

**JUVENILE JUSTICE
SHORT COURSE**

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Diversion as a Strategy

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Introduction

As increasingly larger numbers of juveniles are processed through the formal judicial system, it becomes necessary to divert them away from this system and try as far as possible to keep juveniles in the community. This is necessary for a number of reasons, some of which are listed below:

1. Juveniles are often the victims of harsh socioeconomic circumstances which propel them into deviant actions. Incarceration will not help them to develop better ways of coping with their circumstances, but will simply reinforce their alienation from the wider community.
2. Most of the offences committed by juveniles are minor, for example shop-lifting or vandalism. While these should be taken seriously, juveniles are at an impressionable age and may be influenced to act more responsibly through strategies other than the punitive and retributive.
3. Adolescents typically undergo a rebellious and defiant period while still maturing. Most will "outgrow" their deviance and assume more responsible roles as they become older. Over-reacting to "juvenile delinquency" may therefore be counter-productive and reinforce deviant tendencies.
4. Incarceration of juveniles in police cells and prisons, apart from the fact that these institutions are already overcrowded, may lead to worsening problems, eg emotional damage, contact with hardened offenders, and risk of contracting the HIV virus if sexually assaulted while imprisoned.

Definition of Diversion

As Muntingh & Shapiro (eds) (1994) point out, diversion can be described as the channelling of *prima facie* cases from the formal criminal justice system, on certain conditions, to extra-judicial programmes, at the discretion of the prosecution.

Diversionsary options in no way intend to make offenders less accountable or responsible for their actions, but rather to provide offenders with the opportunity to rethink their lives without getting a criminal record. In principle a case is eligible for diversion when it is not in the best interest of the offender, the victim, the criminal justice system or society that he/she should be prosecuted and convicted.

The primary aims of diversion can be identified as follows:

- to make offenders responsible and accountable for their actions
- to provide an opportunity for reparation.
- to identify underlying problems motivating offending behaviour through personalised services
- to prevent offenders from receiving a criminal record and being labelled as criminals as this may become a self-fulfilling prophecy
- to open up the judicial process for educational and rehabilitative procedures to come into action to the benefit of all parties concerned
- to lessen the caseload on the formal justice system.

Diversion can take place at any point in the criminal justice system where this may be appropriate. For example these points could be identified as follows:

1. Prior to any offending behaviour, through educational and other informative means to make juveniles aware of the criminal justice system, societal expectations, etc.
2. When the offender first comes to the notice of the police and before any charge is made. (ie warned and cautioned).

3. After being charged, but prior to any court appearance (at the discretion on the part of Police/prosecution to drop the charge in favour of some diversionary programme).
4. As a sentence of the court (eg a community sentence, etc)

Diversionary schemes aim to prevent juvenile offenders from becoming involved in the justice system. Diversionary schemes have been adopted by many countries. In the following the situation in South Wales and South Africa will be examined:

Diversionary Schemes in South Wales

During the 1980s in the UK there was an increasing emphasis on diversion, based on the premise that diverting young people from the criminal justice system at an early stage makes them less likely to re-offend. By 1990, 70% of all male offenders and 86% of all females aged 14 - 16 were cautioned by the Police (Home Office, 1991). Further Home Office statistics have shown that 87% of juveniles cautioned were not convicted of a further offence within two years.

The philosophy of the juvenile justice system in South Wales is one of minimum intervention. The Youth Justice service deals with children and youth from the age of 10 to 17. Youth who commit offences are dealt with wherever possible in ways which minimise intervention by the authorities. The Social Services Department adopts a policy of utilising the "decision-making" points of intervention to ensure that as far as possible youth are kept out of the criminal justice system.

Initially, after a juvenile has been charged with an offence, the docket goes before a panel consisting of a social worker and a policeman (the Youth Justice Bureau). If cautioning is considered appropriate the young person may be referred to a Pre-Court Diversion Programme. On this short Programme, young people are given a chance to look at the situations which lead to their offending, are confronted with consequences they face if they continue to offend and are helped to work out better ways of dealing with difficult situations. The Programme claims a success rate of 92,5% as only 7,5% have then gone on to commit further offences.

If the Youth Justice Bureau recommends prosecution, the case now goes before another Panel (the Pre-Sentence Panel) consisting of a Probation Officer, Social Worker, and representatives of the Education Department and the Crown Prosecution Service. This Panel may still decide that a caution is appropriate, or may suggest what is termed a *caution plus*.

The *caution plus* may involve sessions at the Community Options Project (a joint project organised by South Glamorgan Social Services and the children's charity Barnardos), where the serious nature of the offence is graphically brought home to the young person (eg if the offence is one of TADA "Taking and Driving Away" (stealing cars), horrific videos of the aftermath of car accidents may be shown). Other community service type options are also recommended for juveniles at this stage.

This all occurs before a juvenile attends Court. If the decision is made for prosecution, a probable recommendation would be a Supervision Order with a stipulated programme under the Community Options Project. This may involve reparations, offender counselling and diversionary projects (this will involve volunteers from the community).

If the Court accepts the proposals in the programme, an agreement meeting will be set up immediately after Court that will involve the young person, family/carer, supervising officer, project leader and project worker.

Another diversionary programme organised in Wales (South Glamorgan) is the Community Justice Centre. This Centre is part of a three-year funded experimental project of the Home Office Programme Development Unit. It works in partnership with Barnardos and the Youth Justice Services. The Centre works with young people aged between 10 and 17 years and anyone who is in conflict with a young person (they could be an adult or another young person), where it is anticipated

that unresolved conflict may have serious consequences, such as: family breakdown, homelessness, being excluded from school, criminal behaviour and involvement with the police and courts.

The service offers the possibility of the use of trained mediators who will assist the parties involved in a conflict to find a mutually acceptable resolution to their dispute. The Centre emphasises that mediation agreements reached with the help of the Community Justice Centre do not take away people's legal rights or replace the legal system. It however adds to the options available in terms of resolving conflict.

Diversion in South Africa

Diversionary programmes for juvenile offenders in South Africa have been promoted by organisations such as NICRO (National Institute for Crime Prevention and the Rehabilitation of Offenders). As noted by NICRO:

"Diversion appears to be one field in which rapid advances can be gained to make the criminal justice system more humane and empowering" (Muntingh & Shapiro (eds), 1994:4).

NICRO offers three diversionary options, namely:

- *Pre-Trial Community Service*
- *Victim Offender Mediation*
- *Youth Offender Programme*

Pre-Trial Community Service

This Programme is a diversionary option which allows the offender to serve a certain number of hours at a non-profit organisation in his/her free time without payment. Charges are withdrawn on condition that the service is completed within a given time. There are no definite rules for the number of hours a certain offence will receive because each case is considered individually. However on average a pre-trial server is instructed to perform 40 - 60 hours of service. On average juveniles (above the age of 14 years) will serve 30 - 50 hours. This option is only considered where the offence is relatively minor, where the offender is a first offender, where the accused has a contactable address and where the community service can serve some purpose of reparation and victim healing.

Victim-Offender Mediation

This Programme (VOM) is the process of facilitating communication between the victim and offender after a crime has been committed. During mediation, facts, feelings and restitution are discussed; the objective of such communication is to work out, with the aid of a mediator, an agreement which could consist of an apology, monetary compensation and/or indirect compensation for losses suffered by the victim. Referrals are made at two points in the criminal justice process, namely pre-trial and pre-sentence. Pre-trial is preferable and complies with one of the aims of the programme, ie diverting cases away from the criminal justice system.

Offenders are aged over 14 and should either have pleaded guilty or be planning to plead guilty. The offender must be willing to participate in negotiations with an identifiable victim and losses or damages must be easily identifiable and definable. Further screening of the victim and offender will be done continuously throughout the process by the appointed mediator and is also based on the following criteria:

- there must be something to negotiate about and feelings to be dealt with
- both parties must be willing to proceed
- there must not be ulterior motives for participation
- unduly high levels of conflict should not exist.

Youth Offender Programme

The Youth Offender Programme or "Juvenile School" is a life skills course comprised of six sessions held one afternoon a week (after school) over six consecutive weeks. It has been established as an alternative sentencing option for young offenders who find themselves in trouble with the law.

Young offenders are selected to attend the programme according to certain stipulated criteria. If the young offender meets the required criteria for referral, the court, with the assistance of a probation officer, refers the youth to the programme. Ideally the programme should be used as a pre-trial option in order to avoid a criminal record at a very young age. However it can also be used as a sentence. Whether used as a diversion or an alternative sentencing option, attendance at the programme provides the young offender with an opportunity to take responsibility for his/her actions (van der Sandt & Wessels, 1993).

The most suitable age of youth to be included in this programme is 12 to 18 years

Diversion in Zimbabwe

The most appropriate diversion occurs before juveniles even come into contact with the Police. However once a complaint has been made, there is still the opportunity of introducing some diversionary alternative. For example the complaint may initially be discussed with the Police Community Liaison Officers who may be able to reach agreement between the parties. Many victims opt to withdraw their complaints, allowing the Police simply to caution the juvenile; often the parents and the complainant are known to each other and are able to reach some agreement. Other examples of diversion can occur at other stages in the juvenile justice system, even though these might not be formally recognised as such. Further consideration of possible diversion within the Zimbabwe criminal justice system may take place during our discussions of the case studies prepared by Mrs Gumbo.

In closing I would like to let the Short Course participants know the main recommendations and decisions taken by the recent Juvenile Diversion Workshop, facilitated by NICRO and held in Bulawayo during March 1994 *:

1. There is need for a separate section of Probation Officers dealing only with juvenile offenders. Probation Officers are having to do far too many tasks, some of which could be done by clerks. Probation Officers need to specialise.
2. Probation Officer to be present to provide report on child's background if parents cannot be present at either the Police interview or during the trial.
3. Probation Officer to work with SPP in assessing the gravity of the offence and making a decision on whether to proceed.
4. Probation Officer to work with SPP in deciding on community service or juvenile school as a pre-sentencing option.
5. A separate court is needed for trials of juveniles.
6. Documents related to juveniles needed in the preparation of reports must be obtainable from one central place. This should help to lessen the delay in presenting reports which is currently being experienced.
7. Probation Officer to be attached to the court for all juvenile cases. Court rolls need to be made available to Probation Officers so that unnecessary time is not wasted waiting at court. In the juvenile court, cases where Probation Officers are involved need to be given priority so that time is not wasted, and the Probation service can be more efficient and effective.
8. Probation Officers need adequate information to try to find parents of juveniles, and must not be denied information from the courts when inquiring about juveniles in remand homes.

9. The Probation service needs rationalisation and restructuring, and possibly more person-power. Representations to be made to the head of Welfare Services as a matter of urgency.
10. A juvenile school programme to be developed for offenders.
11. Try to persuade Ministry of Education to change its attitude to caning."

* Acknowledgement to Legal Projects Centre (1994:6).

References

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