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Examining the Effects of Juvenile Diversion in San Diego, California

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A Thesis  
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Of the University of San Diego

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By  
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Sociology  
2021

## EXAMINING THE EFFECTS OF JUVENILE DIVERSION IN SAN DIEGO, CALIFORNIA

Juvenile diversion is the practice of minimizing a youth's contact with the formal juvenile justice system by redirecting him or her to community programs and other resources. Diversion programs are becoming more widespread across the country, and San Diego, California has been a pivotal starting point for diversion initiatives. The purpose of this study is to analyze the way juvenile diversion is operating in terms of services, referrals, program completion, recidivism, and effects on youth through a qualitative semi-structured in-depth interview approach. The research question that guided this study was as follows: does diversion operate on the principle of least harm or does it expand social control? Though diversion is seemingly regarded as a positive alternative to the juvenile justice system, my findings indicate the informality surrounding diversion services allows for increased officer discretion and social control of youth. Troubled youth were most commonly referred to programs for status offenses, and services included mental health treatment, case management, and life skills programs. Police were the primary points of contact for youth. These findings suggest that diversion functions as an extension of the traditional juvenile justice system and it may not be as positive in practice as it is in theory.

Keywords: diversion, social control, officer discretion

Across the country, juvenile justice reform initiatives are occurring to rehabilitate juveniles instead of criminalizing them. In 2018, for every 1,000 delinquency cases processed, 56.7% were handled formally while 43.3% were handled informally (National Center for Juvenile Justice). With nearly half of processed cases being handled outside of the court setting, the push to divert youth from the formal system increases. The goal is to keep children in the community, instead of exposing them to detention. San Diego, California has been a major center for juvenile diversion efforts, which aim to limit youth's formal contact with the juvenile justice system through the use of skill building programs and alternatives to detention. When youth come into contact with police and school resource officers for status offenses, law enforcement has the ability to refer them to programs instead of sending the case to the district attorney's office for formal charges to be filed. This allows youth to address the root causes of their issues while avoiding a juvenile record.

### *Purpose of the Study*

Though diversion efforts seem positive in theory, the purpose of this study is to examine if juvenile diversion is operating on the basis of least harm or if it is expanding the net of social control. This aligns with the work of Frank Zimring, who highlights least harm, and Barry Feld, who argues diversion expands social control. However, few studies have examined the selection process for youth as they enter diversion programs and the ways in which diversion is embedded in the formal system. This qualitative study also aims to shed light on these topics to determine how juvenile diversion affects youth in San Diego, California.

### *Research Question*

The research question that guided this study is as follows:

1. Does diversion operate on the principle of least harm or does it expand social control?

## LITERATURE REVIEW

Juvenile diversion is the legal practice of minimizing a youth's contact with the formal justice system by redirecting him or her to community programs and other resources. Juvenile diversion programs in the United States began in the 1960s and have become an increasingly popular way to hold misguided youth accountable for their actions (Roberts 2004). This literature review will examine the general way diversion operates, types of diversion services, reasons youth are diverted, benefits of program participation, and harmful effects of diversion.

The definition of juvenile diversion remains arbitrary because diversion initiatives operate differently across the country. There is little formal regulation, so it is up to a county or state on how they handle cases. Though diversion programs are not uniform, they typically begin with two different pathways. First, youth may make contact with law enforcement followed by a referral to outside sources or to a community program. Second, youth may get in trouble in the school setting, also resulting in a referral to community programs. The first scenario occurs post-arrest, while the second usually occurs before a youth is arrested or gets into legal trouble. Gibbons and Blake (1976:413) explain that there are many styles and levels of commitment to diversion programs and that typically depends on the type of offender. Further, youth who are referred to community programs by police are commonly those who are released without further action. This is important because there is no formal sanction or legal requirement, but the police still have control over the case since they are the referring party. Consequently, if a youth chooses not to complete the diversion program they are referred to, the case will go back to the police officer. Unsuccessful completion can then result in the youth being formally processed in the juvenile justice system (NeMoyer et al. 2019). This speaks to the voluntary nature of many diversion programs. Typically, diversion programs are optional for youth to complete, but

choosing not to participate does not dismiss the case. Therefore, formal action is likely to be taken.

Diversion is not offered to all youth offenders, despite its promise to limit the contact between juvenile offenders and the formal court setting. Juvenile diversion efforts are commonly aimed at removing noncriminal offenders from juvenile court (Rojeck and Erickson 1981:243). These offenders are classified as status offenders. Status offenses are noncriminal acts that are only considered law violations due to a juvenile's status as a minor. These acts might include truancy, running away, curfew violation, substance use, etc. Rojeck and Erickson (1981) explain that the justification for control over status offenders is to prevent escalation into delinquency, as status offenses are predelinquent. However, this justification blurs the line between a mistake and a delinquent act.

Diversion programs tend to offer a variety of resources and services, such as mental health counseling, family therapy, case management, life skills programs, employment, education, substance abuse treatment, recreational activities, and/or restorative justice (Campbell and Retzlaff 2000). Most of these services are offered in combination with others. Campbell and Retzlaff's study identified mental health counseling and life skills in most combinations of intervention. Though recreation had the highest completion rate, they found program completion is dependent on the individual offender instead of the type of program deployed. This is significant because it shows youth require an individualized approach, instead of a uniform program.

Diversion is supposed to function as a positive alternative to detention. Thus, research finds the supposed benefits of diversion programs to be avoiding an official record by providing

access to services, stigma reduction and decreased recidivism, and lower caseloads and costs.

Diversion allows a youth to avoid formal processing. This is the core benefit of diversion because youth may circumvent having a formal record and the sanctions that go along with court (Mears et. al 2016). Juvenile diversion programs are also thought to counteract labeling theory. Labeling theory is the idea that being arrested and labeled as an offender results in further delinquency. This is because children internalize the delinquent label. Elliot and Blanchard (1975) explain that diversion should theoretically reduce further delinquency because youth are redirected to less stigmatizing services than the traditional justice system. However, their findings suggest diversion was no more successful than probation in reducing recidivism. Although, diverted youth had less perceived negative labeling from friends than youth on probation. This may indicate diversion is less stigmatizing than probation, but not necessarily effective in reducing recidivism.

Another potential benefit of diversion is reducing court caseloads. Since diversion operates outside of the formal system, fewer youth should be referred to juvenile court. With a lighter caseload, court resources can then be directed to higher risk youth whose needs cannot be met outside of the court system (Mears et. al 2016). Frank Zimring also believes, with a diversionary mindset, that it is better to not convict one innocent kid than it is to let ten guilty go. His argument stems from diversion in the modern court and the 1974 *Juvenile Justice and Delinquency Prevention Act*. The objectives of the act were to remove minors from jails and prisons and to deinstitutionalize status offenders. The goal was to remove kids from detention and place them into community settings. (Zimring 2019:42). Due to this, Zimring saw diversion as a guiding light based on the principle of least harm. Least harm is the idea that the justice system is operating in a way that produces the least amount of negative impact on a youth.

Though diversion has some benefits in theory, research also suggests that it entails many harms. These negative consequences such as social control and net widening call into question if diversion is truly operating on the principle of least harm. As diversion operates outside of the court, it becomes subject to wide discretion with little formal accountability. This is why Barry Feld defines diversion as extralegal criteria, as it functions beyond the law. Diversion has arguably become an extension of the court's resources in order to combat delinquency. Feld (1999) further explains that diversion policies aim to enhance autonomy and limit state intervention, but instead they widen the net of control over non-criminal youth. Frank Zimring (2019) also admits that social control is being deployed. However, he argues that it is not an issue because it amounts to a low intensity and depends on the subject's basic health and community life.

Another aspect of social control pertaining to diversion is that many youth are inappropriately selected for these programs. Kids who may not have otherwise come into contact with the system are being subjected to diversionary efforts because they are being referred by schools, welfare agencies, and parents (Polk 654). Therefore, it is not just police who are widening the net of who is diverted; but, the practice is still reaching kids who may not need it, especially siblings of status offenders.

Lastly, diversion is left up to the discretion of law enforcement and judges. Feld further explains that police and intake keepers make low-visibility decisions with little accountability. This is problematic because youth are then subjected to an informal system with few protections. Based on these findings, diversion does not seem to operate on a least harm basis.

Juvenile diversion operates differently across the country, but the main objective is to



reduce a youth's contact with the formal system. Diverted youth are typically status offenders that must complete specific program requirements. While some scholars find diversion to be a positive alternative to juvenile detention, others point out its shortcomings. The juvenile justice system is supposed to operate based on the principle of least harm, so diversion in theory should follow this approach.

## METHODOLOGY

A qualitative research approach was chosen for this study in order to gain insight into the practice of juvenile diversion. Semi-structured in-depth interviews were the method of data collection because they allowed for a deeper understanding of individual experiences relating to the way juvenile diversion operates in San Diego. The Institutional Review Board at the University of San Diego approved this study.

### *Participants*

Selected participants resided in San Diego, California, and had direct experience with juvenile diversion. Participants were eighteen years of age or older, and either staff at diversion programs or members of law enforcement in San Diego, CA. The following list indicates selected participants, their job title, and affiliation.

1. Participant A, Officer, San Diego Police Department
2. Participant B, Director of Youth Development, Diversion Site B.
3. Participant C, Employee, San Diego County District Attorney's Office
4. Participant D, Director of Youth Prevention and Intervention, Diversion Site D.
5. Participant E, Case Manager, Diversion Site E.

6. Participant F, Associate Executive Director, Diversion Site F.
7. Participant G, Director of Services, Diversion Site G.
8. Participant H, Officer, San Diego Probation Department
9. Participant I, Director, Diversion Site I
10. Participant J, Chief Operating Officer, Diversion Site J

Participants were selected based on their area of expertise and direct knowledge pertaining to juvenile diversion. All participants have worked with diverted youth. Participants were recruited via email and telephone. They received an Informed Consent Form that detailed the research study, participation expectations, risks, benefits, and a notice of confidentiality. For this study, eight participants were interviewed via telephone and two were interviewed via zoom to accommodate participants' schedules.

Participants consented to audio recording and the interviews lasted approximately thirty-five minutes each. Questions and probes were developed to understand the definition of diversion, its lasting effects, how youth are selected for diversion, and how community programs operate. Interviews were conducted between October 1, 2021, and November 18, 2021.

### *Data Analysis*

Interview recordings were transcribed verbatim, and pseudonyms were assigned to all identifiers. The transcribed interviews were manually coded using in vivo and descriptive methods for the first cycle and pattern coding for the second cycle. The researcher then examined relationships across all data, analyzing it based on the themes that emerged from second cycle coding.

## FINDINGS

The primary purpose of this study was to examine if juvenile diversion is operating on the basis of least harm or if it is expanding the net of social control. Participants provided insight through their lived experiences and knowledge on the subject. Based on participant responses, it can be concluded that juvenile diversion expands the net of social control by operating as an extension of the formal system instead of an alternative to formal processing. This can be explained by the concept of delinquency expansion, the idea that juvenile diversion entails many layers that result in youth maintaining contact with the formal justice system.

### *Research Themes*

Four coding themes emerged from the interview data to support the concept of delinquency expansion: referrals, role of police, program requirements, and follow up. The themes are explained in detail below.

### *Referrals.*

For youth to enter a diversion program, a referral must first be made. For traditional diversion, this occurs at the first point of contact with law enforcement. However, San Diego diversion initiatives revealed that referrals happened at all points of entry in the juvenile justice system, and the selection process for youth expanded social control. This indicates that these programs are not truly diverting youth from the system but operating as an extension of it.

As of July 21, 2021, the District Attorney's office in San Diego rolled out its Juvenile Diversion Initiative. This program screens all cases referred to the DA for diversion eligibility. In this scenario, diversion is occurring post-arrest but pre-court. When youth are arrested by the

police, the police can decide to divert or send the case to the district attorney's office for formal charges to be filed. The new program requires all juvenile cases sent to the district attorney to be screened for their initiative before the DA files on a case. Participant I, a member of the National Conflict Resolution Center, explained that once the District Attorney has jurisdiction of the case, they have two options. The DA can either divert youth with the new initiative or file formal charges. Participant I described this in the following statement:

For the cases that the DA's office has the right to keep and they decide that they would prosecute on this on this youth, they have two options. They have the option of JDI or the option to prosecute. And right now, the great part is that actually all cases are being screened for JDI first, and then the ones that don't meet the criteria are the ones that unfortunately will continue down the traditional system. (Participant I)

As mentioned, this program screens all cases referred to the DA for diversion eligibility.

However, by the time a case makes its way to the district attorney, youth have already made formal contact with the system. The process to begin formal charges has already begun because the case did not get diverted at the law enforcement level. Therefore, diversion is still being utilized alongside the traditional system when the district attorney is the referring party.

Participant C, a member of the district attorney's office expands on this idea, as well as provides evidence for expanding social control in the following quote:

It's very broad so every law enforcement reports. So, it doesn't matter if it's the school resource officer report or an agency or any police report. Any law enforcement report that gets sent to us asking for charges to be filed against the youth will be screened for our diversion initiative. So, every single case that comes in here and gets screened. (Participant C)

Though the goal is to reduce contact with the system, the case is arguably entrenched in the formal system at this point. Participant I and Participant C show that diversion is operating at all points of entry into the justice system. This means that youth are receiving diversion services while still having ties to the formal legal system. Additionally, if all cases sent to the DA's office

are being screened, every youth that was not diverted at the police level is now on the DA's radar. Though the goal is to prevent youth from going further into the system, they have already become embedded in the system.

The next layer of diversion intersecting with the formal system is at the court level. Once a case is turned over to court jurisdiction, the judge may order informal supervision or the completion of a diversion program. Participant H, a member of the probation department, explained diversion on the judge level in the following statement:

When they come to court, the judge can decide in the early stages whether to divert them or let them go through the system. The judge has a very heavy responsibility, and it's just for juveniles. They're the ones that decide which track they're going to go on. Whether it's going to be informal or formal, and then that shapes if they get in a diversion program. (Participant H)

Participant H indicates the discretion the judge has in diverting juveniles. This has implications for the process of diversion as a whole. If the idea is to limit a youth's contact with the formal system, this layer of diversion does not recognize that goal. This is because the case has made its way from the police to the district attorney up through the court setting. Under this form of delinquency expansion, youth are going through the court process to then complete a diversion program in addition.

Diversion referrals can also occur as a condition of probation. This means diversion programs can contain a mixture of traditionally diverted youth and youth who are diverted as a condition of probation. Participant D explained that this happens because some cases cannot legally be diverted on the police level due to the nature of the crime, However, police can still refer youth to programs as an additional requirement of probation. Thus, this type of diversion program occurs post-sentencing and after contact with the system has already been made.

Alternatives to Detention, which aims to divert kids from custody, is one program that functions this way. It also allows youth to show the judge they are working on self-improvement.

Participant D described in the following statement how participation in a diversion program can influence the case outcome when it does go through formal processing:

A lot of times if families have gone through ATD, the DA gets the case. They're reviewing it. Sometimes they hear they're in ATD, they'll check in with us. How did they do? We let them know. That might make them decide whether they even want to file on the case. So ATD is used as another level of diversion a lot of times because it is a vehicle used to sometimes have the youth have their charges dismissed on the court level, or other times be handled on an informal level versus a formal level. Even for kids who end up on probation, they're still utilizing ATD to divert from being detained. (Participant D)

Participant D explained the way diversion is being utilized once youth have already come into contact with the formal system. This suggests diversion is being used as a tool to mitigate formal consequences, but not necessarily to prevent youth from entering the system.

Participant J also pointed to the way programs mix diverted youth and probation youth. Participant J mentioned that Program J takes referrals from probation, the district attorney, and public defender. Those youth then “participate in services and learn more about restorative healing and circles and emotional literacy” (Participant J). This intersection between diverted youth and probation youth speaks to diversion being an extension of the formal system, instead of an alternative. The mixture of these groups also has implications for social treatment and expectations. While more research on this aspect is needed, the potential for leveling juvenile offenders up to the status of probation youth exists.

Diversion referrals also have the capability of expanding the net of social control, as Barry Feld theorized. This happens through physical monitoring and types of youth being referred.

Participant D and Participant J indicated their programs have staff members located in schools. Participant D stated, “For our prevention and intervention staff, we have our staff co-located on site at schools and family resource centers in the community” (Participant D). Similarly, Participant J explained, “Program J is in various school districts. One of our biggest contracts is with the San Diego County Office of Education. San Diego County Office of Education provides additional support services for traditional school settings” (Participant J). These statements show the presence of diversion staff in the school setting. This expands the net of social control because kids who may not otherwise come into contact with the system are now being exposed to it through physical monitoring. The presence of staff in schools increases the likelihood of referrals, which in turn leads to delinquency expansion.

There is also the issue of youth being inappropriately selected for program participation. The DA’s Juvenile Justice initiative operates on diverting as many youths as possible. Participant C confirmed, “We try to capture as many people as we can” (Participant C). Other programs seem to follow this mentality. Participant D indicated that Program D diverts runaway youth. They explained, “Those runaway youth haven’t actually committed an offense, but obviously, if they’ve run away from home that’s a significant issue” (Participant D). From this statement, it is clear that diversion efforts are expanding to populations beyond youth committing crimes. Thus, the filtering process for youth to end up in diversion programs becomes less clear. Participant D also indicated that the police refer witnesses and victims of crimes to their program. This is another example of inappropriately selected youth. Though those kids may need services, there are alternatives to diversion programs. These kids are being enmeshed into the system, despite not having committed a crime. Lastly, Participant H, a member of the probation department, reported that the department expands their services beyond the diverted youth. Participant H

explained, “Sometimes that even means providing support services for the parents, for siblings of the household as well” (Participant H). This is a clear indication of delinquency expansion because siblings of offenders are being captured in the net similar to runaways, victims, and witnesses of crimes. The probation department then has knowledge of the siblings, potentially putting them on the radar in the future.

Ultimately, the referral process expands social control based on the referring party, the intersection of probation and diversion referrals, and expanding the net of referrals. This all happens in the context of maintaining contact with the formal system, resulting in the expansion of delinquency.

#### *Role of the police.*

Law enforcement has the most discretion when it comes to juvenile diversion, as they are typically the first point of contact for youth offenders. All police referred cases must also be sent back to the officers to close out the case as successfully diverted. Thus, diversion starts and ends with the police. Participant D and Participant F confirmed long standing partnerships with the police department, while Participant C, Participant B, Participant E, Participant G, and Participant J confirmed they maintain contact with police to report case outcomes. This shows the prolonged involvement of the police in diversion cases, despite the goal of limiting contact with the formal system.

Since law enforcement has the ability to divert at their level, it is up to their discretion which kids get diversion services and which kids go through the system. Participant D gives an example of this in the following statement:



We had a young girl, who San Diego PD had arrested, was going to try to book. Instead, she comes through ATD through cool beds. We find out through working with her that there had been numerous calls to the home over the past two years prior, always with her being the alleged victim of child abuse. She was already in the process of trying to apply for job corps. But the thing about job corps is, if you are in the juvenile justice system, you're not able to go into job corps. So, if she had been booked into the hall, that would have completely taken that huge goal and opportunity away from her. So, we were able to go back to San Diego PD and say this young lady is doing excellent with us. We really don't think her going back home is going to end up being the best thing. We've had meetings with her and her mom. It continues to be very volatile, and we really think what is best is for her to be able to move forward in going into job corps. But that's only going to happen, if you end up diverting her here on your law enforcement level and don't send that case forward. And they were like, okay. We'll trust what you say. (Participant D)

Participant D's story shows the power police have in diverting youth. The girl in this example was a victim of abuse, but the police were still planning to move her through the formal system. Though she ended up in a diversion program, she still made contact with the formal system before being intercepted by Program D. Therefore, her contact with the system was not minimized, but she was able to achieve her goals at the discretion of the police. This presents an inherent problem due to police biases. Some youth may have opportunities over others because there isn't a routine way to handle these cases. Though status offenders and first-time offenders are supposed to be diverted, officer discretion may allow otherwise, like in the case above. Participant E shared a similar statement about police discretion. They stated, "The officer takes a look at it. The officer might think this is a small crime, so it's not worth it to send it to juvenile court. Then he would send it to us. So, it completely is up to the officer what he needs to do" (Participant E). Participant E suggests an unregulated power structure that diversion gives the police. Since these cases are being handled on an informal basis, there are no safeguards for youth. They are at the will of the officer they encounter.

Officers also have discretion after youth partake in diversion programs. If a youth does not complete their diversion requirements, the program sends the case back to the referring

officer. From there the officer decides how to move forward. Participant E demonstrated this in the following statement: “So it’s completely up to the officer what he decides to do. He might want to refer the youth to the juvenile court. Or you know, he might look at it and say okay did you complete maybe two-thirds of the requirement? Then we can close the case. It’s completely up to them” (Participant E). In this statement, Participant E indicated the discretion of officers at the tail end of diversion. Youth must complete all requirements satisfactory to the standards of the officers for the case to be diverted successfully.

San Diego also has a special Juvenile Services Division in the police department. This unit offers its own diversion services, making the police both the referring party and the service provider. This has implications because youth maintain extended contact with law enforcement, though they are supposed to be diverted from the system. This is not to say that diversion increases criminalization of youth, but that potential certainly exists with maintained contact between youth and the police. The police have control at every point of diversion in this situation, instead of having some ties via a community program. The Juvenile Services Division is specifically aimed at addressing the underlying causes of juvenile offenses. Unlike patrol units, the Juvenile Services Division maintains extended involvement with the youth. Participant A, a member of law enforcement, explained in the following statement:

We are fortunate enough to where we can invest more time into our juveniles, as opposed to just patrol. On patrol it's more cut and dry. So, this is what we need to do. You commit a crime. One of two things will happen. You either go to juvenile hall or we take a report, and the detectives will follow up without having the time to find out why the juvenile is doing what they're doing. So, we have the luxury of time. So, we're able to find out the underlying issues of why our kids are doing what they're doing. (Participant A)

While it is important that youth who are struggling have access to services, the police department may not be the most appropriate provider. Participant A also alludes to maintaining contact with

youth for an extended period of time, despite diversion's aim to be temporary. This ties back to expanding social control because these youth continue to be under the radar of the police department. It also contributes to delinquency expansion, as the police take on more duties.

The last role of the police in diversion programs happens on a more indirect level, but still has implications for the concept of least harm. San Diego diversion programs are typically funded by the probation department. Four out of ten respondents confirmed the probation department funds their diversion programs. This suggests that these particular programs operate on an informal basis but have direct ties and influence from the formal system. Participant B, a member of the probation department, detailed how the department funds the Resilience program. He emphasized it was their idea to put it on the streets and find a provider to execute the program. Participant B also explained that the department received criticism for not directly offering programs. He mentioned "They see us as this group is out here doing what you should be doing, but in reality, we don't do that. We fund that" (Participant B). This statement shows that the probation department does play a significant role in diversion programs. It provides funding and even ideas for the programs to reach youth.

Participant E also confirmed, "The funding is from the probation department. It's running a five-year term. So, the funding is pretty stable" (Participant E). Participant D offered, "We've been the South region provider and that is actually funded through the Juvenile Probation Department and Juvenile Justice Crime Prevention Act funding." Lastly, Participant J explained, "We have the San Diego County Resilience Community Mentoring program. It's a contract through the San Diego County Department of Probation" (Participant J). Since the probation department funds these programs, there is an overlap between diversion and probation. If an aspect of the formal system is sponsoring community diversion programs financially, a hidden

layer of contact emerges and furthers delinquency expansion. The relationship between probation and diversion then becomes blurry, potentially allowing diversion to operate as an extension of the probation department.

The police have a significant role in the practice of diversion. Even if diversion services are providing opportunity for youth, police decide from the beginning which youth receive that opportunity. Additionally, offering in house diversion services may result in a conflict of interest. Lastly, probation department funding creates a maintained relationship between diversion and the formal system. All of these aspects undermine the principle of least harm, and result in delinquency expansion.

*Program requirements.*

Diversion programs entail a variety of services and program requirements. Common services include case management, individual therapy, family therapy, and substance abuse groups. Requirements range from writing apology letters to community service and skill building. While many of these services could be beneficial to youth, some programs operate on fear-based tactics that undermine the principle of least harm.

Teen court is a component of program E. Staff at this site schedule hearings for diverted youth among peer jurors. There is also a volunteer judge present. The youth jurors decide what requirements the diverted youth must complete and give them ninety days to accomplish them. Two issues emerge from this program. First, youth must admit guilt to the violation they allegedly committed before the hearing. Participant E offered, "We're not deciding if they're guilty or not. So, they have to admit guilt before they come to the program because we don't have the capacity to do that. So, they say the crime was committed. They admitted guilt to the

crime. Then we can take them to the teen court” (Participant E). This requirement puts a child in the position of choosing between admitting guilt without any protections to continue diversion or maintaining their innocence, resulting in program non-compliance. There also might be a level of coercion to enter the program in the first place. Participant E further explained, “We try to let them know that it is beneficial to participate in the program because you’re not going to have the criminal record on your name. It’s easier than juvenile court. But sometimes, you know they don’t want to do that anyway” (Participant E). While these are beneficial aspects to participating in teen court, there is also exposure to harm.

Another issue with this program is that it simulates the court setting, despite diversion’s promise to divert youth from the court. Additionally, the court is not required to follow any constitutional due process rules. Though constitutional rights are limited for youth in the first place, the complete absence allows greater harm to be done. Thus, there are aspects of court for the diverted youth, but few safeguards against those aspects.

Program A is the police diversion program that is offered by the Juvenile Services Unit. As previously mentioned, this program is problematic in that the police are the referring party and the service providers. However, many aspects of this program are ingrained in the formal system while operating on fear-based tactics. This undermines the principle of least harm. The program is structured by a series of presenters.

One of the presentations is given by a juvenile justice judge, which exposes youth to another aspect of the formal court setting. Participant A stated:

So, we do an orientation and then we have the judge. The judge from juvenile hall. So, he’s a real-life judge. He comes and he gives them a presentation. And he tells them

about choices, his role in the juvenile justice system, and what happens when they appear before him after a violation has been committed. So that particular discussion, you can hear a pin drop because they're soaking it up. Because now they know this is the judge, and whatever the judge says- it goes. And if the judge wants you to stay in juvenile hall, you stay in juvenile hall and there's nothing you can do about it. If he wants you to go home based on the facts, then you can go home. (Participant A)

Participant A demonstrates the way juvenile diversion is still interacting with the formal system. By bringing a juvenile court judge to speak to diverted youth, offenders are making contact with the head of the court system. However, if diversion is operating based on least harm, then youth should not come into contact with the juvenile judge at any point during diversion.

The police diversion program also features a presentation by a medical examiner. This presentation that Participant A detailed in the following statement seemingly relies on a scared straight tactic for youth:

The last presenter we have for our diversion program is the medical examiner. His presentation is called Beyond the Caution Tape... For example, he'll bring autopsy photos of gunshot victims. You know what you would look like on the slab. Or if you OD, this is what you look like. The effects of drugs on the brain, on the body. Especially the stuff that can kill you. (Participant A)

This contradicts the principle of least harm, as it exposes youth to potentially traumatizing imagery. The underlying message to youth is that that could be them if they do not get their act together. However, youth find themselves in this particular program for status offenses. Kids who have committed felonies, especially violent felonies, are not eligible to participate. Thus, youth who are considered relatively low risk in the community are being exposed to the effects of higher-level crime as a deterrent. Additionally, scared straight tactics are proven not to be effective for youth. Petrosino et. al discovered, "These programs likely increase the odds that children exposed to them will commit offenses in future" (2004). Ultimately, these program requirements may be creating the reverse effect for diverted youth, as well as prolonging contact

between youth and the police.

Lastly, Program J takes place during the school day for youth who are referred by school officers. Participant J explained, “They get part of their school day dedicated to programming. It’s usually no more than an hour and a half of their school day that is dedicated to the program” (Participant J). Requiring program hours during school could have two implications for youth. First, youth are missing class, which is typically a contributing factor to delinquency. Even if the program takes place during free hours, that is time that youth could be working on homework or meeting with teachers for assistance. Second, kids that are in these programs are singled out amongst their peers, potentially creating a social stigma for them. This program then brings delinquency expansion into the school setting.

While diversion programs have the potential to offer important services for youth, the requirements in some San Diego programs are counterproductive to the mission of diversion. For a diversion program to be effective, it must not operate in a way that could further harm children.

*Follow up.*

Though diversion is supposed to be a short-term solution to juvenile delinquency, many programs sustain contact with youth even after program completion. Participant C, a member of the District Attorney’s office, described this contact maintenance in the following statement:

We don't want it to be like you're in diversion, and boom, it's done 8 weeks later and walk away. We stay with them and hold their hand and walk them through it because we all know being an adult is very hard and it requires a village. So, we needed to stay with the kids. But see, diversion allows us to do that. If you're on probation, probation has to end. Whether it's three months, six months, a year, probation is gonna end and then we leave that youth and family. Never to be seen again. Well, that's not very supportive. I mean, if you're truly supportive, if you're really trying to enrich and rehabilitate and be a resource of support, then you do want to walk through with them. (Participant C)

Participant C's explanation is a clear example of delinquency expansion. It indicates that youth are still under some type of long-term surveillance. Additionally, this is occurring at the district attorney level, so there is further embedment in the system than the police level.

Participant F also described how Program F goes beyond the diversion contract.

Participant F offered, "What we might do is just say hey, your diversion contract is closed, but we're linking to this other program who can provide you the follow up aftercare support"

(Participant F). This statement shows that programs have the ability to maintain contact with youth, even if it is to provide additional resources. Lastly, many programs calculate recidivism rates to determine their effectiveness. Participant I explained:

So JDI is still new. So that one, we still don't know. The plan is for six months after program completion and one year after program completion. With the RCC program, we also checked three years after program completion. So, with the RCC program, it was eight percent after six months, eight percent after one year, and 16 percent after three years. And that's compared to probation, you know, 50 percent plus of recidivism.  
(Participant I)

This is an indication that programs are still monitoring youth after program completion. Even if the case is closed out as successfully diverted, there is still some type of record of the youth's name in order to run these statistics. While many rates are calculated after three months and after six months, Program I's rates are calculated more long term. Participant F also explained this process for program F in following statement: "We run the young people names three months after they leave our program in the ArcGIS system, which is the probation database, and that will let us know if the young person had a new negative contact with law enforcement" (Participant F). Participant F demonstrates another way youth are exposed to the formal system due to diversion. If probation is receiving a list of past offender's names, then all of those youth are coming into contact with another layer of the system. Diversion is supposed to prevent this.



Ultimately, some type of follow up exists with diversion programs. This may happen in the form of informal monitoring, additional services, or recidivism calculations. This does not follow the principle of least harm because program completion does not entail true freedom from the system.

## CONCLUSION

Overall, juvenile diversion is a pressing issue of juvenile justice, as this is a period of de-incarceration. With detention rates going down, juvenile cases are continuously being handled outside of the formal system. San Diego is a pivotal starting point for this practice, and other cities across the country are following suit. That is why it is imperative to examine how these initiatives affect youth. This study aimed to answer the question: does juvenile diversion operate on the basis of least harm or does it expand the net of social control? Based on the data, juvenile diversion undermines the principle of least harm by producing delinquency expansion. This is significant because the juvenile justice system is supposed to be founded on the principle of least harm as a whole. This is not to say that juvenile detention is a better alternative, but diversion practices need reform in terms of this study's key themes: the referral process, role of the police, program requirements, and follow up. These themes delineate the process of diversion and reinforce each other in expanding the juvenile justice system. This ultimately happens through prolonged contact with the formal justice system, despite diversion's promise of reducing exposure to the system. These findings supplement Feld's theory of expanding the net. However, this study's main contribution is the analysis of the different layers of diversion, especially in terms of police discretion. It did not support Zimring's concept of least harm. The study's findings are significant at the local level in San Diego. Yet, they point to implications at the state level, and even national level as diversion initiatives are adopted around the country. Juvenile

diversion has the potential to be a successful alternative to formal processing, but the shortcomings of the practice must be revised for that to happen. This is imperative as diversion becomes widespread.

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