

**An Evaluation of
THE OAKLAND DRUG COURT AFTER THREE YEARS**

(Fast, Intensive, Report, Supervision and Treatment)

**A Drug Diversion Program of the
Oakland-Piedmont-Emeryville Municipal Court
and
the Alameda County Probation Department**

By

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INTRODUCTION: The Beginning of a Reality-Based Drug Court

The FIRST Diversion Program began in the Fall of 1990, but its genesis came earlier. While presiding over the Oakland Drug Court, I listened to hundreds of drug-using defendants request an opportunity to enter the Drug Diversion Program.

The existing Diversion system called for the defendant to report for a Diversion eligibility interview weeks after the initial court appearance and return to court 6 to 8 weeks later for the grant of Diversion. Over one third (1/3) would not return to court for their Diversion eligibility hearing. Though the demands of that program were minimal, three-quarters would fail that Diversion program.

I felt an increasing sense of frustration with the failure of the Diversion system to deal with the realities of drug addiction; that by failing to provide an immediate and highly structured drug rehabilitation program, the court was setting many drug-addicted defendants up for failure.

The FIRST Diversion Program grew out of those frustrations and is an attempt to deal with the psychological, physiological and behavioral realities of the drug-addicted defendant.

The project premise is that *immediate and intensive intervention after initial incarceration and release from custody create a significant opportunity for successful supervision and treatment of drug-using defendants.*

This project could not have been realized without the full partnership of the Oakland-Piedmont-Emeryville Municipal Court and the Alameda County Probation Department, nor without the full participation of the Alameda County Public Defender's Office and the District Attorney's Office.

I am indebted to the dedicated, innovative and hardworking people who make this program work.

Jeffrey S. Tauber

*Judge Tauber is the initiator of Oakland's Drug Court, the FIRST (Fast, Intensive, Report, Supervision and Treatment) Drug Diversion Program. The FIRST Drug Court Program is a collaborative effort of the Oakland Municipal Court and the Alameda County Probation Department, District Attorney's Office and Public Defender's Office.

The FIRST Diversion Program was presented with the 1992 Public Employees' Roundtable Award for Outstanding County-Run Public Service Program in the Nation." In 1993, the California Judicial Council presented Oakland's Drug Court with the Ralph G. Kleps Award for "Innovative Court Administration."

SHARED STATEMENT OF PURPOSE
of the Oakland-Piedmont-Emeryville Municipal Court
and the Alameda County Probation Department

Drug Diversion presents an extraordinary opportunity for successful intervention in a defendant's drug usage. Defendants are frequently new to the criminal justice system. This is often their first in-custody experience. They are frightened, upset, and worried about their future. In short they are in crisis. Out of that crisis comes our best (and perhaps last) opportunity for successful intervention. If we allow the immediacy of that crisis to fade, that opportunity may disappear.

By placing the defendant in comprehensive and intensive supervision, typically within one day of his or her release from custody, we believe we are giving the program and treatment the opportunity to take root and increasing the defendant's commitment to the Diversion process.

By recognizing that drug relapse and failure is often a part of the rehabilitation process and planning for it in the program, we believe we can keep the defendant's progress toward successful drug rehabilitation moving forward.

By responding to failures immediately and in a measured fashion we believe that we can gradually correct unacceptable behavior.

By responding to success similarly, we believe we can encourage compliance and successful drug rehabilitation.

By providing the defendant with a Diversion Contract that spells out the positive consequences of compliance and the negative consequences of non-compliance, we believe that we will help give the defendant control over his or her own rehabilitation program and ultimately make him or her a participant rather than a self-described victim of Diversion and the Criminal Justice System.

By communicating to the defendant, through educational and counseling groups, that recovery is possible and by teaching the keys to that recovery, we maximize the chance of each defendant succeeding.

And finally, by working closely with each other as partners in the development and administration of this program, we in the court and probation department, believe we can create a Diversion Program that maximizes the defendant's opportunity for successful drug rehabilitation.

THE F.I.R.S.T. COMPLIANCE STRATEGY

TWELVE FEATURES OF A REALITY-BASED DRUG REHABILITATION PROGRAM

Court-ordered drug rehabilitation programs suffer from the generally held belief that "nothing works" in the treatment of drug-using offenders. Too often that perception is based upon the experiences of court programs that do little to adapt to the realities of drug abuse (i.e., terminating an offenders participation upon the first sign of drug relapse.)

Successful court-ordered drug rehabilitation programs are based on an understanding of the physiological, psychological and behavioral realities of drug usage and are designed and implemented with those realities in mind. They recognize that drug abuse is a serious debilitating disease; that relapse and intermittent progress are a part of most successful drug rehabilitations; that as a drug addiction is not created overnight, it cannot be cured overnight; that a drug user is most vulnerable to successful intervention when he or she is in crisis (i.e., immediately after initial arrest and incarceration); that drug users are in denial and will do everything possible to avoid responsibility, make excuses for program failure, and evade the court and its programs.

The F.I.R.S.T. Diversion Program is an attempt to work with, rather than against, those realities. The F.I.R.S.T. Drug Diversion Program's reality-based design relies on the following features:

1. A DIVERSION PROGRAM

The California Diversion statute provides a powerful motivational tool for drug rehabilitation, offering the defendant the opportunity to work toward a complete dismissal of a felony drug charge.

Drug Rehabilitation is at best a difficult, demanding, and lengthy process. In order to motivate defendants to complete that process it is necessary to offer them substantial positive, as well as negative incentives to do so.

In California, Drug Diversion is statutorily mandated for eligible defendants (See Appendix A: California Penal Code §1000), diverting less serious offenders from the criminal justice system into a supervision and treatment program administered by the county probation department. If the defendant successfully completes the diversion program, criminal charges are dismissed and the offense (including the arrest) is erased for most practical purposes.

2. A UNIFIED DRUG COURT

The Oakland Drug Court provides direction and focus through the leadership of a single judge and permanent staff.

Such leadership insures consistency in judicial decision making and program implementation, coordination and accountability of participating agencies and staff, and cost-effectiveness through direct calendaring and efficient case management.

3. IMMEDIATE INTERVENTION

Recognizing that even the best drug rehabilitation program will be less than effective if intervention is delayed, diversion is typically granted within one day of the offender's release from custody.

Upon grant of diversion, the divertee (a defendant admitted into a diversion program) is ordered to go directly to the Probation Department (a 5-minute walk) for an immediate Diversion orientation session.

For the same reason, supervision and treatment are front-loaded to engage the participant early and often, giving the program and treatment the opportunity to take root. Over the first ten weeks, divertees are required to have a minimum of three contacts per week with the program staff.

4. A HANDS-ON APPROACH

By working closely together, in daily communication, the drug court judge court staff and dedicated probation officers are able to monitor each divertee's progress, as well as the programs overall effectiveness.

A divertee is ordered to report to a named probation officer immediately after the court's initial grant of diversion. That pattern continues over the course of diversion. Typically, the divertee's probation officer meets with the judge before court hearings to discuss the divertee's progress, appears in court with the divertee, and meets with the divertee immediately after the court hearing.

5. COORDINATED, COMPREHENSIVE SUPERVISION:

The drug offender is held accountable for his or her conduct through the implementation of a coordinated and comprehensive supervision plan.

Offender accountability depends on the establishment of strong linkages between participating agencies, direct access to full information on the divertee's progress, and vigilant probation and court monitoring procedures.

The Court receives complete information on the divertee's progress at frequent progress report hearings (poor performers typically are required to appear at 5-week intervals). Additionally the divertee is returned to court immediately after substantial non-compliance for a modification and/or termination hearing.

6. DRUG TESTING

The F.I.R.S.T. Diversion Program relies on random drug testing.

Frequent drug testing is critical to the monitoring of Divertee progress. Continued drug usage is typically dealt with by increasing supervision, testing, and/or treatment requirements, ultimately culminating in residential treatment (rather than incarceration).

7. THE USE OF PROGRESSIVE SANCTIONS

The court relies on the use of progressive sanctions, the measured application of a spectrum of sanctions, whose severity increases incrementally with the number and seriousness of program failures.

The F.I.R.S.T. Program uses a patient and consistent, yet flexible, approach to the monitoring of divertee progress, to move the divertee toward sobriety.

Inadequate Participation

Less serious violations, such as inadequate participation, call for sanctions starting with the intensification of supervision, treatment, and/or a single day's custody and increase incrementally (i.e., 1 day, 2 days, 4 days, etc.) with continued program violations. While failure to participate may call for the limited incarceration of the divertee, (and the recycling of the divertee through that phase) continued drug usage is more appropriately dealt with by increasing supervision, drug testing, and/or treatment. Note: In the nomenclature of the Drug Court, the offender is recycled into the program after spending at least one day in custody.

Program Failure

At the other end of the spectrum, program failure (represented by an offender's termination from diversion after a failure to appear i.e., FTA, for a progress report hearing) calls for a substantial period of incarceration (at least one week) to detox the offender, as well as deter the divertee from further program failure and/or drug usage. Note: In the nomenclature of the Drug Court, the offender is *reinstated* into the program after spending at least one week in custody. (Only two reinstatements were permitted before termination from the program.)

8. THE USE OF CONTINGENCY CONTRACTS

Progressive sanctions are applied according to the terms of a contingency contract developed cooperatively by the Drug Court Judge, the Probation Department staff, and other participating agencies.

There should be consequences for all conduct. Under The Contingency Contract's Incentives/Sanctions Point System, positive behavior is rewarded and negative behavior is penalized. The number of rehabilitative tasks completed is reflected in the contract by the number of points achieved. (See Appendix B).

Over the life of the program, that point total may translate into rewards (where the divertee's term of diversion may be reduced from 24 months to as little as 6 months, and the diversion fee reduced from \$220 to as little as \$20) or sanctions (where the court increases the intensity of supervision, treatment and/or orders the divertee into custody for a limited period).

By establishing specific consequences for success and failure, the F.I.R.S.T. Diversion Contingency Contract makes all participants accountable for the contracts promised consequences (including the court and Probation Department), and gives each divertee control of his or her own rehabilitation.

9. EFFECTIVE LONG-TERM TREATMENT AND AFTERCARE

The F.I.R.S.T. program relies on an innovative probation group supervision model that is both cost and treatment-effective.

Meeting on a weekly basis (after the initial group orientation session) both supervision and counseling are provided within the context of a group session. Most divertees are assigned to community-based counseling programs at their individual probation assessment interview in the second week of the program. The Probation Department also provides five weekly drug education classes (2 hours per session) on its premises.

10. A COURT ENVIRONMENT THAT PROMOTES REHABILITATION

Unlike more traditional courts, where the goal is to expeditiously adjudicate cases, the F.I.R.S.T. Drug Court is designed to promote the rehabilitation of drug-using offenders.

By increasing the frequency of court hearings, as well as the intensity and length of judge/divertee contacts, and by developing a personal relationship with individual divertees, the judge has become a critical participant in the divertee's rehabilitation. The court and staff work closely together as a team, understanding that a non-adversarial approach works best to promote rehabilitation.

The court calendar is set up to provide participants with an object lesson on the potential consequences of the program. In-custody divertees who have failed in the program are always seen first before a full audience of participants. Those appearing for progress reports are heard before those who are to be granted diversion, with successes (dismissals are greeted with applause, congratulations, and a F.I.R.S.T. diploma) and failures (short-term remands into custody) prominently displayed. Last on the calendar are those to be recycled or reinstated into the program (after new divertees have left the courtroom!)

11. JUDICIAL INVOLVEMENT IN A COURT/PROBATION PARTNERSHIP

It is necessary to look beyond traditional roles and relationships to the forming of innovative partnerships that feature collaboration in decision making, sharing of resources, and coordination of efforts.

The Drug Court Judge steps beyond the traditional judicial role of impartial referee and becomes an active participant (along with the Probation Department) in the organization, design, and implementation of the F.I.R.S.T. Drug Court and Court-Ordered Drug Rehabilitation Program. Only by doing so can we create the structures, procedures, and relationships necessary to make the FIRST program work.

12. STRUCTURAL ACCOUNTABILITY: WHERE STRUCTURE IS ACCOUNTABLE FOR PROGRAM COORDINATION AND EFFECTIVENESS

The goal of the F.I.R.S.T. Program is to reshape program and redefine relationships in such a way that program structure itself will promote accountability and help maintain effectiveness over the life of the program.

An example of structural accountability can be found in the Oakland Drug Court's Contingency contract. The Contingency Contract is the structural cornerstone of the program, providing ground rules that reduce confusion and confrontation over program implementation while promoting long-term program stability and effectiveness. The contract makes the divertee accountable for his or her behavior. Importantly, the Court, Probation Department and participating agencies have also committed themselves to the terms of the contingency contract, making themselves accountable to the divertee and to each other for the contract's promised consequences.

THE THREE PHASES OF THE F.I.R.S.T. PROGRAM

PHASE I - THE DIVERSION PLACEMENT

DAY 1

Felony drug defendants are arraigned in the Felony Master Calendar Court.

A packet of information is compiled by the District Attorney's Office prior to the defendant's appearance in the Court. This consists of:

- (1) a declaration of eligibility;
- (2) a police Report; and
- (3) a RAP Sheet and/or CII Report (county and state criminal histories)

At the time of arraignment, the District Attorney determines initial statutory eligibility. If the defendant is determined to be eligible, the judge requests a combined OR (release without bail) and diversion report (see Appendix C) sent to the "Drug Court" for a diversion referral and attorney and plea hearing on the following day.

DAY 2

At an afternoon Diversion Referral/Attorney & Plea hearing in the Drug Court, the defendant is interviewed by both Pretrial Service personnel for a diversion recommendation (and OR release recommendation if necessary) and by the Public Defender regarding representation.

Important: Before a defendant can be granted Diversion (or recycled/reinstated into Diversion), he or she must be released from custody and ordered to return to court the following morning for the grant of Diversion and the initial probation session.

DAY 3

Before the morning calendar, a probation officer reviews the Diversion/OR report prepared the previous afternoon and makes a recommendation as to the defendant's appropriateness for diversion. That recommendation is considered by the district attorney, public defender (or other defense counsel) and the court, before the court's decision is made.

Each of four Phase II probation officers under the supervision of a Unit Supervisor is assigned one week a month to receive all diversion referrals for the week. The probation officer's caseload is limited to approximately 25 defendants per month (a total caseload of 50 defendants) who are scheduled to graduate to Phase III at the ten-week progress report hearing.

The probation officer acts as the court officer and appears in court on a monthly basis when his or her own cases are before the court. This allows the probation/court officer to report to the court directly on the divertees progress (as well as return a defendant who has performed poorly to court at the five-week progress report hearing).

PHASE II. THE TWO-MONTH INTENSIVE EVALUATION AND SUPERVISION PHASE

Each morning, at the time the defendant is granted Diversion, defendants are ordered to report immediately to a named probation officer for an initial group orientation session (approximately five defendants per day). Divertees are briefed by their court-assigned Probation Officer on the rules and regulations of the FIRST Drug Diversion Contract.

Over the next ten weeks, the divertee is responsible for completing 22 separate tasks under the contract.

- reporting to the probation officer for a single assessment interview (the second week) and attending five group probation sessions (6)
- attending four Drug education and one AIDS class (5)
- taking three urine tests with negative results (3)
- registering with a community counseling program in the program's 2nd week and participating in it over the course of the program (7)
- making one payment toward a \$220 diversion fee (1)

At the ten-week Progress Report hearing, the divertee's performance in Phase II is reviewed, as well as his or her compliance with the Phase II Contingency Contract. (See Appendix B).

Those divertees who have satisfactorily fulfilled their obligations are granted whatever incentives their performance calls for under the contract (up to a 9-month reduction in the 24-month diversion term and up to a \$100 reduction in the \$220 diversion fee). The divertee is then graduated to Phase III and ordered to immediately report to his or her Phase III probation officer for an orientation session.

Those divertee's who have performed inadequately may be: (1) given a 5-week extension to complete the Phase II program (where the divertee has not completed the drug education and/or counseling requirements); (2) recycled through Phase II with a 5-week further progress report (which may include a limited period of incarceration) or (3) assigned to individual probation supervision because of special problems (i.e. mental disorders or learning disabilities).

PHASE III. THE FINAL SUPERVISION AND TREATMENT PHASE

During the three-month Phase III period, a defendant is responsible for completing 24 separate tasks under the Phase III contract:

- attending eight (8) group probation sessions
- seeing the probation officer twice (2) individually
- taking four (4) urine tests with negative results
- participating in community counseling for eight (8) weeks
- making two (2) diversion fee payments

At the first three-month Phase III Progress Report hearing, the divertee's performance is reviewed as well as his or her compliance with the Phase III Contingency Contract. (See Appendix B).

Those divertees who have satisfactorily fulfilled their obligations are granted whatever incentives their performance calls for under their contract (up to a 9-month reduction in the 24-month diversion term and up to a \$100 reduction in the \$220 diversion fee). This may mean that the divertee has earned a dismissal under Penal Code Section 1000 or that he or she has their case continued the standard 3 months period for a further progress report.

Those divertees who have performed inadequately may be: (1) recycled through Phase III with a further progress report in 5 weeks (which may include a limited period of incarceration); or (2) terminated from the Diversion Program and have criminal proceedings reinstated.

EVALUATION

METHODOLOGY

This evaluation covers a three-year period following the arraignment of those defendants in this study.

The data in this Evaluation was provided by the Alameda County Data Processing Department, the Alameda County Probation Department and the Oakland-Piedmont-Emeryville Municipal Court Administration Office. The study was originally designed by Dr. Dorie Klein (Doctor of Criminology, U.C. Berkeley), Director of the Alameda County Office of Court Services and completed under the direction of Cathy Pementell, Assistant Division Chief of the Oakland-Piedmont-Emeryville Municipal Court.

It relies on the statistical comparison of the first one hundred-ten (110) defendants referred to the FIRST Diversion Program between January 2 and February 7, 1991 and the first one hundred-ten (110) defendants in a control group referred to Diversion between January 1 and March 8, 1990.

The data on successful diversion dismissals was cut off thirty-six (36) months after each initial Diversion Hearing. The data provided on the rate of felony recidivism, the number of days in custody and the issuance of bench warrants reflects a cut off of thirty-six (36) months after the date of each defendant's initial arraignment. (See Appendix D for data base.)

A limited number of diversion cases were excluded from the samples because they were not representative of the diversion population. For example, those defendants who were not placed in the FIRST Diversion unit or who were immediately transferred out of the Oakland unit's jurisdiction were excluded.

In an attempt to capture a representative sample reflecting a broad spectrum of defendants, the entrance requirements for the FIRST Diversion Program were relaxed substantially (consistent with probation policies and community safety).

Data furnished by the Probation Department on the number of Diversion Referrals and Grants for all January and February 1990/1991.

TABLE 1

January & February	1990	1991
Referrals to Diversion	144	224
Grants of Diversion	95	194
% of Referred Defs. granted Diversion	65.9%	86.6%

Thus, we are providing data on the effect of the program on many defendants who are typically considered poor rehabilitation risks (with a large number of failures to appear, a long history of drug usage, or previous failures on Diversion or probation). This also assures us that we are not simply skimming the criminal justice system for those defendants who are most likely to succeed.

The 1991 FIRST Diversion study group is made up of those defendants who had not been referred to diversion on the instant case previously (54 defendants).

The First Study Group is divided into a *Speedy Diversion* group made up of those defendants who were granted diversion within 3 days of their arraignment date, and a Non-Speedy Diversion group (56 defendants) who were granted diversion four (4) days or more after the defendant's arraignment date.

The 1990 sample is also composed of divertees who had not been referred to diversion previously on the instant case.

(Note: The only difference between the *speedy* and non-speedy 1991 Diversion groups is the number of days between the Arraignment and Diversion hearing dates. There were no *speedy* Diversion grants in 1990; therefore both 1991 *speedy* and non-speedy groups are compared for analysis with the 1990 group).

THE SUCCESS OF THE FIRST DIVERSION PROGRAM

A. The data collected supports the conclusion that the imposition of an immediate and intensive supervision and treatment program substantially reduces the rate of felony recidivism during a three-year period following arraignment.

The First Diversion Program appears to have reduced the felony recidivism of defendants (arrests for new felony offenses) markedly over the 1990 program. It is estimated that there were 44% fewer felony arrests (582 fewer) for offenders in the FIRST Program than under the previous program. (See Appendix D4).

(NOTE: There were approximately 1000 defendants referred to Diversion in the year 1991. For comparison purposes, when extrapolating results for all first time defendants referred for either 1990 or 1991, I have used the 1000 defendant figure (9.09×110 (sample) = 1000).

Total Number of Felony Arrests between Arraignment and Arraignment & 36 Months

TABLE 2

	1990	1991	Reduction in Arrests
No. of Arrests	1327	745	582 fewer felonies

The Average Number of Arrests for Each Defendant During the 36-Month Period Following Arraignment (See Appendix D4)

Felony Arrests

TABLE 3

	Total 1990	Total 1991	<i>Speedy Diversion</i> 1991	Non-Speedy Diversion 1991
Average No. of Defendants	1.33	.75	.69	.80
Comparative % of Reduction	*	44%	48%	40%

*Base line for comparison.

While the rate of recidivism declined in both 1991 Diversion groups, the greater reduction was in the *Speedy Diversion* group (48%).

B. The data collected supports the conclusion that the imposition of an immediate and intensive supervision and treatment program substantially reduces the number of days divertees spend in custody over the course of a three-year period.

Total Number of Days in Custody on Felony Offense(s) During the Three-Year Period Following Arraignment

TABLE 4

	Total 1990	Total 1991	<i>Speedy</i> 1991	Non- Speedy 1991
Average No. of days in custody	78	44	45	42
Comparative % of Reduction	*	44%	42%	46%

*Base line for comparison.

Those divertees in the F.I.R.S.T. Diversion Program spent 44% fewer days in custody (44 days per defendant) over the three-year diversion program than did those in the 1990 group (78 days per defendant). See Appendix D8.

C. The data collected supports the conclusion that the imposition of an immediate and intensive supervision and treatment program substantially increases the number of divertees who earn successful dismissals.

The Percentage of Divertees who Earned Successful Dismissals During the three-year period following the initial Diversion Hearing.

TABLE 5

	Dismissal Rate at 24 Months	Comparative Increase in Rate of Dismissals over 1990
*Total 1990	29%	--
Total 1991	54%	86%
<i>Speedy</i>	56%	93%
Non-Speedy	52%	79%

*Base line for comparison.

There were 86% more successful diversion dismissals under the F.I.R.S.T. program than under the 1990 program.

D. The data collected supports the conclusion that the immediate grant of Diversion substantially increases the rate of appearance at court hearings and probation sessions during the two-year statutory Diversion period.

1. In 1991, 97% of defendants referred to the F.I.R.S.T. Diversion Program appeared as ordered, for their initial Diversion Hearing. (NOTE: that hearing was typically held the day after the Diversion Referral was made.)

In 1990, 60% of defendants appeared for their initial Diversion hearing as ordered. 40% of defendants failed to appear for their initial Diversion hearing. (NOTE: That hearing was typically held six to eight weeks after the Diversion Referral was made.)

2. In 1991, 96% of defendants granted Diversion appeared for their Diversion orientation session as directed. (NOTE: Defendants granted diversion were ordered to report immediately to their named probation officer for their initial diversion orientation session.

In 1990, there was no comparable data for the defendants' rate of appearance at the initial Diversion Orientation session. However, it was not unusual for four weeks or more to transpire before that initial session.)

3. Those defendants in the FIRST Diversion Program demonstrated a reduction in the number of bench warrants issued for failures to appear at court hearings (BWI) during the thirty six-month (36) period after the initial Arraignment date. This was true despite the fact that their were typically twice the number of regularly held court hearings in the 1991 program.

Total No. of Bench Warrants Issued (BWI) between Arraignment and Arraignment + 36 Months

Table 6

	1990	1991
No. of BWI	121	74
No. of BWI per Defendant	1.1	.67
Comparative % of Reduction	*	39%

*Base line for comparison

(NOTE: There were a total of 9 regularly scheduled Diversion hearings during the 24 month 1991 Drug Diversion Program and only 4 during the 18 month 1990 program.)

**THE IMPORTANCE OF IMMEDIATE INTERVENTION FOR YOUNGER
DIVERTEES**

The data collected strongly suggests that immediate intervention (the *Speedy Diversion* group were diverted within 3 days of arraignment) is especially effective in engaging young offenders in the successful completion of a court-ordered drug diversion program and in reducing their rate of felony recidivism.

A. Those divertees, 18 to 30 years old in the 1991 *Speedy Diversion* program showed a dramatic reduction in the number of new felony arrests made over the three-year study period. (See Appendix D4).

**The Average No. of Arrests Per Defendant for the 18 to 30 and 31 to 45 Year Age
Groups During the 3-Year Period Following Arraignment**

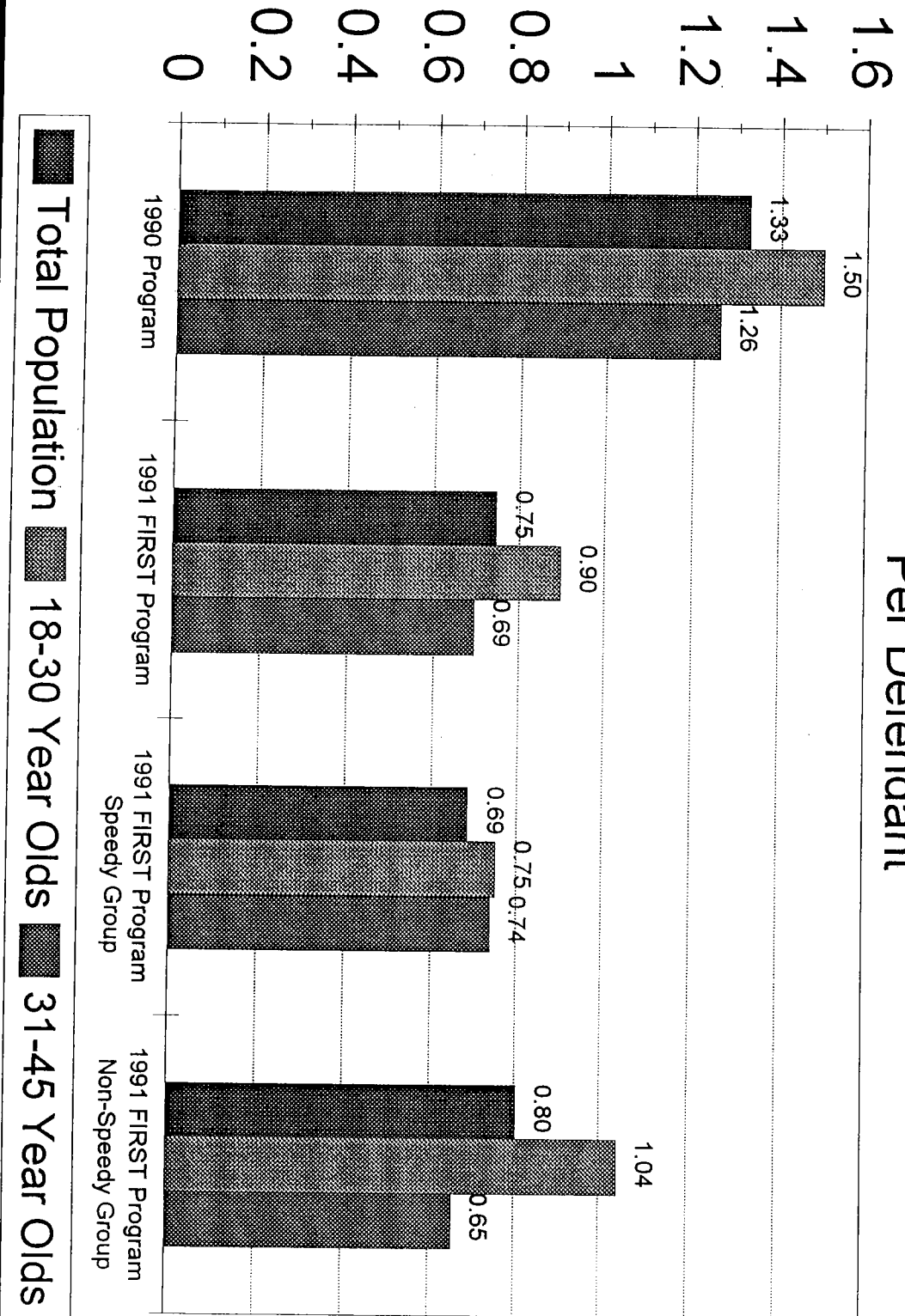
TABLE 7

18-30 Year Olds	Total 1990	Total 1991	<i>Speedy</i> 1991	Non- <i>Speedy</i> 1991
Average No. of new felony arrests per defendant	1.50	.90	.75	1.04
Comparative % of reduction	*	40%	50%	31%
31-45 Year Olds	Total 1990	Total 1991	<i>Speedy</i> 1991	Non- <i>Speedy</i> 1991
Average No. of new felony arrests per defendant	1.26	.69	.74	.65
Comparative % of reduction	*	45%	41%	48%

*Base line for comparison.

The Speedy Diversion, 18 to 30 year group, had one-half the rate of new felony arrests (75% arrests per defendant) as that same 18 to 30 year age group in the 1990 program (1.50 arrests per defendant).

Average Number of New Felony Arrests within 36 months of Arraignment Per Defendant



B. Those divertees in the 18 to 30 year old *Speedy* Diversion group showed a substantial reduction in the number of days spent in custody during the three-year study period.

The Total Number of Days In Custody on Felony Offenses for Divertees Ages 18 to 30 and 31 to 45 During the Three-Year Period Following Arraignment

TABLE 8

18-30 Year Olds	Total 1990	Total 1991	<i>Speedy</i> 1991	Non- <i>Speedy</i> 1991
Average No. of days in custody	79	55	55	55
Comparative % of Reduction	*	30%	30%	30%
31 to 45 Year Olds	Total 1990	Total 1991	<i>Speedy</i> 1991	Non- <i>Speedy</i> 1991
Average No. of days in custody	74	41	47	36
Comparative % of Reduction	*	45%	36%	51%

*Base line for comparison.

C. Those divertees 18 to 30 years old in the 1991 *Speedy* Diversion program showed an extraordinary increase in the percentage of successful dismissals during the three-year study period. Those increases substantially reversed the results of the 1990 program.

The Percentage of Successful Dismissals of Divertees Ages 18 to 30 and 31 to 45 During the Three Years Following Arraignment

Table 9

18-30 Year Olds	Total 1990	Total 1991	<i>Speedy</i> 1991	Non-Speedy 1991
% of Dismissals	22%	57%	67%	48%
Comparative % of Improvement	*	159%	204%	118%

31 to 45 Year Olds	Total 1990	Total 1991	<i>Speedy</i> 1991	Non-Speedy 1991
% of Dismissals	35%	45%	39%	50%
Comparative % of Improvement	*	29%	11%	43%

*Base line for comparison.

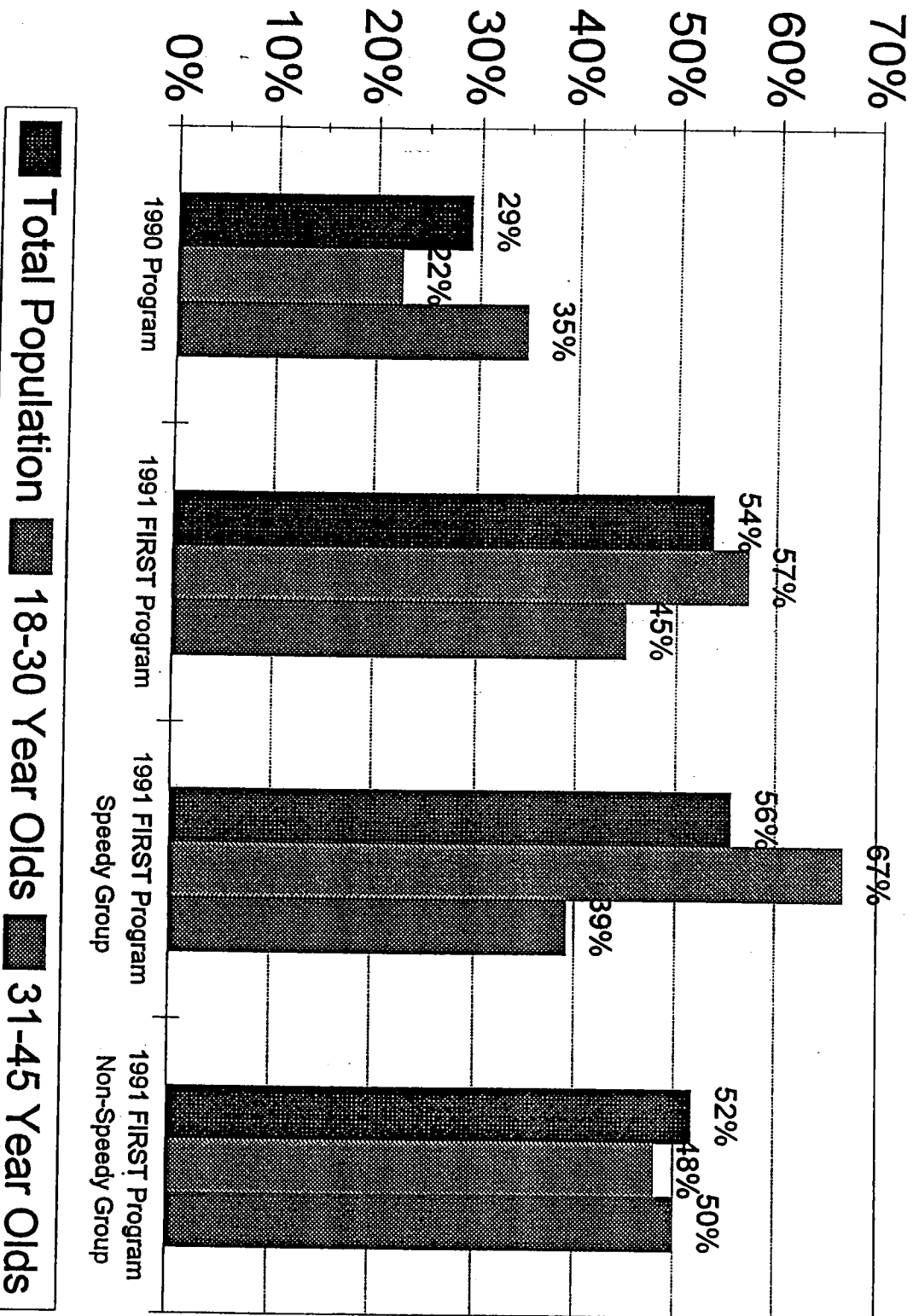
In the 1990 program, divertees, 18 to 30 years old, were less successful (a 22% dismissal rate) than the 31 to 45 year age group (a 35% dismissal rate). In the 1991 program, however, the 18 to 30 year olds in the *Speedy Diversion* group were more successful (a 67% dismissal rate) than those in the 31 to 45 year old group (a 39% dismissal rate).

Significantly, those younger divertees in the 1991 *Speedy* group (a 67% dismissal rate) showed an increase in successful dismissals over younger divertees in the 1991 Non-Speedy group (a 48% dismissal rate).

That same 18 to 30 year old Speedy Diversion group achieved almost three times the dismissal rate of the 1990, 18 to 30 year old group. (See Appendix D2)

Program Successfully Completed

Within the 24 month Diversion Program



COST-BENEFIT ANALYSIS

The significant increase in the number of successful Diversion dismissals and the decrease in criminal recidivism resulting from the FIRST Diversion Program means a substantial reduction in the workload of judges, court staff, sheriff's deputies, public defenders, district attorneys, probation officers, and other criminal justice personnel.*

While we do not have the resources, at this time, to fully analyze the reduction in workload and increase in cost-effectiveness, (i.e., we are only providing felony recidivism data), we can estimate some of the savings achieved by the law enforcement community during the three-year period.

A. Savings in Custody Costs to the Alameda County Sheriff's Department

There were approximately 34,000 (33,869) fewer days in custody accrued by divertees in the 1991 FIRST program on all their felony arrests (including the underlying diversion case) during the three-year study period.

(Note: For statistical purposes, the number of days in custody during the first three years of the study period (1990,1991, and 1992) were compared to the number of days in custody spent during the first three years of the 1991 program, 1991, 1992 and 1993. (See Appendix D5 through 8).

Significantly, since 1991 the Alameda County Sheriff's Department has been able to rent unused jail cells to San Francisco (as well as the U.S. Immigration Service) at \$60.80 per day. Based on that rental value, we can estimate the First program's savings to Alameda County at over \$2 million (\$2,059,236) during the three-year study period.

*It should be noted that only possession for personal use cases are statutorily eligible for Diversion under PC1000. Even with that limitation, more than fifty percent (50%) of all drug cases filed in Oakland in 1991 met that criterion.

The Alameda County District Attorney's Office reports the following number of Felony Drug Cases filed in the Oakland-Piedmont-Emeryville Municipal Court for 1990/1991:

Table 10

Health & Safety Code Cases (H*S)	1990	1991
All Drug Cases Filed	3121	2881
Possession of Controlled Substance Cases Filed	1133	1452

B. Savings in Arrest and Booking Costs to the Oakland Police Department

The estimated 582 fewer felony arrests made by the Oakland Police Department of defendants in the FIRST Diversion program saved the county approximately \$183,000 in arrest and booking costs during the three-year period. (Based on Oakland Police Department estimates that each arrest and booking costs the arresting agency approximately \$314.00).

C. Savings in Probation Personnel to the Alameda County Probation Department

The FIRST Diversion Program, by eliminating the need for formal Diversion investigation reports, saved an estimated \$600,000 over the 2 year Diversion period (\$300,000 plus per annum).

Under the 1990 program, the defendant's case would be continued 6 to 8 weeks for a comprehensive Diversion eligibility report to be filed with the court. By going to a brief overnight eligibility report (see Appendix C), the defendant's entry into the program is immediate and the five plus probation officers who formerly wrote the longer reports now engage in hands-on Diversion supervision.

CONCLUSION

The Success of The First Diversion Program

This study was designed to test the First Diversion Rehabilitation model. To that end, performance records, as well as appearance retention rates were monitored by court staff. Countywide arrest, custody, and bench warrant data were provided by the Alameda County Data Processing Department.

While an evaluation of two significantly different Diversion programs operating during different time periods (the 1990 and 1991 programs) is difficult and the data available limited to a three-year period, it appears that the First Diversion program has had substantial success at increasing the number of persons successfully graduated from the F.I.R.S.T. Drug Diversion Program (an 86% increase). *More importantly, the First Diversion had remarkable success at reducing the felony recidivism rate and number of days defendants are incarcerated. (The reduction in both new felony arrests and the number of days spent in custody for those placed in the 1991 FIRST program over the 1990 program is 44%).*

Almost every indicator shows nearly twice the success over the previous year's program. Significantly, those in the *Speedy* Diversion groups (diverted within 3 days of their arraignment) show a significant improvement over the other 1991 groups (i.e., there was substantial increase in both successful dismissals and reductions in felony recidivism in the *Speedy* group).

The Importance of Immediate Intervention for Young Adults

Importantly the premise of this study has been only partially confirmed: *that immediate intervention is an essential component in successful court-ordered drug rehabilitation if the participant is a young person (between the ages of 18 and 30).*

While in the 1990 program, older, more mature divertees did substantially better than his or her younger counterparts, that was not true in 1991. Sixty-seven percent (67%) of younger offenders successfully completed the Diversion program and were awarded dismissals in the 1991 *Speedy Diversion* group as opposed to a 39% dismissal rate for older divertees in that same *Speedy Diversion* group, a 48% dismissal rate for younger offenders in the non-speedy Diversion group, and a 22% completion rate for younger 1990 divertees.

Similarly, in the 1991 program, the rate of felony recidivism for younger offenders in the *Speedy* Diversion group was .75 per divertee, virtually the same as older *Speedy* Diversion divertees (.74), but one half of the rate of recidivism of younger offenders in the 1990 group (1.50).

This data would appear to contradict the conventional wisdom that older drug users can benefit most from court-ordered drug rehabilitation programs. On reflection, however, it would confirm much of what we know about youthful offenders; that they respond to structure and immediacy and have a greater need of both than older persons.

Beyond the positive effect that the First Diversion project is having on the defendant and community safety, there is a substantial and direct economic effect upon the criminal justice system. Conservatively speaking, approximately \$3,000,000 in savings to Alameda County law enforcement agencies alone during the three-year study period, can be directly attributed to the success of the FIRST Diversion Program (for those entering the program in 1991).

APPENDICES

CHAPTER 2.5 SPECIAL PROCEEDINGS IN NARCOTICS AND DRUG ABUSE CASES

Chapter applicability. §1000.

Notification—Action by probation department—Inadmissible information. §1000.1.

Diversion of proceedings—Time limits. §1000.2.

Resumption of criminal proceedings. §1000.3.

Record of diverted cases. §1000.5.

§1000. Chapter Applicability.

(a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, 11365, 11377, or 11550 of the Health and Safety Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or Section 11370.1 of the Health and Safety Code if the amount possessed is one-half gram or less of a substance containing cocaine base, one gram or less of a substance containing cocaine, one gram or less of a substance containing heroin, one gram or less of a substance containing methamphetamine, one-eighth gram or less of a crystalline substance containing phencyclidine, one milliliter or less of a liquid substance containing phencyclidine, one-half gram or less of plant material containing phencyclidine, or one hand-rolled cigarette treated with phencyclidine, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4230 of the Business and Professions Code, and it appears to the district attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no conviction for any offense involving controlled substances prior to the alleged commission of the charged divertible offense.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant's record does not indicate that probation or parole has ever been revoked without thereafter being completed.

(5) The defendant's record does not indicate that he or she has been diverted pursuant to this chapter within five years prior to the alleged commission of the charged divertible offense.

(6) The defendant has no prior felony conviction within five years prior to the alleged commission of the charged divertible offense.

(b) The district attorney shall review his or her file to determine whether or not paragraphs (1) to (6), inclusive, of subdivision (a) are applicable to the defendant. Upon the agreement of the district attorney, law enforcement, the public defender, the presiding judge of the criminal division of the municipal court or a judge designated by the presiding judge [1], this procedure shall be completed as soon as possible after the initial filing of the charges. If the defendant is found eligible, the district attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the diversion hearing at the arraignment. If the defendant is found ineligible, the district attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. [2]

(c) All referrals to diversion granted by the court pursuant to this chapter on or after January 1, 1995, shall be made only to diversion programs which have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to diversion programs which provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision. Prior to January 1, 1995, all referrals to diversion granted by the court shall, to the maximum extent possible, be made to diversion programs which have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to diversion programs which provide services at no cost to the participant and have been deemed by the court to be credible and effective.

(d) Successful completion of diversion for a violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.5. Leg.H. 1972 ch. 1255, effective December 15, 1972, 1975 ch. 1267, 1983 ch. 1314, 1987 ch. 1367, effective September 29, 1987, 1988 ch. 1086, 1990 ch. 53, effective April 20, 1990, 1991 ch. 469, 1992 ch. 1118.

§1000. 1992 Deletes. [1] , and the probation department of each county [2] Nothing in this subdivision shall be construed to affect the obligation of a probation department to conduct an investigation and make a report to the court, pursuant to subdivision (b) of Section 1000.1 and Section 1000.2.

Cross-References

"Felony" defined. Penal Code §17.

Effect of successful completion of diversion. Penal Code §1000.5.

Revocation of probation. Penal Code §1203.2.

Revocation of parole. Penal Code §§3060-3064.

Ref.: Cal. Crim. Def. Prac., Ch. 51, "Diversion and Dismissal in Interest of Justice."

§1000.1. Notification—Action by Probation Department—Inadmissible Information.

(a) If the district attorney determines that this chapter may be applicable to the defendant, he or she shall advise the defendant and his or her attorney in writing of [1] that determination. This notification shall include the following:

(1) A full description of the procedures of diversionary investigation.

(2) A general explanation of the roles and authorities of the probation department, the district attorney, the community program, and the court in the diversion process.

(3) A clear statement that the court may decide in a hearing not to divert the defendant and that he or she may have to stand trial for the alleged offense.

(4) A clear statement that should the defendant fail in meeting the terms of his or her diversion, or should he or she be convicted of a misdemeanor which reflects the divertee's propensity for violence, or should the divertee be convicted of any felony, he or she may be required, after a court hearing, to stand trial for the original alleged offense.

(5) An explanation of criminal record retention and disposition resulting from participation in the diversion and the divertee's rights relative to answering questions about his or her arrest and diversion following successful completion of the diversion program.

(b) If the defendant consents and waives his or her right to a speedy trial, the [2] court may refer the case to the probation department or the court may summarily grant diversion. When directed by the court, the probation department shall make an investigation and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior controlled substance use, treatment history, if any, demonstrable motivation, and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which community programs or programs of the probation department the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendation to the court. The court shall make the final determination regarding education, treatment, or rehabilitation for the defendant.

(c) No statement, or any information procured therefrom, made by the defendant to any probation officer or drug treatment worker, which is made during the course of any investigation conducted by the probation department or drug treatment program pursuant to subdivision (b), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.

No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, which is made to any probation officer or drug program worker subsequent to the granting of diversion, shall be admissible in any action or proceeding.

In the event that diversion is either denied, or is subsequently revoked once it has been granted, neither

the probation investigation nor statements or information divulged during that investigation shall be used in any sentencing procedures. Leg.H. 1972 ch. 1255, effective December 15, 1972, 1975 ch. 1267, 1984 ch. 1179, 1992 ch. 1118.

§1000.1. 1992 Deletes. [1] such [2] district attorney shall

Cross-References

Right to speedy trial. Penal Code §686.

Effect of successful completion of diversion. Penal Code §1000.5.

Time for trial. Penal Code §1382.

Ref.: Cal. Crim. Def. Prac., Ch. 51, "Diversion and Dismissal in Interest of Justice."

§1000.2. Diversion of Proceedings—Time Limits.

The court shall hold a hearing and, after consideration of [1] any [2] information [3] relevant to its decision, shall determine if the defendant consents to further proceedings under this chapter and waives his or her right to a speedy trial and if the defendant should be diverted and referred for education, treatment, or rehabilitation. On or after January 1, 1995, if the court deems the defendant a person who would be benefited by diversion and the defendant consents to participate, the court referral to diversion shall only be made to diversion programs which have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to diversion programs which provide services at no cost to the participant and have been deemed by the court to be credible and effective. Prior to January 1, 1995, all referrals to diversion granted by the court shall, to the maximum extent possible, be made to diversion programs which have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to diversion programs which provide services at no cost to the participant and have been deemed by the court to be credible and effective. If the court does not deem the defendant a person who would be benefited by diversion, or if the defendant does not consent to participate, the proceedings shall continue as in any other case.

At [4] the time that a defendant's case is diverted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

The period during which the further criminal proceedings against the defendant may be diverted shall be for no less than six months nor longer than two years. Progress reports shall be filed by the probation department with the court [5] as directed by the court. Leg.H. 1972 ch. 1255, effective December 15, 1972, 1975 chs. 357, 1267, 1992 ch. 1118.

§1000.2. 1992 Deletes. [1] the probation department's report and [2] other [3] considered by the court to be [4] such [5] not less than every six months

Cross-References

Exoneration of bail. Penal Code §§1300-1304.

Waiver of time for trial. Penal Code §1382.

Ref.: Cal. Crim. Def. Prac., Ch. 40, "Accusatory Pleadings," Ch. 51, "Diversion and Dismissal in Interest of Justice."

§1000.3. Enacted 1972. Repealed 1975 ch. 1267.

A new §1000.3 follows.

§1000.3. Resumption of Criminal Proceedings.

If it appears to the probation department that the divertee is performing unsatisfactorily in the assigned program, or that the divertee is not benefiting from education, treatment, or rehabilitation, or that the divertee is convicted of a misdemeanor which reflects the divertee's propensity for violence, or if the divertee is convicted of a felony, after notice to the divertee, the court shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the court finds that the divertee is not performing satisfactorily in the assigned program, or that the divertee is not benefiting from diversion, or the court finds that the divertee has been convicted of a crime as indicated above, the criminal case shall be referred back to the court for resumption of the criminal proceedings. If the divertee has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges shall be dismissed. **Leg.H.** 1975 ch. 1267.

Cross-References

"Felony" and "misdemeanor" defined. Penal Code §17.

Effect of successful completion of diversion. Penal Code §1000.5.

§1000.4. Enacted 1972. Repealed 1978 ch. 524.

§1000.5. Record of Diverted Cases.

Any record filed with the Department of Justice shall indicate the disposition in those cases diverted pursuant to this chapter. Upon successful completion of a diversion program the arrest upon which the diversion was based shall be deemed to have never occurred. The divertee may indicate in response to any question concerning his prior criminal record that he was not arrested or diverted for such offense. A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the divertee's consent, be used in any way which could result in the denial of any employment, benefit, license, or certificate. **Leg.H.** 1975 ch. 1267.

PHASE II

TWO MONTH SUMMARY DRUG DIVERSION REPORT

On October 29, 1992, [REDACTED] was referred to the Probation Department for Report and Modification pursuant to a grant of diversion under Section 1000 of the California Penal Code.

____ Conviction record attached X No known prior H&S convictions

PERFORMANCE DURING FIRST TWO MONTHS OF DIVERSION SUPERVISION

<u>Number Tasks Possible</u>	<u>Number Satisfactorily Completed</u>	<u>Comments</u>
<u>6</u> REPORTING	<u>6</u>	
<u>5</u> IDAP	<u>5</u>	
<u>7</u> PROGRAM	<u>7</u>	<u>Def. referred to Terra Firma on 11-10-92. He registered with program on 11-11 & has attended weekly sessions since then.</u>
<u>3</u> TESTING	<u>3</u>	<u>Def. tested negative for cocaine on 11-9 & 11-24 and 12-7-92.</u>
<u>1</u> FEE PAYMENT	<u>1</u>	
	<u>22</u> TOTAL	

ORDERED: \$220.00 PAID: \$20.00
 BALANCE: \$200.00
 PHASE: _____

DEFENDANT'S SELF-REPORTED DRUG HISTORY:

- (a) Drug(s) of Choice: Cocaine and alcohol, specifically beer and rum.
- (b) Frequency of Use: The defendant reports that he began using cocaine in March 1991 and that from May to August of that year he used daily. He uses cocaine once every other week currently. The defendant reports that he drinks beer daily and rum on the weekends. He admits that he has had problems in personal relationships because of his drinking.
- (c) Latest Usage: Cocaine--on or about December 8, 1992.
 Alcohol--unreported.

THE MUNICIPAL COURT OF THE OAKLAND-PIEDMONT JUDICIAL DISTRICT
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

SPEEDY DIVERSION REPORT

PROGRESS REPORT: PHASE: III

DEFENDANT: [REDACTED] Date of Hearing: [REDACTED]
Dept. No.: [REDACTED]
OFFENSE: HS 11350(A) F CEN No.: [REDACTED]
PFN No.: [REDACTED]
Docket No.: [REDACTED]

Diversion Order made in Dept. No. [REDACTED] by Judge [REDACTED] on [REDACTED]. Length of diversion [REDACTED] months, reduced to [REDACTED] months.

PERFORMANCE ON DIVERSION:

<u>Points Possible</u>	<u>Points Earned</u>	<u>Comments</u>
<u>8</u> GROUP SESSIONS	<u>8</u>	
<u>2</u> INDIVIDUAL APPTS.	<u>2</u>	
<u>4</u> DRUG TESTS	<u>4</u>	All tests were clean.
<u>8</u> PROGRAM	<u>8</u>	Defendant has shown proof of regular attendance at the Narcotics Education League. The defendant attends that program twice a week.
<u>2</u> PAYMENTS	<u>2</u>	BALANCE: We believe that the defendant has paid the required \$50. However, the Central Collections computer does not even have the defendant listed. Therefore, we are unable to check their records. We have asked the defendant to bring proof of payment to Court.
<u>24</u> TOTAL	<u>24</u>	

COMPLETED IDAP: YES NO

415/VOLUNTEER WORK COMPLETED: YES NO NOT ORDERED

APPENDIX C

Diversion/Eligibility Pretrial Services Report

P.D.: Yes No

\$ _____ Bail

Arrest Report # _____

ALAMEDA COUNTY PROBATION DEPARTMENT

PRETRIAL SERVICE

DEFENDANT REPORT

Date/Time Interviewed _____

Last Name	First	Middle	Age	DOB	Sex	Race	PFN
AKA				Docket			CEN
Present Charges		Court	Dept.	Ct. Date & Time		CII	

Arrest Date: _____ Time: _____ Surrendered: Yes No Warrant Direct Arrest

PROBATION/PAROLE SUMMARY		Active Probation A <input type="checkbox"/> J <input type="checkbox"/>
		Inactive Case <input type="checkbox"/>
		Active Parole <input type="checkbox"/>
		Active CYA <input type="checkbox"/>
		No Record <input type="checkbox"/>
P.O:	Comments:	

COMMUNITY/PERSONAL DATA	HOW LONG IN COUNTY?	HOW LONG IN BAY AREA?	Verified By
Present Address	Phone	How Long	
Prior/Alternate Address	Phone	How Long	
Living with	Relationship	Marital Status	Supporting: Spouse <input type="checkbox"/> Other <input type="checkbox"/>
			Children <input type="checkbox"/> Parents <input type="checkbox"/>
Relative In Area	Relationship	Address	Phone
Reference In Area	Relationship	Address	Phone
Current Employer/School	Location	Phone	Duties
			F.T. <input type="checkbox"/> How Long
Previous Employer	Location	Phone	Duties
			F.T. <input type="checkbox"/> How Long
Welfare	U.I.B.	Work. Comp.	S.S.I.
			Other
			Total
			Education Level

IMMEDIATE PERSONAL AND MEDICAL PROBLEMS (Including Drugs, Alcohol, Detox, Psychiatric, Housing)

TYPE OF PROBLEM	DURATION	PRESENT TREATMENT/MEDICATION	TREATMENT REQUESTED
1.			
2.			
3.			
4.			

DRUG DIVERSION			
	CORPUS	CII	JUVIS
			By Def. Statement
<input type="checkbox"/> Prior Drug Conviction? <input type="checkbox"/> Prior Drug Diversion? <input type="checkbox"/> Prior Felony within 5 years? <input type="checkbox"/> Revoked/Sentenced Prob. or Parole?			
Willing to complete program? _____			
Classes <input type="checkbox"/> AIDS <input type="checkbox"/> Outpatient <input type="checkbox"/> Inpatient <input type="checkbox"/> Medication <input type="checkbox"/>			
Based on the information provided above, the following recommendation is made: Grant <input type="checkbox"/> Denial <input type="checkbox"/> Cont. for further report <input type="checkbox"/>			
by: _____		Deputy Probation Officer	

Interviewer Comments: _____

Interviewer/Location _____ Position Number _____

D. TABLES

1. Number of Defendants by demographic categories
2. Successful Program Completions/Dismissals
3. Number of Defendants With New Felony Arrests
4. Number of New Felony Arrests
5. Number of Days in Custody During 1st Year
6. Number of Days in Custody During 2nd Year
7. Number of Days in Custody During 3rd Year
8. Total Number of Days in Custody during 3 Years after Arraignment

Note: Data reflects information on 110 defendants in the 1990/1991 study groups. See p.13.

TABLE D3

NUMBER OF DEFENDANTS WITH NEW FELONY ARRESTS WITHIN 36 MONTHS OF ARRAIGNMENT:

	SEX		RACE		BL-A-C-K		O-T-H-E-R		AGE					
	TOTAL	Male	Female	TOTAL	Male	Female	Male	Female	18-30	31-45	46+			
1990	60	51	9	3	2	1	55	47	8	2	0	35	24	1
1991	45	38	7	4	4	0	37	31	6	4	3	24	17	4
SPEEDY	21	20	1	1	1	0	18	17	1	2	0	11	8	2
NONSPDY	24	18	6	3	3	0	19	14	5	2	1	13	9	2
1990	55%	58%	41%	43%	40%	50%	57%	61%	42%	29%	33%	60%	52%	17%
1991	41%	44%	29%	31%	40%	0%	42%	45%	32%	44%	43%	49%	35%	33%
SPEEDY	39%	47%	9%	33%	100%	0%	39%	45%	13%	40%	50%	46%	35%	29%
NONSPDY	43%	42%	46%	30%	33%	0%	45%	45%	45%	50%	33%	52%	35%	40%

TABLE D4

TOTAL NUMBER OF NEW FELONY ARRESTS WITHIN 36 MONTHS OF ARRAIGNMENT:

	SEX		RACE		BL-A-C-K		O-T-H-E-R		AGE					
	TOTAL	Male	Female	TOTAL	Male	Female	Male	Female	18-30	31-45	46+			
1990	146	129	17	6	5	1	136	120	16	4	0	87	58	1
1991	82	70	12	13	13	0	63	53	10	6	4	44	34	4
SPEEDY	37	36	1	3	3	0	31	30	1	3	3	18	17	2
NONSPDY	45	34	11	10	10	0	32	23	9	**	1	26	17	2
Average number of new felony arrests per defendant within 36 months of arraignment:	1.33	1.47	0.77	0.86	1.00	0.50	1.42	1.56	0.84	0.57	0.67	1.50	1.26	0.17
1991	0.75	0.81	0.50	1.00	1.30	0.00	0.72	0.77	0.53	0.67	0.57	0.90	0.69	0.33
SPEEDY	0.69	0.84	0.09	1.00	3.00	0.00	0.67	0.79	0.13	0.60	0.75	0.75	0.74	0.29
NONSPDY	0.80	0.79	0.85	1.00	1.11	0.00	0.76	0.74	0.82	0.75	0.33	1.04	0.65	0.40

TABLE D5

TOTAL NUMBER OF DAYS IN CUSTODY ON FELONY OFFENSE(S) DURING FIRST YEAR OF STUDY PERIOD:

SEX	TOTAL	RACE		W-H-I-T-E		B-L-A-C-K		O-T-H-E-R		AGE					
		Male	Female	TOTAL	Male	Female	TOTAL	Male	Female	TOTAL	Male	Female	18-30	31-45	46+
1990	3477	3160	317	465	344	121	2735	2542	193	277	274	3	2062	1388	27
1991	1799	1440	359	86	54	32	1615	1305	310	98	81	17	1001	730	68
SPEEDY	1018	892	126	48	18	30	892	800	92	78	74	4	443	532	43
NONSPDY	781	548	233	38	36	2	723	505	218	20	7	13	558	198	25
Average number of days in custody on felony offense(s) per defendant during first year of study period:															
1990	32	36	14	66	69	61	28	33	10	40	46	3	36	30	5
1991	16	17	15	7	5	11	18	19	16	11	12	9	20	15	6
SPEEDY	19	21	11	16	18	15	19	21	12	16	19	4	18	23	6
NONSPDY	14	13	18	4	4	2	17	16	20	5	2	13	22	8	5

TABLE D6

TOTAL NUMBER OF DAYS IN CUSTODY ON FELONY OFFENSE(S) DURING SECOND YEAR OF STUDY PERIOD:

SEX	TOTAL	RACE		W-H-I-T-E		B-L-A-C-K		O-T-H-E-R		AGE					
		Male	Female	TOTAL	Male	Female	TOTAL	Male	Female	TOTAL	Male	Female	18-30	31-45	46+
1990	3267	2734	533	123	123	0	3065	2533	532	79	78	1	1530	1538	8
1991	1759	1450	309	361	361	0	1194	940	254	204	149	55	895	841	23
SPEEDY	844	819	25	154	154	0	570	545	25	120	120	0	325	496	23
NONSPDY	915	631	284	207	207	0	624	395	229	84	29	55	570	345	0
Average number of days in custody on felony offense(s) per defendant during second year of study period:															
1990	30	31	24	18	25	0	32	33	28	11	13	1	26	33	1
1991	16	17	13	28	36	0	14	14	13	23	21	28	18	17	2
SPEEDY	16	19	2	51	154	0	12	14	3	24	30	0	14	22	3
NONSPDY	16	15	22	21	23	0	15	13	21	21	10	55	23	13	0

TABLE D7

TOTAL NUMBER OF DAYS IN CUSTODY ON FELONY OFFENSE(S) DURING THIRD YEAR OF STUDY PERIOD:

	SEX		RACE		B-L-A-C-K		O-T-H-E-R		AGE							
	TOTAL	Male	TOTAL	Male	TOTAL	Female	TOTAL	Female	18-30	31-45	46+					
1990	1805	1532	273	6	3	3	1725	1455	270	74	74	0	18-30	31-45	46+	
													1009	478	0	
1991	1285	1005	280	186	186	0	1002	776	226	77	43	34	781	439	45	
SPEEDY	591	557	34	0	0	0	561	527	34	30	30	0	546	45	0	
NONSPDY	674	448	226	186	186	0	441	249	192	47	13	34	235	394	45	
Average number of days in custody on felony offense(s) per defendant during third year of study period:																
1990	16	17	12	1	1	2	18	19	14	11	12	0	17	10	0	
1991	12	12	11	14	19	0	11	11	12	9	6	17	16	9	4	
SPEEDY	11	13	3	0	0	0	12	14	4	6	8	0	23	2	0	
NONSPDY	12	10	17	19	21	0	11	8	17	12	4	34	9	15	9	

TABLE D8

TOTAL NUMBER OF DAYS IN CUSTODY ON FELONY OFFENSE(S) DURING THREE YEARS OF STUDY PERIOD:

	SEX		RACE		B-L-A-C-K		O-T-H-E-R		AGE							
	TOTAL	Male	TOTAL	Male	TOTAL	Female	TOTAL	Female	18-30	31-45	46+					
1990	8549	7426	1123	594	470	124	7525	6530	995	430	426	4	18-30	31-45	46+	
													4601	3404	35	
1991	4823	3895	928	633	601	32	3811	3021	790	379	273	106	2677	2010	136	
SPEEDY	2453	2268	185	202	172	30	2023	1872	151	228	224	4	1314	1073	86	
NONSPDY	2370	1627	743	431	429	2	1788	1149	639	151	49	102	1363	937	70	
Average number of days in custody on felony offense(s) per defendant during three years of study period:																
1990	78	84	51	85	94	62	78	85	52	61	71	4	79	74	6	
1991	44	45	39	49	60	11	43	44	42	42	39	53	55	41	11	
SPEEDY	45	53	17	67	172	15	44	49	19	46	56	4	55	47	9	
NONSPDY	42	38	57	43	48	2	43	37	58	38	18	102	55	36	14	

SPEEDY DIVERSION GUIDELINES

January 29, 1992

I. TIME

A. 9:00 Probation Officer meets with Judge to review cases.

9:30 Diversion Calendar is called.

B. Order of Calendar

1. In custody defendants picked up on warrants for failing to appear for Diversion Hearing/Progress Report.

2. Progress Reports

(a) Phase II - Tuesday/Thursday

(b) Phase III - Wednesday/Friday

(*Suggestion: Call at least one defendant with 9 mo. reduction and one defendant to be remanded into custody up front.)

3. Placements

(a) FIRST TIME placements called first.

(b) Recycles and reinstatements.

C. Continuances

1. There are routinely four time periods for continuances:

a. 1 week - where defendant has FTA for progress report (except where he has FTA for orientation session or is presently in recycle or reinstatement status).

b. 5 weeks - Phase II extensions & Special Monitoring Period.

c. 10 weeks - Phase II

d. 3 months - Phase III, post Phase III

2. Diversion continuances are not granted for longer than 3 months (unless these are extraordinary circumstances).

D. Special Monitoring Report (SR) = 5-Week Progress Report

1. An SR is ordered where:

a. A defendant is reinstated or recycled into Diversion.

b. A defendant has tested positive and/or is in danger of failing in the program.

- c. (For clerk's convenience - next regular court date should be noted in file.)

*Suggestion: [When the defendant tests positive for Cocaine, consider recommending that the defendant enroll in the Accupuncture programs at the Cocaine Recovery Center (90th & MacArthur). This should be noted by Clerk & PO on probation papers.]

II. PLACEMENTS

A. Time

Diversion placements take place only in the morning (after Diversion warrants and Progress reports).

B. Before Placement Speech (to audience)

1. Stress to defendant that he/she is in control of case/rehabilitation. He/she decides if dismissal or jail is outcome.
2. Program works for you and with you to stop Drug Abuse.

C. Each defendant is informed:

1. That he/she is granted Diversion for two years (but that it may be reduced to as little as six months if the defendant successfully participates.)
2. That he/she must report to named Probation Officer immediately upon leaving court at the Probation office, 400 Broadway.
3. That the defendant must follow all instructions of named P.O.
4. That defendant must participate in any program of education, counseling, rehabilitation/treatment, as directed by named P.O.
5. That defendant must obey all laws and be of good conduct.
6. That defendant must not use or possess narcotics or dangerous drugs or associate with persons who do.
7. That defendant must pay a Diversion fee of \$220 which may be reduced substantially if defendant is successful.

D. When Defendant is placed on Regular Diversion

1. Proceeds through placement and to orientation session as if entering Speedy Program.

2. Note on Court/Probation documents reason for Regular Diversion:
 - (a) Mental problems or learning disability
 - (b) Out-of-county/non-Oakland resident
 - (c) Other disqualifying factors
3. Defendant directed to inform P.O. at orientation session of special status.

III. PHASE II PROGRESS REPORTS

A. Point System

Over a ten-week period, a defendant is required to achieve the following points for maximum incentives:

- (1) 6 - probation contacts
- (2) 3 - negative tests
- (3) 1 - register with community counseling by 1st group meeting (3rd P.O. contact)
- (4) 6 - participate in community counseling for six weeks (a point for each week's participation)
- (5) 5 - drug education classes (IDAP)
- (6) 1 - one Diversion fee payment

B. Incentives

Depending on the number of points achieved, these reductions follow:

- (1) 9 months/\$100.00 reduction (21 points)
- (2) 6 months/\$75.00 reduction (17-19)
- (3) 3 months/\$50.00 reduction (14-16)
- (4) no reductions/no sanctions (11-13)
- (5) sanctions (10 or less)

C. Phase II Graduate (11 points or more) are informed:

- (1) Number of points achieved (and the tasks reflected).
- (2) Incentive/reductions he/she has achieved.
- (3) Defendant is graduated to Phase III and must report immediately to named P.O. at Probation office.
- (4) Next court date: 3 months

D. Five-Week Extension (of Phase II)

A five-week extension is ordered when a defendant has scored adequate points (11+) but has not substantially completed IDAP or Community Counseling.

- (1) Defendant is ordered to report to named P.O. (on specified date and time/no more than one week hence for monitoring of completion of Phase II).
- (2) Defendant is told specifically of inadequacies and ordered to make them up.
- (3) Defendant is granted reductions earned at ten-week progress report (no additional incentives granted at five-week extension hearing).

E. Phase II Recycles

Ordered where defendant has scored less than half the maximum points (10 or less).

1. Recycle typically granted only once in each phase (discretion used depending on defendant's progress).
2. Progressive sanctions applied:
 - a. Defendant ordered into custody, informed of failures and put over until 4 p.m. the next day for release.

*Suggestion: (Do this early in calendar when audience is full.)

- b. A second recycle/or other failure calls for two-day remand.
- c. A third recycle/or other failure (such as consistent positive tests) calls for four-day remand.

*Suggestion: (If a failure is slight/or other considerations warrant it, you may wish to put case over only until 4 p.m. on same day for release.)

3. Recycles are always given a 5-week special monitoring report date.

*Suggestion: (If failure relate to testing consider recommending Cocaine Recovery Center.)

IV. PHASE III PROGRESS REPORTS

A. Point System

Over a 3-month period, a defendant is required to achieve the following points for maximum incentives::

- (1) 8 - probation group sessions
- (2) 2 - individual sessions
- (3) 4 - negative tests
- (4) 8 - participate in community counseling for 8 weeks (1 point for each week's participation)
- (5) 2 - two Diversion fee payments

B. Incentives

Depending on the number of points achieved, these reductions follow:

- 1. 9 months/\$100.00 (22-24 points)
- 2. 6 months/\$75.00 (19-21 points)
- 3. 3 months/\$50.00 (16-18 points)
- 4. No reductions/no sanctions (13-15 points)
- 5. Sanctions (12 or less)

C. Phase III Graduates (12 points or more) are informed:

- 1. Number of points achieved (and the tasks reflected)
- 2. Incentives/reductions he/she has merited.
- 3. Defendant is continued on probation for 3 months.
- 4. Defendant is ordered to report to assigned Phase III P.O. at time previously set by agreement with P.O. (state in open court) or if no agreed upon date, order defendant to contact P.O. immediately (within 48 hours) to set up appointment within one week.

D. Phase III Recycles

Ordered when defendant has scored less than half the maximum points (11 or less).

[See Section III.E. Phase II Recycle (page 4) for procedures for Phase III Recycles.]

V. REINSTATEMENTS:

Placement on Diversion after a defendant had been previously terminated from Diversion.

A. Defendant may be reinstated on Diversion only after spending a minimum of one week in custody.

- 1. All defendants arrested for FTA at a Diversion Hearing/Progress Report date make first appearance at morning Diversion calendar.
- 2. Discuss with attorneys on previous afternoon whether defendant to be reinstated or set for PX next morning.

- (a) If defendant is to be reinstated - case will be put over 7 days from afternoon, for setting (time will not be pulled).
- (b) If defendant is not to be reinstated - case will still be heard first thing on Diversion calendar and set for a regularly set pretrial and PX date (time pulled).

B. Procedures

- 1. Defendants are reinstated into the Phase they were last in.
- 2. Reinstatements are given a five-week intermediate date (SR).
- 3. Reinstatements are placed on Diversion after Regular Placements.
- 4. Defendants may be reinstated on one occasion only (unless there are extraordinary circumstances).

VI. DIVERSION TERMINATIONS

A. Successful Dismissals

- 1. Present defendant with diploma upon dismissal.
*(Handshake is optional.)
- 2. Information of erasure of arrest.

*(Set cases for dismissal on Tuesday thru Friday so most defendants placed on Diversion will observe it.)

B. Unsuccessful Terminations

- 1. Terminated w/ prejudice [there are no more choices at Diversion unless extraordinary circumstances shown.]
 - a. A BWI for FTA after a previous reinstatement.
 - b. Two recycles in a single phase.
- 2. Testing Positive is Not Reason by Itself to Terminate.
Termination is generally not appropriate for positive testing alone if the defendant is participating satisfactorily.
 - a. Progressive sanctions should be applied.

- b. A more intensive rehabilitation program tried (i.e., Cocaine Recovery Center, Residential Treatment).

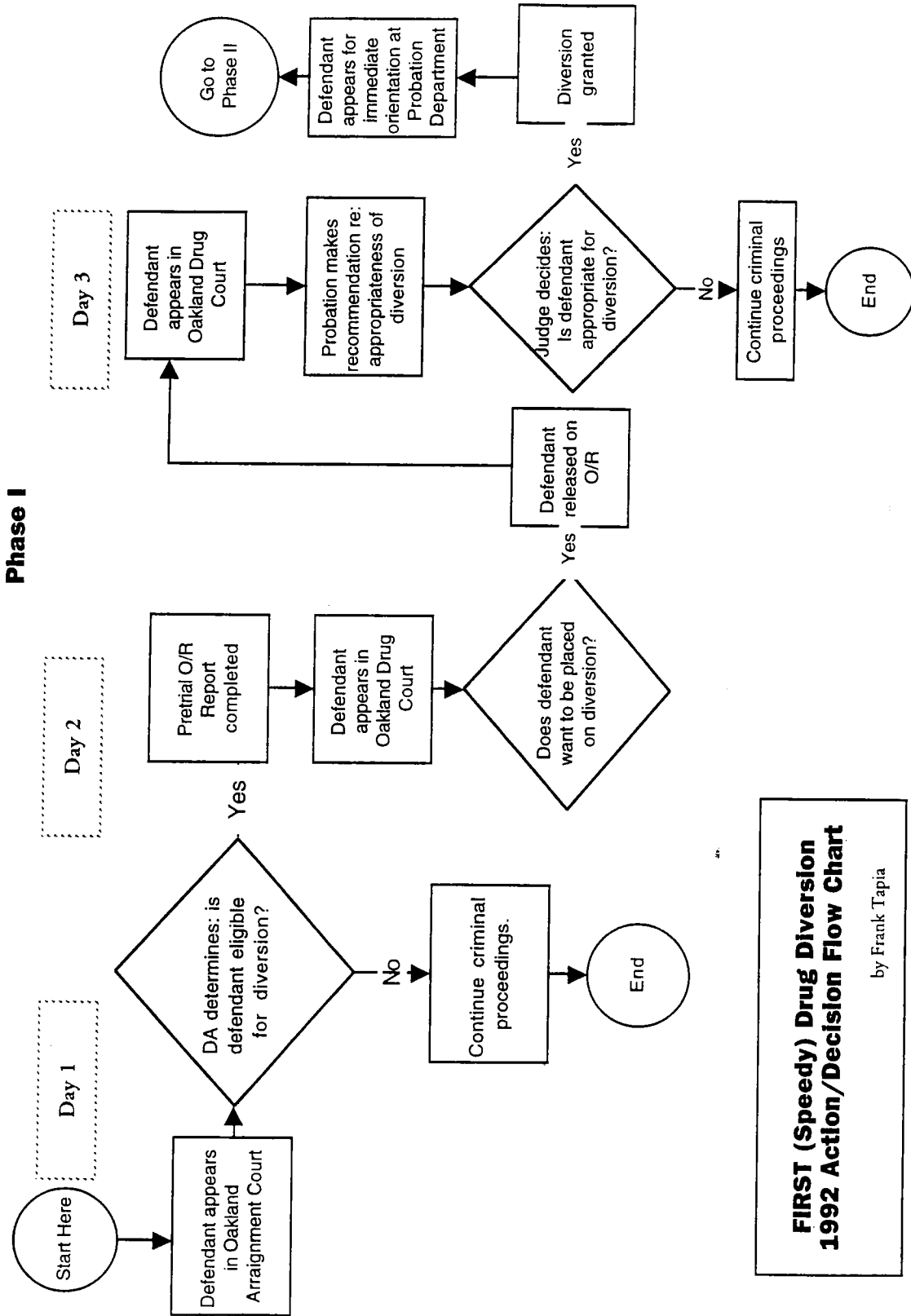
C. **Accepting Pleas for Diversion Failure**

1. Defendants failing Diversion must plead to a Felony 11350B and remain in custody until Superior Court sentencing.
2. Misdemeanor and/or no time pleas are only appropriate in unusual cases where age, health, mental illness, or other extraordinary factors are present.

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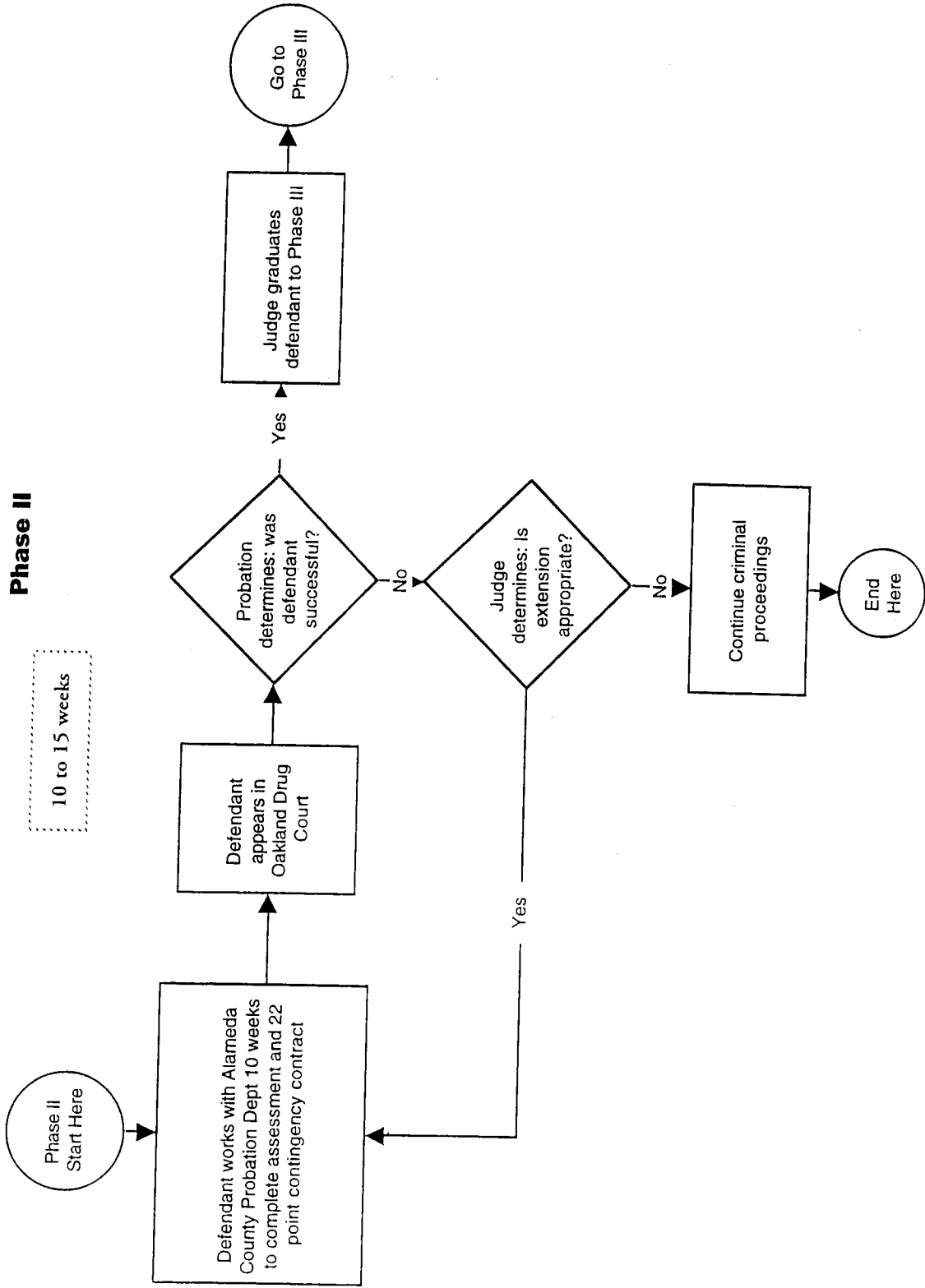
APPENDIX F

FIRST Drug Diversion Action/Decision Flowchart



**FIRST (Speedy) Drug Diversion
1992 Action/Decision Flow Chart**
by Frank Tapia

Phase II



3 months to 1.5 years

Phase III

