

## Diversion from Formal Juvenile Court Processing

Juvenile diversion programs allow youths who commit offenses to be directed away from more formal juvenile justice system involvement (Bynum and Thompson 1996). Some diversion programs are pretrial or predisposition, which means that youths are diverted away from system processing from the outset; however, others begin only after formal adjudication or an admission of guilt. In these cases, youths are diverted away from detention or incarceration, but are still formally processed (Models for Change 2011).

The focus of this literature review is on diversion programs that range from the initial point of contact with the justice system (such as contact with the police) up until disposition in the juvenile courts, at which point a youth may still be redirected away from formal court processing. Thus, this review does not include literature on diversion programs after disposition, including court-mandated alternatives to detention and detention itself.

Diversion is predicated on the belief that formal system processing and/or incarceration has criminogenic effects and that alternatives such as decriminalization, deinstitutionalization, and diversion are better for long-term youth development (Bishop and Decker 2006; McAra and McVie 2007; Loeb, Waung, and Sheeran 2015). In creating informal channels to navigate youths (generally those who have committed first-time or status offenses) away from traditional processing, diversion programs serve as opportunities to correct youths' antisocial behaviors with the assistance of their families and the community, rather than through the justice system (Kammer, Minor, and Wells 1997; Patrick and March 2005).

Diversion programs are intended to hold juveniles accountable for their behavior (Mackin et al. 2010; Beck et al. 2006) without formal court involvement. As an alternative to traditional processing, diversion programs are designed to reduce stigma, reduce coercive entry into the system and unnecessary social control, reduce recidivism, provide youths with services they would not have otherwise received, and connect them to broader community service alternatives (Harris et al. 2011; Leve and Chamberlain 2005; Osgood and Weichselbaum 1984). Diversion programs are also designed to reduce the risk of criminal socialization by providing role models and positive peers, instilling discipline, improving school engagement, and increasing levels of overall youth functioning (Loeb,

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Waung, and Sheeran 2015; Jordan et al. 2013; Beck et al. 2006).

Diversion programs have also been implemented as a strategy to reduce the costs of formal court proceedings by diminishing the burden on the juvenile court system and detention facilities (Models for Change 2011). Diversion leads to a decrease in the caseloads of prosecutors, judges, and juvenile probation officers. In addition, diversion leads to a decrease in the number of youths sent to detention facilities. The cost of formally processing youths through the system and housing them is often greater than the cost of many diversion programs (Petrosino, Turpin-Petrosino, and Guckenberg 2013). For example, between 2005 and 2008, Florida's Office of Program Policy and Analysis and Government estimated that it would cost \$50.8 million to house juveniles in detention centers and only \$14.4 million to send them to a diversion program (National Conference of State Legislatures 2011). Such programs allow for the system's limited resources to be reallocated toward juveniles who commit more serious offenses (Cuellar, McReynolds, and Wasserman 2006). Diversion programs may reduce the strain on the entire juvenile justice system and improve its overall efficiency (Patrick and Marsh 2005).

## Theoretical Foundation

The concept of diversion originally arose from two theoretical rationales. The first, labeling theory (Becker 1963), contends that processing certain youths through the juvenile justice system may do more harm than good, because it inadvertently stigmatizes and ostracizes them for having committed relatively minor acts that may have been more appropriately handled outside the formal system (Lundman 1993; Klein 1986). As Akers explained, labeling theory "advances the thesis that individuals who are labeled or dramatically stigmatized as deviant are likely to take on a deviant self-identity and become more, rather than less, deviant than if they had not been so labeled" (1994, 128). A label of "deviant," "delinquent", or "juvenile offender" can affect the way in which youths come to define themselves and how society perceives them, thus influencing their future behaviors and dictating the social roles they can assume (Dick et al. 2004).

The second, differential association theory (Cressy 1952; Sutherland 1974), suggests that system-involved youths will adopt antisocial attitudes and behaviors from their delinquent peers. Exposure to and fraternization with more advanced delinquent youths and adults is thought to have a criminogenic effect that increases the probability of youths reoffending (Loeb, Waung, and Sheeran, 2015; Tustin and Lutes 2005). By reducing youths' exposure and contact with the juvenile justice system, diversion programs aim to minimize the effects of labeling them as deviant and limit their opportunities to associate with delinquent peers and adopt antisocial behaviors.

More recently, the developmental perspective in juvenile justice also suggests that most youths mature out of offending behavior as it is a short-lived, normal part of adolescence. Adolescence represents a period between childhood and adulthood characterized by experimentation and risk-taking behaviors, sensitivity to peers and other social influences, and the development of individual identity (Collins and Steinberg 2006; Spear 2010). For most youths, this period of exploration ceases as their individual identities are established, and only a small percentage of youths persist in their offending behavior into adulthood (Moffitt 1993). Consequently, diversion programs focused on minimal intervention are consistent with the idea that the juvenile justice system can facilitate a successful, prosocial transition to adulthood, while also holding youths accountable for their antisocial behaviors (Bonnie et al. 2013).

## Features of Diversion Programs

While diversion programs share the goal of processing youths away from more formal juvenile justice system involvement, the nature of diversion practices differs according to the type of program (Hoge 2016; Mears et al. 2016). These programs vary significantly in their approaches and methods (Cox, Conrad, and Allen 2003; Hamilton et al. 2007), and many of the differences can be found across six main components: 1) points of contact, 2) setting, 3) structure, 4) target population, 5) types of intervention or services delivered, and 6) formal and informal processing.

### Six Main Components

**Points of Contact.** Diversion programs vary according to the contact point or the method of entry into the juvenile justice system (Cocozza et al. 2005). Diversion can occur at contact points ranging from arrest to adjudication, but usually prior to disposition, when a youth is formally sentenced by a judge (Rousch 1996; Regoli and Hewitt 2000). Depending on the point at which a youth enters the system, diversion can include a range of approaches used as alternatives to either initial or continued justice processing.

**Setting.** Depending on the needs of the juvenile, diversion programs can occur in a justice setting (i.e., teen/youth court, drug court, mental health court) or in a non-justice setting (i.e., the community); the setting can vary in the way in which charges are handled, and whether sentencing is suspended or fully processed (Cocozza et al. 2005).

**Structure.** Some diversion programs are highly structured, with criteria for program inclusion determined by referral, the outcome of a risk/needs assessment, or other factors such as age, type of offense, and criminal history. Such programs may also lay out specific conditions and responsibilities that youths must follow to enter and remain in the program. These diversion programs often involve a system of incentives and sanctions, used to motivate youths to meet the terms of the program and ensure program completion. Failing to comply with program requirements may lead to dismissal from the program and a referral back to juvenile court (Models for Change 2011).

**Target Population.** Diversion programs vary by target population, whether for youths who commit first-time offenses, status offenses, misdemeanor offenses, or inclusive felony or violent offenses. Services can also target specific types of offenses (such as truancy or drugs and alcohol) or specific age groups (Cocozza et al. 2005).

**Types of Intervention.** Programs may also vary in the primary form of intervention or service provided. Depending on the intervention, services can be therapeutic in nature, geared toward behavior modification, involve community service activities, and/or include some form of restitution to victims or the community. Such service strategies include reintegrative shaming conferences, restorative justice, truancy intervention programs, juvenile holdover programs, respite or shelter care, mentoring programs, curfew prevention programs, parent training, and underage-drinking prevention and intervention programs (Cocozza et al. 2005).

**Formal and Informal Processing.** Diversion programs also vary across two general types: informal and formal. *Informal or caution or warning programs* are the least invasive and serve to divert youths out of

the system with little to no further action (Wilson and Hoge 2013). They emphasize warning about future consequences of continued antisocial behavior from family or local law enforcement (Potter and Kakar 2002). In caution programs, youthful involvement with the system is at its most limited point (Wilson and Hoge 2013; Polk 1984). Juveniles diverted by police officers can be warned and released with no conditions, released and referred to community-based services, and/or discharged with pending charges. If no further contact with the law occurs, any postarrest charges are dismissed after a specified time (Models for Change 2011; Mears et al. 2016).

Alternatively, *formal diversion programs* usually occur after arrest and involve 1) a justice component (police decisions, probation supervision, court processes), and 2) a service component (Dembo, Wareham, and Schmeidler 2005). After charges are filed, youths can be referred by prosecutors or judges to programs that range from simple surveillance to participation in an intervention. Conditions of formal diversion tend to include an admission of guilt and an agreement to participate in available and suitable programming. Successful completion of the terms of the agreement usually does not result in additional judicial processing (Models for Change 2011; Wilson and Hoge 2013).

## Recent Developments in Diversion

Diversion programs have evolved over the past few years, especially in relation to two of the six main components: setting (of services) and types of intervention. These changes in setting and types of intervention described below are intended to reflect true diversion and provide some of the often-missing information needed to improve the nature, quality, and number of services that youths in diversion programs receive (Wilson and Hoge 2013).

**Setting.** Diversion programs are moving more and more toward community-based settings, because of the tendency of programs within institutional settings to 1) reflect formal incarceration and potentially dampen any positive effects of treatment and services (Andrews et al. 1990b); 2) have more adverse effects through greater associations with antisocial peers (Dodge, Dishion, and Lansford 2007); and 3) have no greater effect on youths than those programs without juvenile justice supervision (Lipsey 2009).

**Types of Intervention.** To provide targeted services to youths and decrease the likelihood of reoffending, diversion practices are now focused on identifying the attributes of the clients most suited to certain types of programs and providing more direct therapeutic interventions within the diversion process (Wilson and Hoge 2013). Many programs rely heavily on the risk/need/responsivity (RNR) model, which suggests that focused therapeutic interventions are required for diversion programs to successfully address the risk factors often attributed to antisocial behaviors (Andrews et al. 1990a). This model suggests that 1) the intensity of the interventions should reflect the level of risk, 2) criminogenic needs should be targeted, and 3) decisions about programming should also consider other needs (i.e., academic skills, emotional problems) and strengths exhibited by youths (Vincent, Guy, and Grisso 2012; Andrews and Bonta 2010). Many practitioners have relied on the RNR model and employed risk/needs assessments to collect and synthesize information about youths to determine their level of risk for recidivating as well as their specific treatment and service needs (Schwalbe 2008). For more information, see the *Model Programs Guide* literature review on [Risks/Needs Assessment for Youths](#). In terms of diversion programs, usually reserved for youths who present with low or moderate levels of risk, this equates to providing precise yet minimal interventions.

## Limitations of Diversion

From a theoretical perspective, the limitations of diversion include potential incompatibility between diversion and the concepts of due process and fundamental fairness (Siegel and Welsh 2014), which posits that all youths should be punished or held accountable for all offending behavior (Mears et al. 2016) to discourage future offending.

In addition, diversion programs may “widen the net” of the state system (Mears et al. 2016) and increase (rather than decrease) the number of youths under the control of the state, by taking in youths who otherwise might never have come into contact with the system (Greene 2011; Sprott, Doob, and Greene 2004; Curran 1988). Prior to the implementation of diversion programs, juveniles who committed minor offenses would probably have been released from the system and would not have been negatively affected by court processing (Rausch and Logan 1983). Moreover, Sullivan and colleagues (2007) have indicated that many youths selected for diversion programs were usually those who would generally not continue to reoffend, contributing to the impression that a program was successful even though the youths’ behavior would have improved without any form of intervention (Patrick et al. 2004; Bishop and Decker 2006; Mallett, 2011). According to these critics, diversion programs extend social control to youths who would ordinarily have been released to the community, do not prevent stigmatizing, and may even increase recidivism.

Another potential limitation is whether diversion programs are discriminatory in nature due to inconsistent patterns in juvenile justice decision making. For example, a number of studies indicate that police can be influenced by their personal biases, including a youth’s race, and/or economic status (Schulenberg 2003; Johnson and Dipietro 2012; Tapia 2010). These programs could potentially lead to disproportionate representation of minority youths in the juvenile justice system, as the process to select youths eligible for diversion may be arbitrary (Kammer, Minor, and Wells 1997; Regoli and Hewitt 2000; Mears et al. 2016). Maclure and colleagues (2003) found that some court administrators believe that police discretion often leads to inconsistencies in the diversion process, including that black youths are subject to higher levels of court processing (Lieber and Stairs 1999). In this way, due to their subjective nature, diversion programs may be contrary to the concepts of fairness and justice and violate the civil rights of youths and their families (Sheldon 1999; Mears et al. 2016).

## Outcome Evidence

Recent meta-analyses reviewing both early and more recent studies (1982–2010) have found mixed results on the impact of diversion programs. Schwalbe and colleagues (2012) found that recidivism was the most common outcome reported across all 28 studies included in their analysis; however, the effect of diversion programs on recidivism was nonsignificant and no better than traditional juvenile justice processing. On the other hand, Wilson and Hoge (2012) looked at the results from 45 studies published between 1972 and 2010 and found that the average recidivism rate of diverted youths was significantly lower than that of comparison youths who went through the traditional justice system (for more information, see [Juvenile Diversion Programs](#)).

Early studies (Elliott and Blanchard 1975; Klein 1976) found little or no difference in recidivism between diverted and nondiverted youths or increased recidivism (Lincoln 1976). However, more recent studies

on diversion programs have generally yielded more positive results. Studies have indicated that diversion programs have resulted in a reduction in future offending, compared with traditional justice processing (McCord et al. 2001, Hodges et al. 2011). Dryfoos (1990) and Sheldon (1999) have argued that the most successful programs are those that provide intensive, comprehensive services over an extended period, coupled with placement in community-based programs. Of the programs that offered services, research suggests that they are most effective when services are based on the youths' level of risk for offending (August, Piehler, and Bloomquist 2016).

Although there are indications of positive outcomes, diversion programs have expanded and changed substantially (Puzzanchera and Kang 2008), meaning that assessing the evidence or impact of diversion on juvenile offending is complex (Osgood and Weischeselbaum 1984; Mears et al. 2016). Given the many desired outcomes of diversion programs, measuring their efficacy continues to pose a challenge (Hamilton et al. 2007). In addition, many studies also suffer from methodological issues having to do with a lack of appropriate comparison groups (Butts and Buck 2002; Beck et al. 2006). Without comparison or controls groups to establish a baseline group for intervention, it is difficult to assess the exact impact of diversion programs (Patrick et al. 2004; Mears et al. 2016).

Examples of current diversion programs in the *Model Programs Guide* include the following:

***Adolescent Diversion Project (Michigan State University)***. Adolescent Diversion Project (ADP) is a strengths-based, university-led program that diverts arrested youth away from formal judicial processing and provides them with services within their community. The goal of the program is to prevent future delinquency by strengthening a youth's attachment to family and other prosocial individuals, and avoiding potentially stigmatizing environments such as juvenile detention. ADP program is an 18-week intervention, tailored to the specific needs of each youth, where the caseworkers spend 6–8 hours per week with youths in their homes, schools, and communities. During the first 12 weeks of the program, called the active phase, caseworkers spend time each week providing direct assistance, identifying resources, and improving skills in areas such as family relationships, school issues, employment, and free-time activities. During the last 4 weeks, caseworkers transition to the role of consultant, where they prepare youths to use the techniques and strategies they have learned following the end of ADP.

An evaluation of ADP conducted by Davidson and colleagues (1987) found that although there were no significant differences on self-reported measures of delinquency, there were significant differences in rates of official delinquency. Youths randomly assigned to one of the six treatment strategy groups were significantly less likely to have had a court petition filed during the 2 years following the end of the program, compared with the control group. Similarly, a second study of ADP by Smith and colleagues (2004) found that at the 1-year follow up, youths who received services through the diversion program had a 22 percent recidivism rate, compared with a 32 percent recidivism rate for youths who were diverted, but received no services; and a 34 percent recidivism rate for youths who went through formal court processing. The results of both studies suggest that the interactive diversion intervention led to better results, compared with regular court processing of juveniles who committed first-time or status offenses, but only if juveniles were thoroughly separated from the system (Davidson et al. 1987; Smith et al. 2004).

*Multisystemic Therapy for Youth with Problem Sexual Behaviors (MST-PSB)*. MST-PSB is a therapeutic program for adolescents who have committed sexual offenses and demonstrated other problem behaviors by providing treatment within the adolescent's natural environment – that is, where the youth lives. MST-PSB is designed to reduce problem sexual behaviors, antisocial behaviors, and out-of-home placements. The program targets factors underlying problematic juvenile sexual behavior, primarily by addressing a youth's socialization processes and interpersonal transactions. Program staff members work directly with the youth's family and directly or indirectly with others in the youth's community such as peers, teachers, or probation officers. One goal is to empower the parents by providing them the skills and resources needed to raise their adolescent. This program can be implemented as part of preadjudication diversion or postadjudication probation.

An evaluation of MST-PSB by Borduin, Schaeffer, and Heiblum (2009) found that MST participants showed symptom decrease over time, and parents reported decreased behavior problems. Participants showed increases in cohesion and adaptability. There was an improvement in peer relations, a decrease in self-reported delinquent behavior, and fewer arrests and incarceration. The results of this study suggest the promising effects of therapeutic diversion on youths' future sexual and problem behaviors (Borduin, Schaeffer, and Heiblum 2009).

*Special Needs Diversionary Program (SNDP)*. SNDP is a diversion program in Texas designed for youths with mental illness who commit offenses. The goal of SNDP is to offer mental health treatment in conjunction with specialized probation supervision to juveniles ages 10–17, who display low levels of conduct and mental health disorders, with the aim of rehabilitating and preventing them from subsequent delinquency. Using a wraparound model, the program is an intensive case-management strategy that uses probation and professional mental health staff from community-based services to provide individual and group therapy, life-skills training, mentoring, anger-management classes, parental education, and support.

An evaluation of SNDP by Cuellar and colleagues (2006) found that youths referred to the SNDP program significantly reduced the total number of rearrests within 1 year following the program, compared with youths not enrolled in SNDP. Over a 1-year period, 63 fewer arrests occurred per 100 youths served by the program. The results of this study suggest that mental health diversion can be used effectively to prevent or at minimum delay youth recidivism (Cuellar, McReynolds, and Wasserman 2006).

For more information on these programs, please click on the links below.

[Adolescent Diversion Project \(Michigan State University\)](#)

[Multisystemic Therapy for Youth with Problem Sexual Behaviors](#)

[Special Needs Diversionary Program \(Texas\)](#)

## Conclusion

Diversion programs are intended to move youths away from judicial processing to avoid the stigmatizing and criminogenic effects of penetration into the juvenile justice system. Although these programs are fairly common and continue to be implemented (Wilson and Hoge 2013), there is no

commonly accepted definition (Wong et al. 2016) or set of policies and practices (Hoge 2016). Given the considerable variability in approaches and methods, such programs tend to have implementation issues (Lipsey 2009; Mears 2012; Ray and Childs 2015) and limitations in studying their impact. Establishing what constitutes diversion also creates the foundation upon which decisions can be made about which youths are targeted/eligible for diversion, the criteria for inclusion in such programs, and what types of programming are introduced to meet intended impact areas (Mears et al. 2016; Hoge 2016).

Nevertheless, to improve diversion programs, Mears and colleagues (2016) have suggested collecting systematic information on the specific activities that constitute various diversion programs, the number and quality of these activities, and the extent to which each intervention impacts recidivism or other outcomes. Diversion practices are also beginning to identify the attributes of the clients most suited to their program, and integrate risk and needs assessments to their models (Andrews and Bonta 2010). These modifications may provide some of the often-missing information needed to improve the nature, quality, and number of services that youths in diversion programs receive (Wilson and Hoge 2013) and allow for more consistent implementation and accurate assessment of the impact of diversion programs on juvenile offending.

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