

Diversion Programs for Children

What Is Diversion?

Diversion programs are alternatives to initial or continued formal processing of offenders in the criminal justice system. Where some diversion programs apply to adults who perpetrate less serious crimes or crimes for their first time¹, these programs may also be applied to youth and children in conflict with the law.

‘Diversion’ is a rather broad umbrella term for a range of practices to redirect youthful offenders from the justice system through programming, supervision, and supports. Arguments that support diversion programs include the following:

- Diverting youth who have committed minor offenses away from the system and towards community-based treatment and support options is a more appropriate and constructive response than confinement, and a more productive way of addressing and preventing future delinquency
- Formally processing youth through the juvenile justice system does more harm than good by perpetuating delinquency through “labeling” or stigmatising and exposing youth to circumstances within juvenile and adult correctional institutions that may in fact increase delinquency
- Some studies have shown that diversion programs are less costly and more effective at fighting recidivism², due to the redundancy of judicial processes and detention
- Depending on the measures taken, diversion can promote community engagement and enhancement social cohesion
- Deprivation of the child’s liberty can be avoided by using alternatives to detention, while simultaneously reducing psychological damage caused by detention. This allows for the continued development of children in a normal social setting. “The use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously hampers his/her reintegration in society”³.
- It builds individual accountability and responsibility
- It has a better record of achieving successful outcomes for youth through education, pro-social activities, school and community engagement
- Detention-diversion may allow the accused of continuing their lives and employment prior to the trial, and especially in outcomes where the offender is required to pay a fine or offered a non-custodial sentence, social ties and continued employment are key factors that will enable them to turn over a new leaf

Diversion programs can take different forms:

- Formal programs are typically programs that need to be completed as a condition of diversion, such as paying a fine, undergoing rehabilitation sessions, performing community service etc.
- Informal diversion is when an official in the justice system decides with discretion, whether an offender should be kept out of the justice system
- Diversion programs may vary from low-intensity warn-and-release programs to more-intensive treatment or therapeutic programming, all in lieu of formal court processing.
- Restorative justice, community-based, fine, correctional supervision etc.
- Mental health treatment
- Jail-diversion keeps offenders awaiting trial out of detention

¹ Such as in New Zealand. See Community Law (2018).

² See Dembo, Wareham and Schmeidler (2005).

³ See Youth.Gov (2018c).

- Drug courts provide the necessary sanctions and services to reform drug offenders without resorting to long-term incarceration
- In youth-run courts (See Federal Youth Courts Program), youth sentence their peers for minor delinquent and status offenses and other problematic behaviors

Diversion programs can occur at multiple stages in the juvenile justice system, ranging from first contact to pre-trial and post-sentencing.

Diversion programs can be implemented at many levels and contexts:

- First contact with the law - typically police officers, may have the option of letting juvenile offenders off with a warning
- Within the juvenile justice system - where juveniles are offered an alternative to criminal justice on certain conditions such as the performance of community service
- In schools

International Conventions Emphasise on the Need for Diversion

This approach to justice is rooted in international law. It begins with the Convention on the Rights of the Child.

- Article 37 provides that “*the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort*”; and
- Article 40(1) stipulates that children accused of or recognised as having infringed the penal law “*be treated in a manner consistent with the promotion of the child’s sense of dignity and worth...promoting the child’s reintegration and the child’s assuming a constructive role in society*”.
- Further, Article 40(3) and 40(4) provide that signatory states must promote “*measures for dealing with such children without resorting to judicial proceedings*”, and make available “*a variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care...to ensure children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence*”.

The Beijing Rules lay out the international standards for administering juvenile justice.

- Rule 1 provides that the well-being of a juvenile and their family shall be a primary consideration
- Rule 11 further elaborates the need to divert juveniles away from formal trials, and the requirements for doing so (such as seeking the consent of the juveniles or their parents)

Where is it Being Used?

- The Child Justice Act (2008) in South Africa, Child Justice Act (2018) in Jamaica, and Youth Criminal Justice Act in Canada (2003) provide for extra-judicial means of tackling juvenile crime. Practices range from informal police warnings to sanctions such as community service.
- The US Federal Youth Court Program comprises of more than 1000 youth courts in the country, catering specifically to juvenile offenders. These youth courts strive to build civic engagement and an understanding of the legal system among non-offending youths who take part in the proceedings, and uses positive peer pressure as well as a peer-driven sentencing mechanism to decide on appropriate measures for first-time youth offenders. According to the Urban Institute’s Evaluation of Teen Courts Project, a study based on four teen court programs in four different states, the six-month recidivism figures among the programs ranged from 6% to 9%, which is promising.
- There exist many other diversion programs across the world and this list is not close to exhaustive.

What the Evidence Says

Overall, there are plenty of successful examples of diversion programs around the world. However from a more balanced point of view, the evidence is not conclusive; many studies show little difference between diversion and traditional measures, while some even found that diversion produced worse outcomes than the status quo system.

- Kretschmar et al (2018) present a study on the reoffending of Ohio young adults who had undergone a diversion program when they were youths, and finds that youth who had completed the program (as compared to those who partially completed it or did not participate at all) were much less likely at reoffending. For example, non-program-participants were 2.07 times more likely to reoffend than finishers of the program, and unsuccessful programs participants were 1.68 times more likely to reoffend than finishers.
- Kramers-Olen's (2015) article presents the view of South Africa's Child Justice Act from the perspective of neuroscience. The authors conclude: *"Developmental neuroscience...demonstrates the relative neural immaturity of adolescents in decision making and cognitive control during emotionally charged situations"* which raise concerns about subjecting children to the same legal processes as adults. The author suggests an increase the minimum age of criminal responsibility and the maintenance of the principle of the rebuttable presumption of doli incapax (Midson, 2012), *"thus examining the moral blameworthiness of adolescent accused's on a case-by-case basis. Of course, there are serious challenges in developing a psychometric measure of moral development that is reliable, culturally appropriate, and avoids the pitfalls inherent in the use of hypothetical dilemmas (see Turiel, 2008). Furthermore, given the challenges in human resources in the mental health field, such case-by-case examinations may prove very difficult to implement"* (p. 476).
- Sullivan and Latessa (2011) studied the effect of diversion programs on recidivism. One study of african-american males in Ohio's RECLAIM Program found that diversion program participants had lower rates of recidivism while under program supervision, but the adult reoffending rate of both groups were not significantly different. The researchers attribute this to the short program duration (only 4 months) and the lack of tailored approaches to the specific needs of individuals.
- Samuels' (2015) paper also discusses the possibility of police widening their net due to the institution of formal diversion programmes (in contrast to informal programmes, which can involve community service, donation to charity, or letting off with a warning), which in effect still keeps youth in the justice system and is counterproductive to the goal of reducing juvenile contact with the law.

It is important to keep in mind that what works in one jurisdiction may not work in another. To add to the difficulty of measuring the effectiveness of diversion programs in general, the sheer variability of diversion methods makes it difficult to isolate the 'overall' and true impact of such programs - the term may be slightly too wide to make any useful conclusions. For diversion programs to have the best hope of success, the programs must be well-tailored to the needs and local particularisms of the target jurisdiction. In addition, many instances of negative results have been attributed to poor implementation and management, which suggests that the concept of diversion alone is ineffective if the system put in place is not managed to good standards. To that end, programs need to be sufficiently funded, publicly supported, and effectively run by trained professionals/ facilitators.

If you would like to learn more, please visit childhub.org where you can find other material relating to child justice. This includes an overview of children in the justice system, as well a summary on restorative justice.

The following sources were consulted and referred to in the writing of this summary. Readers may find these sources insightful.

Written by Ser Jay Tan in 2018.

References

- Community Law (2018). *Alternatives to Going to Court: Diversion and Restorative Justice* [online], available at: <http://communitylaw.org.nz/community-law-manual/chapter-33-the-criminal-courts/alternatives-to-going-to-court-diversion-and-restorative-justice/>. Accessed 3 September 2018.
- Dammer, H.R., & Weise-Pengelly, C.A. (2016). Diversion. In Encyclopædia Britannica. Available at: <https://www.britannica.com/topic/diversion>. Accessed 4 September 2018.
- Kremers-Olen, A.L. (2015). Neuroscience, Moral Development, Criminal Capacity, and the Child Justice Act: Justice or Injustice?, *South African Journal of Psychology*, 45(4), pp. 466-479.
- Kretschmar, J.M., Tossone, K., Butcher, F., & Marsh, B. (2018). Examining the Impact of a Juvenile Justice Diversion Program for Youth with Behavioral Health Concerns on Early Adulthood Recidivism, *Children and Youth Services Review*, 91, pp. 168-176.
- Samuels, K. (2015). Examining the Utility of Pre-Charge Youth Diversion Programs: A Canadian Context (Master's Thesis). Available at: <https://ir.library.utoronto.ca/handle/10155/539>.
- Sullivan, C.J., & Latessa, E. (2011). The Coproduction of Outcomes: An Integrated Assessment of Youth and Program Effects on Recidivism, *Youth Violence and Juvenile Justice*, 9(3), pp. 191-206.
- UNICEF (2018). *Costs and Recidivism* [online], available at: https://www.unicef.org/tdad/index_56509.html. Accessed 28 August 2018.
- UNICEF (2018). *Toolkit on Diversion and Alternatives to Detention - Definitions* [online], available at: https://www.unicef.org/tdad/index_56037.html. Accessed 3 September 2018.
- UNICEF (2018). *Toolkit on Diversion and Alternatives to Detention - Child Development and Psychology* [online], available at: https://www.unicef.org/tdad/index_56375.html. Accessed 30 August 2018.
- UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>. Accessed 7 September 2018.
- Youth.Gov (2018a). *Diversion Programs* [online], available at: <https://youth.gov/youth-topics/juvenile-justice/diversion-programs>. Accessed 29 August 2018.
- Youth.Gov (2018b). *Federal Youth Court Program* [online], available at: <https://youth.gov/federal-links/federal-youth-court-program>. Accessed 29 August 2018.
- Youth.Gov (2018c). *Reforming Juvenile Justice: A Developmental Approach* [online], available at: <https://youth.gov/feature-article/reforming-juvenile-justice-developmental-approach>. Accessed 29 August 2018.