



Vermont

Center for Justice Research

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Data Driven Decisions

VERMONT COURT DIVERSION PROGRAM

OUTCOME EVALUATION FINAL REPORT

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April, 2014

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April, 2014

ACKNOWLEDGEMENTS

The Vermont Center For Justice Research would like to acknowledge the following organizations and staff for their guidance and assistance during the course of the evaluation. In particular, the research team wishes to thank:

Vermont Attorney General's Office

Court Diversion Director Willa Farrell, for her assistance in securing administrative and financial support for the evaluation, in helping to ensure the quality of the data, and in providing timely staff support.

Vermont Criminal Information Center (VCIC)

Deputy Director Bruce Parizo, for his technical assistance and commitment to data quality which resulted in highly accurate criminal history extracts from the files of VCIC.

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EXECUTIVE SUMMARY

BACKGROUND

Court Diversion is a local community justice program that began in the late 1970's to divert minor offenders out of the court system. The program's success was so great that the Vermont Legislature made it a statewide option for youth, and in 1982 the program was expanded to include adults (3 VSA §163 & §164).

Court Diversion follows a balanced and restorative justice model: putting right the wrongs that have been done by addressing the needs of all stakeholders, including the victim, the community, and the offender. Diversion participants have been charged with a criminal offense but are not adjudicated. The State's Attorney refers individuals to the county Diversion program. The majority of Diversion clients are charged with misdemeanors; typical violations are disorderly conduct, simple assault, larceny, retail theft, unlawful mischief, and bad checks.

Community members on review boards meet with participants to collaboratively develop contracts that address the particular offense and the underlying reasons for the person's actions. Victims have the opportunity to participate in the process. Agreements made in the review board meeting often include restitution payments to the victims, counseling or substance abuse treatment, writing letters of apology, etc. Participants accept responsibility for violating the law and work to repair the harm they caused and, if successful, the State's Attorney dismisses the charge, and participants do not end up with a criminal record. Participation in the program is voluntary. Vermont law requires the Court to seal all associated files and records within 30 days of the two-year anniversary of successful completion of Diversion, providing the State's Attorney does not object to the sealing.

RESEARCH OBJECTIVES

An outcome evaluation attempts to determine the effects that a program has on participants. The objective of this outcome evaluation was to determine the extent to which the Court Diversion programs have an impact on recidivism.

This outcome evaluation of the Vermont Court Diversion programs was designed to answer three questions associated with the post-program behavior of subjects who participated in a Diversion program from July 1, 2008 to June 30, 2011.

1. Which subjects were convicted of crimes after their participation in the Court Diversion program?
2. For those subjects who were convicted of crimes after their participation in the Court Diversion program, when were they convicted?
3. For those subjects who were convicted of crimes after their participation in the Court Diversion program, what crimes did they commit?

EVALUATION METHODOLOGY

An indicator of post-program criminal behavior that is commonly used in outcome evaluations of criminal justice programs is the number of participants who recidivate -- that is, are convicted of a crime after they complete the program. An analysis of the criminal history records of 3,464 subjects, aged 16 and older, referred to Court Diversion from a Vermont Superior Court – Criminal Division and who completed the program during a three-year period from July 1, 2008 to June 30, 2011, was conducted using the Vermont criminal history record of participants as provided by the Vermont Criminal Information Center (VCIC) at the Department of Public Safety. All the subjects had completed Diversion at least two years prior to the analysis, the time point at which records may have been sealed by the Courts. The Vermont criminal history record on which the recidivism analysis was based included all charges and convictions prosecuted in a Vermont Superior Court – Criminal Division that were available as of January 14, 2014. The criminal records on which the study was based do not contain Federal prosecutions, out-of-state prosecutions, or civil traffic tickets.

It is important to note some limitations to verifying the accuracy of the data provided. When the criminal records from VCIC were searched by matching names and dates of birth, only 1165 of the 3464 Diversion participants were found to have criminal records. It is most likely that the reason no criminal records were found for the remaining 2299 subjects is that they had no contact with the criminal justice system prior to being referred to Diversion, and they were not charged with any additional crimes after leaving the program. Their successful completion of the Diversion program resulted in their original charge being sealed and consequently, they were assumed to be non-recidivists for this study. A less likely possibility is that the Diversion participants' name/date of birth data contained minor errors resulting in no matches with VCIC

records. It is important to remember that within the scope of this study it was not possible to confirm if there were inaccuracies in the name/DOB data for all of the subjects that did not have matching VCIC records. This report provides a recidivism rate analysis for the total study cohort of 3464 subjects; however, it is possible that the recidivism rate reported may be understated.

CONCLUSIONS

1. The outcome evaluation of the Vermont Court Diversion program revealed a recidivism rate of 14.3% for the total study cohort (n=3464). It should be noted that since a valid control sample was not available at the time of this study, it cannot be determined if this result represents a significant reduction in recidivism compared to a sample of similar offenders who had not experienced the benefit of the Diversion program and who were prosecuted through a Vermont Superior Court - Criminal Division.

It is important to remember that this recidivism rate represents a “point-in-time” calculation and does not take into account the large variability in elapsed time from program completion exhibited by the study cohort.

There is a chance that the recidivism rate reported for the total study group may be understated. It was not within the scope of this study to confirm if there were inaccuracies in the name/DOB data for the subjects that did not have VCIC records, as noted in the Methodology section. Criminal records were not found for about two thirds of the total study group. Since the Diversion program is targeted at minor offenders, it is most likely that for these participants, their referral to Diversion was their first contact with the criminal justice system. Upon successful completion of the program, they left without a criminal record and for this study, were assumed to be non-recidivist.

2. The Vermont Court Diversion program was shown to be effective in keeping its participants conviction-free in the community within the first year after program completion. Analysis of when participants were reconvicted revealed a recidivism rate of only 5.8% during the post-program time period of less than one year.
3. The vast majority of post-Diversion recidivists were misdemeanants. Post-Diversion recidivists were convicted of a total of 1544 crimes during the follow-up period, of which almost 90% were misdemeanors. Approximately 40% (199 of 496) of recidivists were convicted of only one post-Diversion crime. The five most frequent types of crimes, comprising almost 60% of the total, were (listed in descending order): theft, criminal Department of Motor Vehicle violations, driving under the influence (DUI), violations of probation, and drug crimes.

RESEARCH QUESTION 1: Which subjects were convicted of crimes after their participation in the Court Diversion program?

Summary of Findings

Table 1A shows a summary of the recidivism rate determination for the total study cohort. Examination of the criminal records of the 3464 subjects who participated in the Court Diversion program revealed that 496 subjects, or 14.3%, were convicted of some type of crime after completing Diversion.

Table 1A
Rate of Recidivism – Total Study Group

	N	%
Recidivist	496	14.3%
Non-recidivist	2968	85.7%
Total	3464	100.0%

It should be noted that this recidivism rate represents a “point-in-time” calculation and does not take into account the large variability in elapsed time from program completion exhibited by the study cohort. It is also important to remember that, since a valid control sample was not available at the time of this study, it cannot be determined if the rate of 14.3% for the total cohort represents a significant reduction in recidivism compared to a sample of similar offenders who had not experienced the benefit of the Diversion program and who were prosecuted through a **Vermont** Superior Court - Criminal Division.

Table 1B displays recidivism rates by the county in which the individual participated in Court Diversion.

Table 1B
Subjects Reconvicted of Any Offense – by County of Diversion Program

	Recidivist		Non-recidivist		Total
	N	%	N	%	N
Caledonia	45	22.1%	159	77.9%	204
Franklin	37	21.6%	134	78.4%	171
Bennington	58	18.9%	249	81.1%	307
Windsor	64	15.6%	347	84.4%	411
Orleans	26	15.2%	145	84.8%	171
Addison	30	14.6%	175	85.4%	205
Rutland	52	13.8%	324	86.2%	376
Chittenden	72	12.9%	486	87.1%	558
Lamoille	18	12.3%	128	87.7%	146
Washington	39	11.4%	302	88.6%	341
Windham	41	10.4%	352	89.6%	393
Orange	12	8.5%	130	91.5%	142
Grand Isle *	1	7.1%	13	92.9%	14
Essex *	1	4.0%	24	96.0%	25
Total	496	14.3%	2968	85.7%	3464

* Results should be considered non-conclusive because of low sample size.

Diversion is often thought of as only for first-time offenders, although prosecutors have discretion to refer repeat offenders. Table 1C summarizes a comparison of recidivism rates for subjects with no previous criminal records with two groups of subjects who have one or more than one pre-Diversion conviction. The results of this analysis show that there are people with pre-Diversion criminal records (albeit a small percentage, 4.6%) who subsequently complete Diversion successfully. More noteworthy is that none of them was subsequently convicted of another crime.

Table 1C
Subjects Reconvicted of Any Offense – by County of Diversion Program

	No Prior Convictions		One Prior Conviction		Two or More Prior Convictions		Total	
	N	%	N	%	N	%	N	%
Recidivist	496	15.0%	0	0.0%	0	0.0%	496	14.3%
Non-recidivist	2807	85.0%	114	100.0%	47	100.0%	2968	85.7%
Total	3303	100.0%	114	100.0%	47	100.0%	3464	100.0%

RESEARCH QUESTION 2: For those subjects who were convicted of crimes after their participation in the Court Diversion program, when were they convicted?

Summary of Findings

The calculation summarized in the previous section represents the recidivism rate at the time this study was conducted. This section takes a closer look at recidivism rates with respect to how long a subject was away from the Diversion program and able to recidivate. The total study cohort is included in this analysis, including the subjects with no criminal records.

Table 2 presents recidivism data for all Diversion participants (n=3464), focusing on the number of subjects who were able to recidivate during a time period and the number who were convicted during that same time period. Looking at the column under “< 1 Year”, the data show that all 3464 were able to recidivate during that time period. The table shows that 202 were convicted of crimes during that time period for a recidivism rate of 5.8%. The column of data under “During Year 1” shows the recidivism status of the subjects who were away from the Diversion program for one full year up to two years. The resulting recidivism rate for this time period was somewhat less at 4.4%. Table 2 also reveals that over 70% of the recidivists (354 of 496) did so within two years of leaving the Diversion program, and 90% (446 of 496) recidivated within three years of leaving the program. After three years the recidivism rate continues to decrease steadily as time away from Diversion increases.

**Table 2
Time to Recidivate by Years of Eligibility to Re-offend**

Post-Diversion Elapsed Time	< 1 Year	During Year 1	During Year 2	During Year 3	During Year 4	5 Years or Longer
Number of Participants Who Recidivated During the Time Period	202	152	92	38	12	0
Total # of Participants Who Were Able to Recidivate During the Time Period*	3464	3464	3464	2842	1574	568
% Recidivated	5.8%	4.4%	2.7%	1.3%	0.8%	0.0%

*The data in this row represents all participants who had participated in a diversion program and were able to recidivate for certain time periods. Participants may appear in more than one column based on the longevity of their post-Diversion elapsed time. For example each of the 2842 Diversion participants who appear in the “During Year 3” column also appear in the “< 1 Year”, “During Year 1”, and “During Year 2” columns because having completed three years of post-Diversion elapsed time, they necessarily have also completed less than one year, one year, and two years.

RESEARCH QUESTION 3: For those subjects who were convicted of crimes after their participation in the Court Diversion program, what crimes did they commit?

Summary of Findings

Table 3 shows the types of post-Diversion crimes for which the subjects were convicted. In total the recidivists averaged 3.1 convictions with a median of two and a maximum of 26. Approximately 40% (199 of 496) of recidivists were convicted of only one post-Diversion crime. The five most frequent types of crimes, comprising almost 60% of the total were (listed in descending order): theft, DMV violations, DUI, violations of probation, and drug offenses. Over 70% of the DMV violations consisted of driving with suspended license and careless and negligent driving. Other DMV violations included leaving the scene of an accident, recklessness and gross negligence, and attempting to elude a law enforcement officer.

**Table 3
All Post-Diversion Crimes for Which Subjects Were Convicted**

	# of Reconvictions	%
Total Theft Convictions	227	14.7%
Total DMV Convictions	214	13.9%
Total DUI Convictions	158	10.2%
Violation of Probation	147	9.5%
Drug Offense	140	9.1%
Total Assault Convictions	112	7.3%
Disorderly Conduct	95	6.2%
Failure to Appear	91	5.9%
Unlawful Mischief	70	4.5%
Alcohol Violation	70	4.5%
Total Fraud Convictions	67	4.3%
Unlawful Trespass	38	2.5%
Vs. Justice*	37	2.4%
Temporary Restraining Order Violation	23	1.5%
Fish & Game Violation	13	0.8%
Acts Prohibited/Prostitution	11	0.7%
Accessory	10	0.6%
Disturbing the Peace	8	0.5%
Other Convictions	13	0.8%
Total Number of Convictions	1544	100.0%
Number of Recidivists	496	
Average # of Convictions	3.1	
Median # of Convictions	2	
Maximum # of Convictions	26	

* Contempt, False Alarms, Resist Arrest, etc.

Table 4 shows that the post-Diversion recidivists were convicted of a total of 1544 crimes during the follow-up period, of which 89.8% were misdemeanors.

Table 4
Offense Levels for All Post-Diversion Crimes for Which Subjects Were Reconvicted

	N	%
Felony	158	10.2%
Misdemeanor	1386	89.8%
Total	1544	100.0%

Table 5A and 5B summarize the type of post-Diversion crimes committed, by the county in which the subjects attended a Diversion program. The tables also show for each county the number of recidivists and mean number of convictions.

Table 5A
Subjects Reconvicted of Any Offense – by County of Diversion Program

	Addison		Bennington		Chittenden		Caledonia		Essex		Franklin		Grand Isle	
	N=	%	N=	%	N=	%	N=	%	N=	%	N=	%	N=	%
Total Theft	19	25.7%	17	9.2%	37	17.1%	18	13.8%	0	0.0%	26	24.1%	4	50.0%
Total DMV	5	6.8%	14	7.6%	32	14.8%	16	12.3%	0	0.0%	19	17.6%	0	0.0%
Total DUI	14	18.9%	9	4.9%	30	13.9%	9	6.9%	0	0.0%	9	8.3%	0	0.0%
Violation of Probation	4	5.4%	25	13.6%	13	6.0%	14	10.8%	0	0.0%	2	1.9%	0	0.0%
Drug Offense	14	18.9%	32	17.4%	16	7.4%	5	3.8%	0	0.0%	9	8.3%	0	0.0%
Total Assault	5	6.8%	17	9.2%	16	7.4%	15	11.5%	0	0.0%	11	10.2%	0	0.0%
Disorderly Conduct	1	1.4%	10	5.4%	14	6.5%	8	6.2%	0	0.0%	5	4.6%	0	0.0%
Failure to Appear	1	1.4%	11	6.0%	12	5.6%	7	5.4%	0	0.0%	4	3.7%	2	25.0%
Alcohol Violation	6	8.1%	16	8.7%	5	2.3%	15	11.5%	0	0.0%	2	1.9%	0	0.0%
Unlawful Mischief	2	2.7%	12	6.5%	12	5.6%	3	2.3%	0	0.0%	13	12.0%	0	0.0%
Total Fraud	2	2.7%	6	3.3%	7	3.2%	4	3.1%	1	100.0%	0	0.0%	0	0.0%
Unlawful Trespass	0	0.0%	3	1.6%	8	3.7%	3	2.3%	0	0.0%	1	0.9%	2	25.0%
Vs. Justice*	1	1.4%	9	4.9%	5	2.3%	1	0.8%	0	0.0%	3	2.8%	0	0.0%
TRO Violation	0	0.0%	0	0.0%	3	1.4%	10	7.7%	0	0.0%	1	0.9%	0	0.0%
Other Convictions	0	0.0%	2	1.1%	4	1.9%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Fish & Game Violation	0	0.0%	1	0.5%	1	0.5%	1	0.8%	0	0.0%	0	0.0%	0	0.0%
Acts Prohibited	0	0.0%	0	0.0%	1	0.5%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Accessory	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	2	1.9%	0	0.0%
Disturbing the Peace	0	0.0%	0	0.0%	0	0.0%	1	0.8%	0	0.0%	1	0.9%	0	0.0%
Total Convictions	74	100.0%	184	100.0%	216	100.0%	130	100.0%	1	100.0%	108	100.0%	8	100.0%
# of Recidivists	30		58		72		45		1		37		1	
Mean # of Convictions	2.5		3.2		3.0		2.9		1.0		2.9		8.0	

* Contempt, False Alarms, Resist Arrest, etc.

Table 5B
Subjects Reconvicted for Any Offense – by County of Diversion Program

	Lamoille		Orange		Orleans		Rutland		Washington		Windham		Windsor	
	N=	%	N=	%	N=	%	N=	%	N=	%	N=	%	N=	%
Total Theft	1	2.7%	10	18.9%	2	2.7%	29	15.7%	9	8.2%	20	13.3%	35	16.4%
Total DMV	8	21.6%	5	9.4%	19	25.7%	17	9.2%	28	25.5%	16	10.7%	35	16.4%
Total DUI	4	10.8%	1	1.9%	9	12.2%	24	13.0%	17	15.5%	13	8.7%	19	8.9%
Violation of Probation	5	13.5%	1	1.9%	7	9.5%	10	5.4%	14	12.7%	21	14.0%	31	14.5%
Drug Offense	4	10.8%	4	7.5%	5	6.8%	18	9.7%	2	1.8%	12	8.0%	19	8.9%
Total Assault	3	8.1%	2	3.8%	5	6.8%	14	7.6%	2	1.8%	13	8.7%	9	4.2%
Disorderly Conduct	2	5.4%	2	3.8%	6	8.1%	14	7.6%	1	0.9%	17	11.3%	15	7.0%
Failure to Appear	1	2.7%	2	3.8%	5	6.8%	15	8.1%	5	4.5%	16	10.7%	10	4.7%
Alcohol Violation	0	0.0%	0	0.0%	5	6.8%	1	0.5%	14	12.7%	3	2.0%	3	1.4%
Unlawful Mischief	2	5.4%	0	0.0%	3	4.1%	11	5.9%	1	0.9%	1	0.7%	10	4.7%
Total Fraud	3	8.1%	18	34.0%	1	1.4%	11	5.9%	2	1.8%	6	4.0%	6	2.8%
Unlawful Trespass	1	2.7%	2	3.8%	0	0.0%	10	5.4%	3	2.7%	1	0.7%	4	1.9%
Vs. Justice*	1	2.7%	2	3.8%	0	0.0%	2	1.1%	3	2.7%	4	2.7%	6	2.8%
TRO Violation	1	2.7%	2	3.8%	2	2.7%	1	0.5%	0	0.0%	0	0.0%	3	1.4%
Other Convictions	0	0.0%	0	0.0%	3	4.1%	2	1.1%	0	0.0%	0	0.0%	2	0.9%
Fish & Game Violation	1	2.7%	0	0.0%	2	2.7%	5	2.7%	0	0.0%	0	0.0%	2	0.9%
Acts Prohibited	0	0.0%	1	1.9%	0	0.0%	1	0.5%	8	7.3%	0	0.0%	0	0.0%
Accessory	0	0.0%	1	1.9%	0	0.0%	0	0.0%	0	0.0%	7	4.7%	0	0.0%
Disturbing the Peace	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	0.9%	0	0.0%	5	2.3%
Total Convictions	37	100.0%	53	100.0%	74	100.0%	185	100.0%	110	100.0%	150	100.0%	214	100.0%
# of Recidivists	18		12		26		52		39		41		64	
Mean # of Convictions	2.1		4.4		2.8		3.6		2.8		3.7		3.3	

* Contempt, False Alarms, Resist Arrest, etc.