. Also, more comparisons with court data could offer additional interesting information. This topic will be addressed in the section on "Research Questions".

Another benefit, close to those presented above, arises from the fact that there is no finding of delinquency in successfully completed diversion agreements. There is therefore a reduction in the number of findings of delinquency which can only benefit the persons involved.

The responsibility principle in the concept of task agreements is a very healthy one, where the young person is held responsible for his actions in a fair fashion. This is a principle which is undoubtedly not upheld often enough in every day life, let alone any justice system.

The impact of the social service community has undoubtedly been good, where, it can be assumed, not as much priority was given to juveniles in trouble with the law as is now the case.

There is no doubt that any client benefits from a program that takes into consideration the human factors of his actions as well as the implications of breaking the law.

There are certainly positive effects of lessening the distance between victims and their offenders. "Compensatory task" agreements provide for compensation to the victim which is sorely lacking in the more official justice

system. Their comments would also show that they benefit in their understanding of both delinquent behaviour and fair treatment.

In terms of the developmental aspects of the program, it was reported that although the Windsor Police Department is very supportive of the diversion project and more specifically the Support Services Program, there has been reluctance on the part of other county police forces both to support the project and to become more actively involved in it. It has also been reported that their early perceptions of the program were that the program overruled what was their original decision to charge. Because the point of entry of the project occurs after a charge is sworn, it becomes a county project and many young persons from outside the actual limits of Windsor are referred to it. As the procedure for entry does not differ from one police force to the next, the reluctance for other police forces to support the project does not seriously affect the actual operation of the project. There have been meetings held with representatives of the county police forces, but these meetings have concentrated on sharing information about the project and no other involvement was forthcoming. The lack of support may be an indication of a weakness in the project, but as it does not pose serious problems to the operation of the program, it cannot be considered a major issue at this point in time.

Although in the early stages of developing the project the Crown Attorney was kept informed, there has been no other involvement of the Crown. The rationale for this stems partly from the fact that the Crown Attorney and his assistants are not as active in the juvenile court system as in the adult court system, and partly in that the police act for the crown in the juvenile system. Thus although the lack of Crown involvement would be a serious handicap in an adult program, it is not judged as being a major issue for Essex County. Again, as long as there is sufficient information exchanged, no other problems arise from the latent role of the Crown Attorney.

Continuing with the developmental aspects of the project, mention was made that there was no consultation with the community prior to the beginning of the program. It was noted by various members of the diversion committee that to be able to embrace the approach of considerable community involvement in the beginning of a project is not a reality in the Windsor setting; because there is very little lay involvement in the "grassroots" network of the social service community, the structures do not readily permit an easy access to the "lay" perspective. Thus, for the sake of the speedy establishment and operation of the project, the concerned professionals who were already available became the planning body.

It is interesting to note that the point of charge was defined as the first formal point of entry into the justice system by the project developers and that this in turn was chosen as the point for diversion into the alternate system. Certainly, others would argue that the first contact with the police would reflect a first contact with the justice apparatus, and other diversion projects in this country, because of this rationale, prefer to operate on a pre-charge basis. The criteria for pre-charge programs usually specify that candidates for diversion are accepted only when there is a strong likelihood of a charge. In other words, candidates who would not otherwise be charged are not accepted, thus ensuring that young persons are not diverted when in fact there is nothing to divert them from. This is cited only in the sense that other models can exist, that pre-charge programs represent an earlier intervention than the post-charge model of Essex County.

The above point was raised by a number of individuals interviewed who had concerns about the idea of leaving a charge pending while a person participates in a diversion program. In the study completed by three master of social work candidates at the University of Windsor in 1976, it was recommended at the end of the study that:

The recommendation is made that the project not have the charge remain pending until the youth fulfills the agreement.<sup>11</sup>

This would generally indicate that there are concerns, by some individuals interviewed and by this study, that exist about the post-charge model adopted by Essex County.

The implications of a pre-charge program underline the fact that the enforceability of diversion agreements is not always built into the program as it is with post-charge programs. There is obviously much controversy about this issue in Canada but it would seem that because of the legal double jeopardy of enforcing pre-charge agreements, pre-charge programs must adopt a voluntary stance to the completion of diversion agreements. It is reported by pre-charge programs that non-success rates do not rise in the light of non-enforceability, but there is very little hard data to confirm this. There is some evidence, however, that indicates that the police would be less likely to support diversion programs if there were no enforceability of agreements. The fact that pre-charge programs do exist in other provinces would discount this statement, yet it is firmly believed by proponents of the post-charge models that police cooperation would not be forthcoming without enforceability.

11. Ibid; Pg. 279

The pros and cons of the post-charge model are cited here for information; there is no easy recommendation to be made.

Those who oppose the post-charge model state that once the young person has admitted guilt for admission to the program, he/she is legally in a poor situation to ever contest the charge or oppose whatever process the diversion program may specify. Although this has not surfaced as an operational problem, it is mentioned here as a consideration.

Close to the issue of enforceability of contracts in post-charge programs, is that of how right it is to enforce an agreement to obtain treatment? What happens if a person completes the task agreement but refuses to complete the agreement to obtain services from a social service agency? The program model suggests that the complete diversion agreement would not be fulfilled, therefore this person could be returned to court. There is a need for clarification of this issue which may include a decision to not return someone to court who refuses further arrangements than the task agreement. This criteria of returning someone to court who refuses a referral is already listed as one of the criteria for return to court after intake.

In respect to the diversion committee, comments were made that there is not enough lay community involvement at the committee level. The problem here becomes that

of defining what is a non-professional. If one defines a non-professional as someone who does not work in the justice system, then almost all committee members are non-professionals. On the other hand, almost all committee members are from the professions, (Law, Teaching, Psychology, Business etc.) therefore it is fair to assume that the comments about lack of community involvement rise from this perception. The committee members were chosen specifically because they represented persons who had a high level of credibility in the community and who would demonstrate the commitment necessary to function seriously as committee members. Certainly there are no reproaches to make towards the committee itself or towards any one individual, however, it might be enriching to include other individuals on the committee. Consideration might be given to including individuals who have no other ties than pure interest in the administration of justice in Windsor or a person who has completed the program and has the "client" perspective. It was commented that the need for the "client" perspective is an idealistic notion that is impractical and unworkable. This is mentioned here as it is an issue that merits consideration; if a young person cannot be found, a parent or even a victim might still bring the same quality in its membership on the committee.

In conjunction with the earlier comments in respect to crown attorneys, it was also reported that it is difficult to ascertain if all duty counsels practicing in the juvenile court are knowledgeable enough about the diversion program to be able to give advice. Certainly many of the duty counsels perform excellently in relation to the program, but it has been a dubious point whether all of them function as well as they might. It would seem that the structure of the legal aid plan partly inhibits identifying a small pool of lawyers to be more available to the project for this function. This comment however is cited here as an example of an area that should be carefully planned.

Although it was explained earlier that the Support Services Program is not a part of the Diversion Program, interviews generally involved continued references to the Support Services Program as well as the Diversion Program. As both these programs fall under the aegis of the diversion committee this section will deal with some of the comments made in respect to the Support Services program.

It was stated that the main function of this program is "to deter those who can be deterred". Social workers are able to deal with a child who is peripherally involved

in delinquent activities. Early intervention presumably alleviates future problems and provides for identification of social or personal problems, thus allowing for correcting socially unacceptable behaviour.

The first question one would pose would be what makes a youth and parents decide to undergo this program if there is no compulsion to do so. It was answered that part of this may be attributed to the perception of the policeman's role. Because of his position and the manner in which the program is presented, individuals may feel that they must participate to prevent further "hassles" from the police. It is stated in one of the documents about the Support Services program that "if the program is rejected without sufficient reason, it is so noted on the juveniles record". It is clear that if the program didn't exist juveniles would probably only be orally cautioned and sent home. It is difficult to evaluate the implications of this program. Some aspects of this program would indicate an intervention in a youth's life when there is no legal basis for doing so, (i.e. no charge would be laid). Prevention programs will always present this dilemma. The policeman's role leading to participation in the program implies a certain degree of coercion which needs to be taken into consideration in terms of its impact on perceptions of social justice.

On the other hand, workers in this program claim that it is extremely beneficial to the participant in relating responsibility for one's actions as well as understanding the consequences of any further marginal behaviour. The description of the Support Services Program goes on to state, "It is felt by the Windsor Police Youth Bureau that more effective methods of dealing with youth offenders should be established and that early intervention could reduce and possibly prevent further socially unacceptable behaviour. Our program provides the police officer with this alternative."

The number of points on the Sellin - Wolfgang index will indicate whether a youth will be referred to the Support Services Program or whether a charge will be laid.<sup>11</sup>

The police are very supportive of the Support Services Program and the Sellin - Wolfgang index for decision-making.

As an Inspector of the Windsor Police Youth Branch stated, "it is the most fair system we can achieve".

11. See page 32 re Sellin - Wolfgang point index.

Reactions to this tool for police decision-making have ranged from support for a method which eliminates arbitrary discretion to opposition to an approach which seems to eliminate, in their view, consideration of the human factors. Before the existence of the index, youths sometimes had up to 10 or 12 contacts before the police officer would decide to lay a charge. Now the guidelines suggest that a police officer must charge when there are five points. This would tend to bring some young persons into the system earlier than would have been the case. Again, there is no final conclusion that can be made at this point, either as to the benefits or faults of such a system.

What does become more relevant, however, are the questions with regard to the implications of the Support Services Program on the Diversion Program. What are the implications of the situation where a youth does not complete an agreement for the Support Services Program, commits an offence, and whether to proceed to court must then be determined. Will he be diverted or will he automatically be considered suitable for Court? What are the effects of his earlier experience with Support Services on a diversion agreement if he/she is diverted? If he/she had only received an oral caution

instead of a referral to Support Services, chances are that her/his behaviour would be viewed more lightly. There is a need to review the implications of the existence of the Support Services Program on both the diversion program and the juvenile justice system as a whole.

One of the major problems experienced by the diversion program in its three-year operation seems to be what can be referred to as inter-agency conflict. Workers in the project come from a number of social agencies on a part-time basis. It would seem that problems were experienced in supervising the quality of work by these workers and co-ordinating activities and standards for the workers. Roles were unclear, networks of communication became bogged down and the resulting friction has caused some serious problems in program operations. Although some of these problems have been alleviated during the three-year process, the result of this experience is to conclude that it may have been preferable to design the project so that staff workers are not shared by any other agency. It is indeed unfortunate that these types of internal problems could affect the standard of service that any one client might receive.

Further to this, it was suggested that time be spent developing further guidelines on the discretion and

responsibilities of the diversion worker; the number of hours of community work allocated, type of social service referral sought and format for general diversion agreements could be better defined than at present. It is important that guidelines be understood as not being too rigid but remain essentially as a helpful tool to be used in conjunction with sound human judgment.

There is a need for clarification as to the impact of the diversion program on the juvenile justice system in general and on probation specifically. The statistics presented indicate that there has been a reduction in probation case-loads. The benefits of the program to the probation officer include that of an instant social history. As the social profile is already prepared, the task of preparing a social history before a disposition, is substantially reduced. It becomes a question of updating the social profile. If there is any need to obtain services in a social service agency these needs are already identified.

The effect of the diversion program on a judge when he is determining a disposition is difficult to ascertain. When a youth has successfully completed a diversion program and then commits an offence for which he must go to court, it was stated that the tendency would be to give probation

and not worse. However, in the same case, because the diversion option was tried the judge may feel that he must give probation rather than some of the "lighter" types of dispositions such as conditional and absolute discharge. Further research might reveal some interesting patterns in this vein since the establishment of the diversion program.

## 2. Issues

Following the narrative in Section 1. Discussion of Part C, this section will identify the major issues that were discussed in the earlier section.

- a) In view of the arguments for and against the post-charge model adopted by Essex County, it may be appropriate to review the question. "Should the charge remain pending?"
- b) There is a need for clarification of the enforceability of social service referral in diversion agreements. The program model suggests that a person may be returned to court if a complete diversion agreement is not respected. It may be appropriate to review the implications of such a stance.
- c) The issue of lay community involvement on the diversion committee indicates a need to consider such options as

nominating persons with the "client" perspective or lay persons with no other professional ties.

- d) With the existence of the Support Services Program, there is a need to review the implications of the Support Services Program on both the Diversion Program and the Juvenile Justice System as a whole.
- e) As for the issue of inter-agency conflict, it may be necessary to re-design the project so that staff workers are not shared by any other agency if this is still perceived as being an operational problem.
- f) With respect to the issue of guidelines for diversion workers, it may be necessary to develop a process by which responsibilities and discretionary decision-making be more formally delineated.
- g) There are many questions that need to be clarified in regard to the diversion program's impact on the justice system. Further data should be collected that would speak to the issue of effect on probation caseloads. Likewise, comments made in relation to judges' dispositions since the existence of the diversion alternative also need to be reviewed. The question of impact on the justice system will be addressed more clearly in the section on Research Questions.

Further to this, although it is understood that projects often suffer from a lack of sufficient time and financial resources for research, it would be desirable to develop a more substantive evaluation component to the Essex County Diversion Program.

3. Recommendations

Because the purpose of this report is to offer useful information to groups interested in starting a diversion program in their own communities, this section includes a collection of recommendations made by those who have been involved in the Essex County Diversion Project. These recommendations on how to start a diversion program are based on the experience gained from the Essex County Project.

a) In retrospect, it would have been useful to have included a developmental period in the program model that would have given the project developers time to define roles, develop referral procedures, develop relationships with social service agencies and settings for youths to do community service work prior to the beginning of the operational phase. Therefore, a short developmental period is perceived as essential for beginning projects.

- b) Because the diversion committee has become such a useful management tool to the project, it would be desirable to set up a management committee from the beginning of project operations.
- c) It is essential to obtain the co-operation of the police, the crown attorneys, the judges and all key actors in the justice system prior to beginning a diversion program.
- d) Guidelines must be determined at the outset, especially those concerning such matters as minimum and maximum amount of community work, and criteria for decision-making when developing diversion agreements.
- e) It would be desirable to provide staff with training in respect to an orientation to the community, its problems and the clients being served by the project.
- f) If more than one agency is involved in staffing the project, it would be preferable to obtain a rotating commitment from individual agencies, each supplying workers on a full-time basis for block periods of time. Quality and continuity of service would be ensured by full time staff.

- g) The question of liability and workmen's compensation when there is community work or voluntary work for the victim (person or corporation) should be addressed before beginning operations.
- h) The development of resources and expansion of program should go hand in hand.
- i) When there is provincial funding, it is important to know if this support will be on-going or not if the project is successful. Further to this, it would be helpful for the project developers to know on what basis or criteria success or failure of the project will be evaluated.
- j) As for legal counsel, it may be more desirable to operate with a smaller group of legal aid lawyers who understand the program, its philosophy and its agreements. Ideally, it would be preferable to work with one lawyer who could participate in such things as defining the lawyer's role in intake.
- k) Referral agreements for social services should be non-enforceable. If enforceability is viewed as essential in any one case, then it would be preferable to proceed to court at the conclusion of intake for enforceability at the court level.

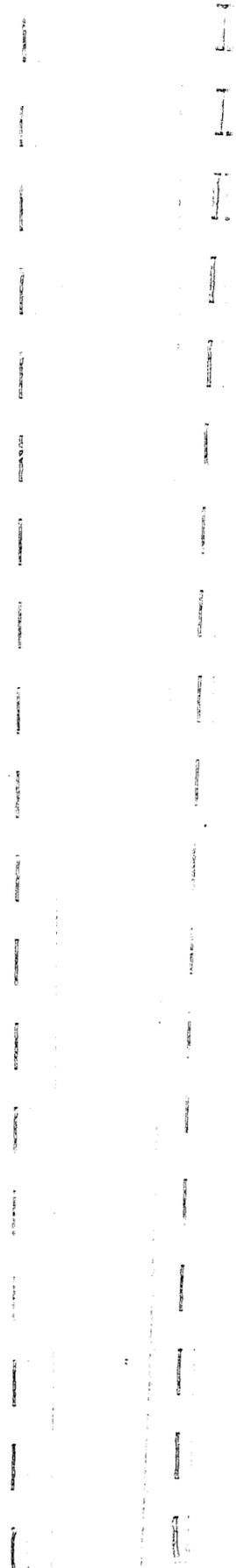
#### 4. Research Questions

Although it is well understood that diversion programs rarely possess the financial and time resources to concentrate on research questions arising from the program's operations, this section will identify some basic research questions relating to the implications of the project's existence.

- a) Since the Essex County Diversion Program's establishment has there been an actual reduction in official adjudication? What has been the extent of this reduction since the beginning of the Essex County Diversion Project?
- b) To what extent has the program's existence affected the practice of informal police diversion?
- c) How does probation differ from the diversion process:
  - in number of hours of contact
  - in different types of youths participating
  - in type of treatment and/or contact
  - in over-all effectiveness of both these processes?
- d) Further to (c) how does the project define how it differs from probation, particularly in relation to the aspects of social control and individual problems?
- e) Now that the more "minor" offences and/or types of youths are being siphoned off before the court process,

is there more or less variance in types of dispositions being given after a finding of delinquency?

f) Is the project directly responsible for decreases in probation caseloads?



APPENDIX A - List of Persons Interviewed

List of Persons Interviewed

1. Terry Bull, Project Administrator, Essex County  
Diversion Pilot Project
2. Ann Gasbar, Support Services Project
3. Duty Counsel
4. Judge T.L. Docherty, Provincial Judge, Provincial Court  
(Family Division)
5. Mary Pylak, Diversion worker, John Howard Society
6. Jo Ann Bondy, Diversion worker
7. Len Hansen, Probation Officer
8. Glen Macdonald, Area Supervisor, Probation and After Care
9. Jack Buhlman, Executive Director, John Howard Society  
of Windsor
10. Insp. O. Hughes, Youth Branch, Windsor Police Department  
and all members of the Diversion Committee during a  
Committee meeting.

APPENDIX B - Pamphlet Explaining the  
Diversion Project

RIGHTS AND RESPONSIBILITIES

Diversion is an agreement that is reached only after you understand the program and have received advice from a lawyer who is there to look after your best interests. Before you can proceed with Diversion, you must acknowledge your responsibility for the offence and agree that the facts as provided by the police are correct. If there is any question about your involvement, the matter must go to court where a judge can listen to all sides and make a fair decision. You have the right to go to court and be heard.

In the Diversion Program, each person - you, your parents, the Diversion Worker, the Victim, the Counsellor - has a share in making plans for the compensatory work and/or counselling. These plans should be completed within two to three weeks and it is the Diversion Worker's responsibility to make sure this happens.

The Diversion Program is not always the best way. At times, even when someone has decided to go through Diversion, the Diversion Worker may see reasons for plans not working. For instance, your situation at home may require more assistance than the program can offer you. Two weeks after your first interview, the Diversion Worker has the right to return the charge to court. The Diversion Worker does not make this

decision alone but discusses it with another member of the Diversion team. If you or your parents think the decision of the team is unfair, you can bring the matter to the Diversion Committee.

If you proceed into the program and there are no further changes in the plans, they are written into "contracts" which will be signed by yourself, your parents and the Diversion Worker.

By signing the contracts, you are saying that you agree with the work and/or counselling and will follow the plans until they are completed. No one in the program can be asked to work more than a total of 40 hours. The contracts are different for each person, but none will last longer than nine months from the date that you sign them.

Your co-operation in following the plan is important. It becomes your responsibility to do the work and see the counsellor. You may find that there are difficulties, but you can talk these over with the Diversion Worker. However, if you do not do the work or do not see the counsellor, without good reason, then you are not co-operating and taking your shared responsibility. The Diversion Worker will discuss your situation with another member of the Diversion team. If members of the Diversion team decide that the

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original charge must be dealt with in court, the charge will be sent on to court and you must appear before the Judge. When this happens, if you and your parents disagree with the Diversion Team's decision to return the charge to court, you can request to meet with the Diversion Committee before the court date.

Once the program has been successfully completed, the charge laid by the police will be adjourned "sine die" by the Judge. This means, that as far as the court is concerned, the matter is finished and nothing else is expected of you in regard to the offence. This also means that you are a responsible young person who did something to undo any harm that your actions caused to others.

Because you didn't go to court, you were not found guilty of anything and do not have a record. However, a file that says you were charged with an offence on a certain date, stays at the court.

All information such as contracts, referral reports, and school contacts are kept in a separate file outside of court files.

As with any activity, we have the right to participate, but we are also governed by rules that guide our actions.

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You will find this to be true in sports, in families, as well as Diversion.

In order to meet with the Diversion Committee, call the Diversion secretary at 254-2871.

APPENDIX C - General Admission of Facts  
and Release of Information

XIII (b)            ESSEX COUNTY DIVERSION PROJECT  
                      250 Windsor Avenue, Fourth Floor  
                      Windsor, Ontario  
                      N9A 6Y5  
                      254-2871

Re: Name of young person  
     Address:

We have been advised of our legal rights by a lawyer  
and have a general understanding of the Diversion Program.

Notwithstanding the right to insist on a trial to prove  
the facts alleged against our child, he/she readily admits  
to those facts and we both agree to meet with the Diversion  
Worker and co-operate to whatever extent necessary.

RELEASE OF INFORMATION

This is your authority to release to a Diversion Worker  
of Essex County Diversion Project any or all information  
that you have in your possession relating to my child.

This release shall remain in full force and effect until  
advised by me that it is cancelled.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Parent or Guardian

\_\_\_\_\_  
Date

APPENDIX D - Standard Information for the  
Social Profile and Case Example

STANDARD INFORMATION FOR SOCIAL PROFILE

Section - Difficulties of Child: ..

At Home:

- (1) Do you have any difficulty with your child's behaviour at home?
- (2) Does your child have a time he/she has to be in at night? What is it? Is he/she responsible about getting in on time?
- (3) Has your child ever run away from home or threatened to run?
- (4) Does your child have chores around the house? How responsible is he/she regarding these?
- (5) Is your child ever away from home for long periods of time that you don't know his or her whereabouts?
- (6) When your child asks permission to have or do something and for whatever reason you have to say "no", how does the child handle the "no".
- (7) Do you feel you have your child under control at home?

At School:

- (1) Does your child like school?
- (2) Does he/she attend regularly?
- (3) What kind of marks does child get?
- (4) How does child get along with teachers?
- (5) How does child get along with other kids at school?

In the Community:

- (1) Has your child had contact with the police to existent charges? Timing and Nature of Contacts.
- (2) Have you ever had complaints from neighbours regarding child's behaviour?
- (3) Are your child's associations of concern to you?
- (4) Has your child ever come home drunk or inebriated?
- (5) Why did your child get into trouble with the law?

Family Relationships:

Between Parents:

- (1) How long have parents been living together, married, separated, divorced?
- (2) How would each spouse describe marital relationship?
- (3) Has marriage experienced periods of severe stress or separation?

- (4) Who sets rules and limits for kids?
- (5) Who enforces limits?
- (6) Do parents agree on limits? ..

Between Father and Child:

- (1) How do father and child get along?
- (2) If there is conflict - over what issues?
- (3) Does child go to father with problems? Is child open or secretive about what's going on outside home?
- (4) If so, is there another adult child confides in?

Between Mother and Child:

Same as above.

Between Child and Siblings:

- (1) How do they get along?
- (2) Who is child closest to?
- (3) Who does child have most difficulty getting along with?
- (4) Is there any extraordinary conflict based on jealousy or resentment?

Other Important Information:

- (1) Has child or family previously been involved with a helping person?
- (2) What are child's special strengths or interests?
- (3) Do you think your child will get in trouble with the police again?
- (4) Does your child need to be involved with a helping person or agency to prevent further conflict with the police?

Prevention-Diversion Programme

Social Profile

CHILD: Allen D.

ADDRESS: Windsor, Ontario

PHONE:

D.O.B.: February 22, 1966

SCHOOL:

GRADE: Junior Opportunity

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Presenting Offence:

On June 10, 1978, Allen broke into a neighbour's garage and stole a minibike. He rode this bike downtown where he was caught.

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Persons Living in Child's Home

MOTHER:	Carol	age: 33	occupation: housewife
SIBLINGS:	Annette	16	student - Secondary
	Patsy	15	" "
	Michelle	14	" - Separate School
	Billy	13	" "
	Renee	10	" "
	Chris	4	at home

Allen's father, William D lives outside the home. Mrs. D reports that this was at her request.

Difficulties of Child

At Home:

Allen is a problem at home, according to his mother. She does not know where he is for long periods of time; Allen has run away from home in the past. Mrs. D reports that if she tells her son that he cannot have or do something, he will probably go ahead and do it anyway. According to Mrs. D, Allen steals money from her also. She feels that he is out of control at home and she can no longer tolerate his behaviour. She has threatened to "send him away", by this she appears to mean that she wants to place him away from the home so that he has no contact with the family. Allen's response to this is one of fear, however, he accepts her statement passively without argument.

Mrs. D told me (in Allen's presence) that if Allen's behaviour does not change by the end of July, she will carry out her threat.

At School:

Allen is in a special class at school (Junior Opportunity). He was placed in this class because he is not able to keep up with his peers academically.

Mr. M, principal of Allen's school, feels that Allen is below average intelligence and will go through the special

class system until he is ready to graduate to a vocational school. Although Allen occasionally gets into mischief at school, he is not a major behavioural problem. Mr. M has had some contact with Mrs. D; she has in the past, come to the school and demanded that the principal search Allen for money which she believed he had stolen from her.

Allen was assigned a social work student this year to work with him a few hours a week during school hours. Mrs. D apparently was upset by this; she maintains that she was not consulted in this matter. Mr. M states that it was his understanding that Mrs. D has been contacted by the Social Work Department of the Separate School Board and that Mrs. D had given her permission for Allen's involvement with the student social worker.

In the Community:

It is not the first contact Allen has had with the police. There have been at least two contacts in the last year, according to the mother.

Mrs. D reports that she has had complaints about Allen's behaviour from the neighbours. Mrs. D. feels that in some instances Allen has gotten into trouble because he has associated with older boys.

Mrs. D feels that her son got into trouble because of his interest in motors and mechanics. The neighbours who own the minibike had taught Allen to ride it and Mrs. D feels that Allen could not resist taking the bike out and riding it.

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Family Relationships

Between Parents:

The parents have been separated for about a year. Mrs. D states that she felt unable to cope with the marital situation and as a result she told her husband to leave the home. Despite this separation, Mrs. D feels that her relationship with her husband is good. She feels that he supports her in her decisions concerning the children, however, she is the parent who sets the rules and limits for the children.

Between Father and Child:

Although Mr. and Mrs. D are separated, Mr. D visits the children without restrictions. Allen feels that he has a fair relationship with his father.

Between Mother and Child:

The relationship between Mrs. D and Allen is poor. Mrs. D states that she finds Allen impossible to handle and that she is unable to cope with his lying and stealing. Her

method of dealing with this problem is to threaten Allen. According to Mrs. D, she wants Allen out of the house and she is using this threat to control his behaviour. Allen appears to be afraid of his mother, although Mrs. D reports that at home he laughs at her and totally disregards her.

Mrs. D feels that Allen is the only child that she has trouble with in the home. It appears as though he is a scapegoat in the family.

Between Child and Siblings:

Allen gets along with his siblings, he spends much of his time with Billy, who is a year older. Mrs. D feels that there is a problem with Allen and his two older sisters; the sisters are left in charge of the younger children and are unable to control Allen.

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Other Important Information:

Allen has previously spent time as a resident at the Regional Children's Centre. Mrs. D feels that his behaviour worsened after this stay. Mrs. D also reports that she has had a number of contacts with the Children's Aid Society; this involvement was also not helpful, according to Mrs. D. She stated that she resented the social workers' interference

and she seemed to be insulted that they should question her rights as a parent. Consequently, Mrs. D has a great mistrust of social workers and stated very early in the interview that she had no intention of becoming involved in any other social agency.

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Identified Needs and Service Recommendations:

There appears to be a great deal of conflict between Mrs. D and Allen; this conflict would seem to be the root of Allen's acting-out behaviour. Mrs. D's method of coping with a problem is to throw the offending person out of the house. This happened in the situation in her marriage; when her husband's behaviour became intolerable, she insisted he leave the home. She is now threatening to do the same to Allen. This threat must seem very real to Allen because he already witnessed the method in which his father left the home and he realized that his mother is determined to carry out this threat. Although she has not yet gotten Allen out of the house, he already is aware of her rejection of him because of this threat. Understandably, Allen gives the impression of an unwanted and unloved boy.

Unfortunately, Mrs. D is against any involvement with social agencies as she feels that social workers view the problem to be hers and not Allen's; this is unacceptable to her.

Mrs. D is also against the idea of Allen going to camp. To her, this implies special treatment and she feels that her other boys would be jealous and cause trouble for her. She is not able to afford to send her other children to camp as she is on Mother's Allowance.

It appears that there is no other course of action available apart from a compensatory task. A contract involving a large number of hours would be helpful for this boy, not because his offence merits it but because he needs an activity outside the home. If Allen could spend time working in an organized activity in the community away from his mother, some of the tension might be relieved.

APPENDIX E - List of Social Service Agencies Used

- 81 -
- John Howard Society
  - Roman Catholic Children's Aid Society
  - Children's Aid Society
  - Partners Program
  - Catholic Family Service Bureau
  - Family Service Bureau
  - Reaching - Out
  - Hotel Dieu Hospital (Social Work Department)
  - Youth for Christ
  - Juvenile Probation Office
  - Essex County School Board
  - Big Brothers
  - Addiction Research Foundation
  - Regional Children's Centre

**CONTINUED**

**1 OF 2**

APPENDIX F - Compensatory Task Agreement  
and Referral Agreement

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XIII (f) ESSEX COUNTY DIVERSION PROJECT  
250 Windsor Avenue, Fourth Floor  
Windsor, Ontario  
N9A 6V5  
254-2871

REFERRAL AGREEMENT

RE: Name of Young Person:

Address:

1. We consent to the referral of \_\_\_\_\_  
to the following agencies for help.
  - a)
  - b)
  - c)
  - d)
2. We commit ourselves to remain cooperative and involved  
with the above mentioned agencies for a period of up to  
nine months.
3. We also consent to the release of any information about  
our family to those agencies and from those agencies to  
the Diversion Project.

I understand that if I do not keep the terms of this  
agreement, my case will be returned to court process.

\_\_\_\_\_  
Date Young Person

\_\_\_\_\_  
Witness: Diversion Worker Parent

\_\_\_\_\_  
Parent

c.c. Police  
Young Person & Parents  
Social Service Agency

XIII (e) ESSEX COUNTY DIVERSION PROJECT  
250 Windsor Avenue, Fourth Floor  
Windsor, Ontario  
N9A 6V5  
254-2871

COMPSNSATORY TASK AGREEMENT

RE: Name of young person

Address:

Occurrence:

Victim: Contacted -  
Met with young person -  
Address: Participated -  
No participation -

I, \_\_\_\_\_ without prejudice, for the purposes of settlement, acknowledge my responsibility under this program to make restitution for any damages or inconvenience I may have caused.

To discharge this obligation, I agree to do the following things:

I understand that if I do not keep the terms of this agreement, my case will be returned to court process.

Date to be completed:

Date \_\_\_\_\_ Young person \_\_\_\_\_  
Witness Parent \_\_\_\_\_  
Parent \_\_\_\_\_  
Diversion Worker \_\_\_\_\_

c.c. Police Department  
Young person & parents

APPENDIX G - The Sellin - Wolfgang Index  
used by the Windsor Police  
Department Youth Branch

WINDSOR POLICE YOUTH BRANCH

GUIDELINES FOR ACTION TO BE TAKEN AGAINST JUVENILE OFFENDERS

The criteria for the selection of juvenile offenders for court process of other action are to be determined by usage of these guidelines which are based on the Sellin-Wolfgang Index.

1. Value of property stolen, damaged, or destroyed. Under \$50.00 - 1 point; \$50.00 to \$150.00 - 2 points; \$151.00 to \$975.00 - 3 points; \$976.00 to \$3,250.00 - 4 points; \$3,251.00 to \$5,500.99 - 5 points; \$5,501.00 to \$12,500 - 6 points; \$12,501.00 to \$27,250.00 - 7 points; \$27,251.00 to \$100,000 - 10 points; \$100,001 to \$150,000 - 11 points; \$150,001 to \$200,000 - 12 points. Over \$200,000 - 13 points.

In all cases of Theft and Wilful Property damage in any form, the points will be calculated according to the scale provided above.

In all forms of Breaking and Entering, two points are provided for the breaking and entering and additional points will be measured according to the amount stolen or the amount intended to be stolen.

In cases involving Robbery where no weapon has been used there would be three points for the robbery plus points accumulated according to the amount stolen. In cases of robbery where a weapon of any form was used there would

be four points for the robbery plus the accumulation of points according to the amount stolen.

Assaults causing death would accumulate 28 points. Assaults causing very severe injuries resulting in hospitalization would accumulate seven points. Assaults involving less serious injuries but where hospitalization is required would accumulate five points. All minor assaults accumulate two points. Twelve points are accumulated if the offence is rape and in cases of indecent assault the minimum points for this offence would be three and the most serious kind of indecent assault would accumulate five points.

Auto Thefts or Taking Auto Without Consent each accumulates two points for the auto theft plus points for damaged property in accordance with the scale. In addition within this category juveniles who drive vehicles and breach the Highway Traffic Act by not having licences would accumulate an additional single point. For the most serious Highway Traffic Act offences such as Dangerous Driving, two points should be allowed.

In all cases of Arson two points should be allowed for the arson, and additional points should be added for the amount of damage caused.

In all matters pertaining to summary conviction offences against the Criminal Code, one point should be allowed.

Breaches of the Narcotic Control Act such as simple possession, allow one point. In cases of Trafficking, then the matter would come under a different jurisdiction.

All offences under the Liquor Licence Act and other Provincial Statutes should be given an assignment of one point.

Where a juvenile has accumulated five points during the two years prior to the occurrence of his last offence a charge automatically should be laid. Where a juvenile has accumulated three points during the same period he should be entered into the pre-charge Diversion Program. Where a juvenile has accumulated four points during the same period a decision is to be made by the investigating officer to determine whether the child should be entered into pre-charge Diversion or the court process. Further, if any doubt as to the number of points to be assigned to an individual, the D/Sgt. I/C Youth Branch should be consulted. In situations where a juvenile has accumulated three points but the investigating officer believes he should be entered into the court process or the pre-charge Diversion process a report is to be submitted in writing setting out the reasons for the deviation from the normal process.

**END**