

THE PSYCHIATRIZATION OF PETTY THEFT: AN UNINTENDED CONSEQUENCE
OF DIVERSION

by

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The Psychiatrization of Petty Theft: An Unintended
Consequence of Diversion

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ABSTRACT

The effectiveness of a Canadian-based diversion program for the management of shoplifting (petty theft) cases is explored in this thesis. The focal point of the research consists of a sample of 189 shoplifting case files created by the Vancouver Adult Diversion (V.A.D.) Program during 1976-1986. Documentary data analysis is carried out on two types of case files: (1) shoplifting cases without a request for a psychiatric assessment; and (2) shoplifting cases in which a psychiatric assessment was requested. The available literature on social control via diversion is combined with the available studies of shoplifting.

True diversion implies that the offender is removed or directed out of the criminal justice system completely. The offender, in this case, is not subjected to any treatment, service or follow-up. New diversion, on the other hand, requires that the offender participates in programs, rather than being screened out of the system altogether.

It is suggested that the V.A.D. Program represents a form of new diversion; and this has implications with respect to the "psychiatrization" of petty theft. The original intention underlying the V.A.D. Program (to divert from the formal criminal justice system) appears to have shifted to referral to programs in the system or related to it. This network of referral and processing of offenders in new settings by

professionals--in this case, psychiatrists--may constitute a widening of the net of social control. The literature reveals that among the foremost rationales used in promoting diversion is the imperative of cost-savings. By reducing the number of cases handled by the formal system, diversion is less expensive than traditional court processing. A comparison of offender characteristics of the V.A.D. sample with the findings of the available literature is also presented.

DEDICATION

To *Life* with *Sorgee*

QUOTATION

I shall pass through
this world but once.
Any good therefore
that I can do or any
kindness that I can
show to any human
being, let me do it now.
Let me not defer or
neglect it for I shall
not pass this way
again.

(EX LIBRIS)

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CHAPTER I

SOCIAL CONTROL, DIVERSION, AND SHOPLIFTING

Introduction

Stanley Cohen (1985: 1) defines social control as follows:

Social control is the organized ways in which society responds to behaviour and people it regards as deviant, problematic, worrying, threatening, troublesome or undesirable in some way or another. This response appears under many terms: punishment, deterrence, treatment, prevention, segregation, justice, rehabilitation, reform or social defence. It is accompanied by many ideas and emotions: hatred, revenge, retaliation, disgust, compassion, salvation, benevolence or admiration. The behaviour in question is classified under many headings: crime, delinquency, deviance, immorality, perversity, wickedness, deficiency or sickness. The people to whom the response is directed, are seen variously as monsters, fools, villains, sufferers, rebels or victims. And those who respond are known as judges, policemen, social workers, psychiatrists, psychologists, criminologists or sociologists of deviance...

In Cohen's approach, the original foundations and development of the deviancy control system can be attributed to essentially three competing historical models: (1) the conventional view of correctional change; (2) the "we blew it" version of history; and (3) "it's all a con" view of correctional change (Cohen, 1985).

Our system of deviancy control originated in those great transformations which took place from the end of the 18th to the beginning of the 19th centuries: firstly the development of a centralized state apparatus for the control of crime and the care of dependency; secondly the increasing differentiation of the deviant and dependent into separate types each with its own attendant corpus of "scientific" knowledge and accredited experts; and finally the increased segregation of deviants and dependents into "asylums":

mental hospitals, prisons, reformatories and other such closed, purpose-built institutions for treatment and punishment (Cohen, 1979: 341, emphasis added).

Of these social control measures, the prison became the most dramatic instrument for altering or changing undesirable behaviour. As such, the prison sentence symbolized an historical transition from punishment as torture--a public, theatrical spectacle. Cohen (1985: 18) notes that this conventional ideology of correctional change and of the emergence of the prison, presented these correctional developments as a victory of humanitarianism over barbarity, and of scientific knowledge over turning prejudice and irrationality. Those early forms of punishment (i.e. public infliction of physical pain), based mainly on arbitrary vengeance, cruelty and ignorance, gave way to informed "scientific" knowledge and intervention by accredited experts and professionals.

Cohen (1985) refers to the second model as the we blew it version of history. The work of Rothman (1971) is discussed as the original and most influential version of this model.¹ Briefly, following the War of Independence, a pre-Durkheimian version of anomie theory became popular with American reformers. Deviants were seen as products of an anomic social order. Efforts to alter or control them thus entailed isolation from the corrupting influences of the open society. As such, the asylum emerged as a control mechanism, a "microcosm" of the

¹Rothman, David J. The Discovery of the Asylum: Social Order and Disorder in the New Republic, Boston: Little Brown, 1971, cited in Stanley Cohen, Visions of Social Control, Cambridge: Polity Press, 1985, p.19.

perfect social order. It was here that deviants, isolated from society's corrupting influences, would be "reformed". But by the 1870's, and more clearly by the 1890's, asylums deteriorated into mere custodial institutions - overcrowded, corrupt and antithetical to rehabilitation. As closed institutions continued to degenerate in the face of this critique, a series of innovative approaches developed. The ideal of individual treatment, the case-by-case method, and the entry of psychiatric doctrines were efforts to humanize the courts, the prison, probation, parole services, and other control agencies. Practice bore little resemblance to the original intentions. The gap between benevolent rhetoric and reality grew larger. Closed institutions hardly improved; new alternatives became supplements to older, control measures; discretion in handling social deviance became increasingly arbitrary; and individual treatment - as a recognition of individual authenticity - barely surfaced.

Finally, Cohen (1985: 22) contends that according to the third model--it's all a con view of correctional change:

the new control system serves the requirements of the emerging capitalist order for continual repression of the recalcitrant members of the working class and, at the same time, continued to mystify everyone (including the reformers themselves) into thinking that these changes are fair, humane and progressive.

In this respect, social control patterns conform to the needs of a capitalist social order which seeks to embed new forms of disciplinary power into every region of social life.

Punishment became 'reasonable' and the body disappeared as the major target of penal repression...Interest was

transferred from the body to the mind--a coercive, solitary and secret mode of punishment...Gone was the liturgy of torture and execution...In its place came a whole technology of subtle power...The new power was not to punish less but to punish better, to punish more deeply into the social body. A new army of technicians (wardens, doctors, chaplains, psychiatrists, educators, social workers, criminologists, penologists) took over from the executioner (the 'immediate anatomist of pain') and proceeded to provide theories which would justify punishment as an exercise in changing the mind (Cohen, 1985: 25-26).

By the beginning of the 1960's, significant changes began to take place in the organization, management, and operation of the state's deviancy control system. Massive attacks - including radical psychiatry and anti-psychiatry (e.g., Scheff, 1966; Szasz, 1961) - were made on the earlier entrenched transformations. It brought an increased impetus toward thinking about the effectiveness of incarceration in closed, security-oriented institutions.

The destructuring impulse here took the form of a radical attack on the very idea of imprisonment. The ideological consensus about the desirability and necessity of the segregative social control institution appeared to break. The prison--we were widely assured--was an experiment whose time had come to end, it had played out its allocated role, the long grim history of prison reform was over, alternative methods were at hand (Cohen, 1985: 32).

The movement toward the expanded use and development of alternatives to "total institutions" (Goffman, 1961) gained popularity. Destructuring attempts (such as decarceration and decriminalization) aimed at decreasing the size, scope and intensity of the state's deviancy control system. "State sponsored efforts to deinstitutionalize and decarcerate, combined with the widespread development of so-called

alternative programs located in the community, have manifestly altered traditional institution-based services to the mentally ill, the aged, the mentally and physically handicapped, the juvenile delinquent, and other categories of individuals over whom the state exercises some measure of supervision or control" (Hylton, 1981: 193, emphasis in original). This marked the beginnings of an explicit attempt to transfer formal social control powers of the state to the people in the community. Hylton (1981) concludes, however, that this "contracting" objective ironically resulted in the expansion of populations subject to official control in Saskatchewan.

Cohen (1979: 343) takes the term "community control" to cover almost any form of formal social control outside the walls of traditional adult and juvenile institutions". He claims that there are two distinct but overlapping types of community control strategies: (1) options set up at some pre-trial stage to divert offenders from initial or further processing by the formal social control system; and (2) intermediate alternatives ranging from probation and community service to institutionalization, or options for early release from institutions, such as parole and mandatory supervision. Cohen (1979: 343) reports that "behind these specific policies lies an overall commitment to almost anything which sounds like increasing community responsibility for the control of crime and delinquency".

This thesis is developed from this ongoing debate over the scope and nature of social control. Specifically, this thesis examines the controversy over the nature and scope of diversion as one of the major emerging reform strategies of the deconstructing movement of the 1960's. Crucial to the examination is the definition of reform. According to Fattah (1987), much of the criminological literature equates any change in the criminal justice system with reform. Fattah (1987) disagrees, arguing that although reform involves changing the status quo, not all change qualifies as reform. That is, change can be objectively observed and measured; reform, on the other hand, implies a subjective judgment (Fattah, 1987: 69). Ericson (1987) and Ericson and McMahon (1987) are critical of the ideal notion that reform makes something progressively better by changing imperfections, faults, errors, abuse or malpractice. Reforms may be meddlesome tinkering, and initiatives are often co-opted to serve specific agency needs, and the larger imperative of social ordering.

Reviewing a police-citizen organization - Citizens' Independent Review of Police Activities (CIRPA) - McMahon and Ericson (1987: 65-66) state:

As it operates, CIRPA has implications for state control, albeit not in the manner intended. Rather than loosening state control, CIRPA may contribute to its solidification...

Challenging the legitimacy of the police is a more substantial threat to the dominant order than challenging educational, social welfare or economic institutions. While these institutions have substantial and pervasive social control effects, they are more implicit than those of the police. The police in

Canadian society are elevated to the status of a national symbol and are at the forefront of debates about the relation between the state and citizens. In spite of their virtual monopoly on violent forms of social control and their increasing monopoly on information which makes citizens knowable for control purposes, the police remain legitimacy incarnate. They are the very embodiment of all the state stands for, of "peace, order and good government" and its translation into "law and order".

State reformers give credence to outside reformers only to the extent that the latter can be embodied in this policing system. When the police are questioned seriously, the authorities do not hesitate to deem reform to be in order, and they proceed to frame the boundaries of the discourse and the outcome of reform. Thus policing reform serves to "re-form" the police institution, and to "re-order" the system of domination it is established to serve.

Fattah (1987: 69-70) maintains that the concept of reform is ideological and relative because words such as good, better, progressive, efficient and humane are not value free and mean different things to different people:

There is no such thing as good or bad reform; there is only good and bad change, depending on whose side we are on. Before labelling any change in the criminal justice system as reform, it is necessary to define what, in the view of the observer, would constitute "progress" or "improvement". This, needless to say, cannot be done in neutral or value-free terms; it can only be done with reference to a specific ideology.

With that in mind, diversion - as an alternative to the traditional court process - is simultaneously one of the most widely acclaimed criminal justice reform ideas (Nimmer, 1976; Austin and Krisberg, 1981) and one of its most criticized initiatives. According to Cohen (1985: 51), the grand rationale of diversion is:

...to restrict the full force of the criminal justice system to more serious offences and either to eliminate

or substantially minimize penetration for all others. By diverting people at the 'front end' (i.e., the prosecution stage) of the criminal justice system, it is hoped that more reductions can take place at later stages (e.g., the incarceration stage).

Diversion - like other "destructuring" attempts and community alternatives - received acclaim from some as the most viable alternative to difficulties associated with formal processing of offenders through the criminal justice system. Much of the literature on the advantages of community corrections emphasizes two sets of assumptions: (1) cognitive and (2) theoretical (Cohen, 1985: 33). Cohen (1985: 33) claims that the cognitive set is interpreted as a matter of common sense--"what everybody knows": incarceration in closed security-oriented institutions is ineffective in terms of deterrence and rehabilitation; alternatives are cost-effective; and without any doubt, community alternatives are more humane than closed institutions.

The second theoretical set of assumptions, according to Cohen (1985: 33-34), appeals to a number of sociological and political beliefs. Such beliefs are not as obvious as the cognitive ones; however, they are believed to be just as well established. First, theorists of stigmatization and labelling claim that the further the deviant is processed into the system, the harder it is to return to normal life (Goffman, 1961; McBride and Dalton, 1977; Hillsman, 1982). Second, the "causes" of crime originate in the labelling processes of society (e.g., family, community, school, police, medicine), and thus, the "cure" must also lie in the community, and not in an artificially created environment, such as an institution

(Goffman, 1961; Chan and Ericson, 1981). Finally, liberal measures are politically suspect, despite the benevolent motives behind them. Therefore, policies such as decriminalization, decarceration and diversion should be redirected to do less harm rather than more good.

Furthermore, underlying the analysis is the issue of whether diversion represents an alternative or not. Rutherford and McDermott (1976) claim that diversion schemes can either be true or new diversion attempts. True diversion entails that the offender is directed completely out of the criminal justice system, with no further service or follow-up. New diversion, on the other hand, entails that the offender ironically participates in programs, in addition to being screened out of the system. That being the case, the original intention of diversion - as an alternative - to divert from or direct out of the formal criminal justice system shifts to referral to programs in or related to the system. This referral and processing offenders in new settings and by professionals with different names is what Cohen (1985) refers to as widening the net of social control (e.g., professionals such as, psychiatrists, psychologists or social workers in state-welfare, health, educational or control systems).

Vancouver Adult Diversion Program

In response to these issues (above) pertaining to diversion, this thesis concentrates on the Vancouver Adult Diversion Program as the focal point of the research. Its management of shoplifting cases is crucial to the analysis of the Program. Diversion from the regular court process is recognized and recommended as a viable alternative for handling shoplifting cases (Ministry of Attorney General, Province of British Columbia, 1984). In light of the "minor" nature of the offence, and what is assumed to be the minimal likelihood of the offender re-offending, a preponderance of shoplifting cases are dealt with through diversion (Ministry of Attorney General, Province of British Columbia, 1984).

The available literature on diversion, however, is virtually devoid of studies of the variety, functioning, and effects of diversion policies and practices on shoplifters. Generally, much of the literature on shoplifting emphasizes: (1) the financial costs of shoplifting to society (i.e., court costs); (2) the characteristics of shoplifters (i.e., first-time offenders); (3) the types of shoplifters (i.e., the amateur, kleptomaniac, non-sensical); and (4) the motives for shoplifting (i.e., social, physical, psychological) (See Cameron, 1964). Due to the above emphases, prosecuting most shoplifters through the traditional court channels is seen as inappropriate (Borgman, 1975; Ministry of Attorney General, Province of British Columbia, 1984; Cleary, 1986; Adams and Cutshall, 1987).

Briefly, a sample of 189 shoplifting case files created by the Vancouver Adult Diversion Program during 1976-1986 were selected and analyzed. A review of the shoplifting case files suggested that many of the shoplifters diverted from the regular court process had been requested by the Diversion Program Manager to see a psychiatrist. Often, it was unclear why it was necessary to impose a psychiatric assessment as a condition of diversion. At this point, particular interest focused on the shoplifter who faced not only the option of diversion as opposed to the regular court process, but a psychiatric assessment as a condition of diversion. The final objective of this thesis was to investigate whether the formal criminal justice system was expanding due to the proliferation of this community alternative--diversion.

Organization of the Thesis

The thesis is organized as follows. *Chapter II* consists of the literature review on diversion and shoplifting. An historical review of the American and Canadian diversion movements will be outlined. Then, the concept of diversion will be examined in much greater detail, with particular attention to contemporary methods of diversion. The discussion will show how diversion as an alternative, has developed and changed since the late 1960's. Some of the major justifications and criticisms associated with the movement will be identified.

Emphasis will be placed on the literature and research pertaining to Canada. The literature review on diversion will conclude with a discussion on diversion in British Columbia, with the Vancouver Adult Diversion Program introduced as the focal point of the original research of this thesis.

The discussion in *Chapter II* will then proceed with a review of the literature on shoplifting. Here, the link between diversion and shoplifting will be established. A discussion of the: (1) financial costs of shoplifting to society; (2) characteristics of shoplifters; (3) typologies of shoplifters; and (4) motives or reasons for shoplifting will demonstrate why diversion is "captured" as a process for the management of shoplifting cases.

Chapter III outlines the research design, methodology and data sources adopted for this study. Special attention will be given to documentary data analysis. In particular, the discussion will emphasize the advantages and disadvantages of documentary data analysis as a data collection procedure. The data sources will then be outlined. The 189 shoplifting case files created by the Vancouver Adult Diversion Program during 1976-1986 represent the primary source of information. A description of the sampling technique and the sample will be summarized. Furthermore, the coding scheme employed for extracting information from the 189 case files will be outlined within this section of this chapter. This will include a total of 28 demographic, offence, and psychiatric variables.

The chapter will conclude with a discussion on the methods of data analyses. The computer package, Statistical Package for the Social Sciences (SPSSx), was employed to generate the statistics. The SPSSx batch system allows the analyst to simplify, summarize, and highlight trends in the data.

Chapter IV presents the findings of the documentary data analysis of the 189 case files. When appropriate, tables and case excerpts will be included to complement the written discussions of the results. A brief discussion will be provided on interpreting descriptive and inferential statistics. Then, a summary of the findings will be made available. An overall case profile of shoplifters diverted from the traditional court process will be presented. The offence itself (i.e., shoplifting) will be summarized in greater detail (for example, types of items stolen and the offender's reason(s) for stealing). Finally, focus will be directed to those diverted shoplifters who are requested to undergo a psychiatric assessment. A central question here is, to what extent are those diverted shoplifters with a request for a psychiatric assessment different from the general population of shoplifters diverted from the traditional court process? An assessment of the factors which constitute the difference will be summarized (for example, previous psychiatric contact and psychiatrist's diagnosis of the offender).

Chapter V provides the conclusions to the thesis and recommendations for future research on the diversion process,

and disposition of shoplifters. Some of the concerns and issues put forth in *Chapters I* and *II* will be addressed. The literature review and empirical sections of this thesis provide a background to a discussion of some wider theoretical issues pertaining to social control. For instance, a major issue is the extent to which diversion is a viable alternative for the management of shoplifting cases. It will be argued that the Vancouver Adult Diversion Program does not constitute true diversion (i.e., the offender is removed from or directed out of the criminal justice system completely). Rather, it represents new diversion, where the offender participates in adjunctive programs, in addition to being screened out of the system. Basically, the Vancouver Adult Diversion Program emerges more as a referral service than an alternative to the regular court process for shoplifters. Thus, the question of whether the Vancouver Adult Diversion Program widens the net of social control will be discussed. In other words, is diversion seen as nothing more than an extension of the main form of control (i.e., the courts) for shoplifters? Of greater concern is the extent to which powers and interests of other experts (professionals), namely psychiatrists, might influence the nature of the Diversion control policy. It can be argued that the Vancouver Adult Diversion Program is there to attract clients for itself and psychiatrists and that more clients justify the existence or the success of the Program. The extent to which the goal of matching clients with the right or proper treatment, based upon various classifications of various

professional documents (for example, police reports, psychiatric files, psychological diagnostic tests) will be explored. According to Cohen (1985: 184, emphasis in original), "this whole business of information gathering, diagnosis, classification, screening and matching is a classic example of only professional interests at work". Thus, this enterprise of classification, according to Cohen (1985: 191), is the centre of power. Finally, as noted above, recommendations for under-taking a full-scale evaluation of the Vancouver Adult Diversion Program will also be considered here.

Conclusion

It is apparent that the ongoing debate over diversion continues. This thesis contributes to this debate via an empirical study of adjudication of shoplifting cases in a major Canadian city (Vancouver). The thesis investigates the premise of "true" or traditional diversion and the competing argument that the Vancouver Adult Diversion Program extends the net of state control. If community programs, such as diversion, are to be considered, there must be a demonstrated need for a serious commitment to evaluation, both to assure that effective programs result, and to assess whether programs contain unanticipated but real dangers. An attempt is made to demonstrate the functioning and effects of the Vancouver Adult Diversion Program policy and procedural practices on adult shoplifters.

CHAPTER II
AN OVERVIEW OF DIVERSION

Introduction

This chapter will explore the origins of diversion and identify some of the major justifications and criticisms associated with the diversion movement. In the available literature, diversion is variously described in positive terms - as a viable alternative to the traditional court process - or more critically, as a means of "net-widening", thereby extending state control. Clearly, there is a need to examine the conceptual, theoretical and operational issues pertaining to diversion. From a programmatic outlook, "failure to address these interwoven issues (conceptual, theoretical and operational) is likely to result in diversion efforts which are every bit as fragmented and disjointed as those justice-system practices which, in some measure, led to the diversion movement" (Carter, 1975: 20).

This chapter will continue with a general discussion of diversion in British Columbia, with special emphasis on the Vancouver Adult Diversion (V.A.D.) Program as the area of study for this thesis. Here, a detailed description of the V.A.D. Program's rationales, goals, objectives, procedural policies, and guidelines will be outlined. Finally, the Vancouver Adult Diversion Program case files are reviewed.

According to the British Columbia Ministry of Attorney General (1984), diversion in British Columbia has become a simple, efficient and inexpensive enforcement process for major retailers. It is suggested that the diversion programs in British Columbia¹ are "captured" as alternative processes for the management of shoplifting cases. In light of the "minor" nature of the offence, and what is assumed to be the minimal likelihood of the offender recidivating, a preponderance of shoplifting cases are dealt with through diversion (Ministry of Attorney General, Province of British Columbia, 1984). Here, a review of the literature on shoplifting will include: (1) the financial costs of shoplifting to society; (2) characteristics of shoplifters; (3) typologies of shoplifters; and (4) the motives or reasons for shoplifting.

Origins of Diversion

In the late 1960's, diversion was a convergence of several ideological and economic trends. The initial references to the concept of diversion were in the U.S. 1967 President's Commission on Law Enforcement and Administration of Justice report.² The authors of the President's Commission Report

¹See Ministry of Attorney General, Province of British Columbia, An Evaluation of Adult Diversion Program Processes, Costs and Outcomes: Vancouver Adult Diversion Program; Mid-Island Diversion Program; Victoria Community/Mediation Services, March, 1984. To the best of the author's knowledge, there has been no comprehensive, follow-up report to the 1984 report.

²President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, Washington, D.C.: U.S. Government Printing Office, 1967.

concluded that there were many offenders, for whom the full force of traditional criminal sanctioning (i.e. incarceration) was much too excessive. The authors of the Report believed that such offenders required some form of treatment or supervision. The dilemma was that American courts and prosecutors lacked alternatives other than charging or dismissing such offenders. As a liberal alternative, the President's Commission (1967: 134) recommended, "early identification and diversion to other community resources of those offenders in need of treatment, for whom full criminal disposition does not appear required".

It was following such notable recommendations that diversion became a nationwide reform strategy for combatting crime, especially juvenile delinquency. Stimulated by the efforts of the 1967 President's Commission, many diversion programs emerged. For Blomberg (1983: 25), the primary function of diversion programs was to provide individually tailored services. Adult and juvenile diversion programs shared in the attempt to replace traditional or official justice-processing with alternative processing into various community-based treatment programs (Blomberg, 1980: 573-574).

According to McBride and Dalton (1977), the development of alternatives, including diversion, was further influenced by two other criminological approaches, differential association and labeling theory. McBride and Dalton (1977) argued that prison milieux promoted criminal and antisocial behaviours. Prisons functioned as learning environments in which individuals learned

roles and behaviours functional only to a prison setting. According to Sutherland's concept of Differential Association,³ some individuals became involved with criminal contacts and became criminals as a consequence, while others did not have such contacts (Gibbons, 1979: 54). Sutherland's version of Differential Association theory included the following propositions (Gibbons, 1979: 54):

1. Criminal behavior is learned, not inherited...the person who is not already trained in crime does not invent criminal behavior.
2. The principal part of learning of criminal behavior occurs within intimate personal groups (such as the prison population).
3. When criminal behavior is learned, the learning includes: (a) techniques of committing the crime, and (b) the specific direction of motives, drives, rationalizations and attitudes.
4. A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of law.

In other words, when individuals became criminal, they did so in large part because of persistent intimate contacts with criminal patterns, and because of isolation from anti-criminal patterns. Therefore, according to McBride and Dalton (1977: 106), because imprisonment socialized incarcerated individuals into roles that could only be played in prison, they believed the prison experience was responsible, to some extent, for high recidivism

³See Edwin H. Sutherland, "Differential Association", in Joseph E. Jacoby (ed.), Classics of Criminology, Oak Park, Illinois: Moore Publishing Company, Inc., 1979, pp.168-171; and Don C. Gibbons, The Criminological Enterprise: Theories and Perspectives, Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1979, pp.46-61.

rates.⁴

The labeling perspective was also instrumental in the development of diversion programs (Lundman, 1976; McBride and Dalton, 1977; Paternoster et al., 1979; Roesch, 1979; Davidson et al., 1981; Hill, 1986; O'Connor, 1986). Generally, "the apprehension, processing, and public labeling of an individual was seen as the core aspect of self and the cause of continuous criminal behaviour" (McBride and Dalton, 1977: 106). As a result of processing and labeling, the individual adopted a criminal self-concept, and thus organized his or her behaviour around that self-concept. The further an individual was processed into the system - especially that which resulted in a conviction - the harder it was for that individual to return to a non-criminal or non-deviant life. The individual became labeled as a criminal, had increased difficulties in obtaining employment, was viewed by the community as deviant and became identified with a deviant image and subculture (Roesch, 1979: 94). The reactions of official agents to individuals accused of deviance encouraged such behavior by generating socially stigmatizing labels such as delinquent, criminal, or ex-offender (Hillsman, 1982: 363-364). Instead of serving as a means of rehabilitation, prisons contributed to the future criminality of prisoners. Thus, many claimed that prisons were 'schools for crime', because they promoted crime by strengthening criminal

⁴The authors cite the work of D. Clemmer, 1950, "On imprisonment as a source of criminality", Journal of Criminal Law, Criminology and Police Science, 41(September): 311-319.

contacts and commitments.⁵ Long-term separation from community life weakened ties with conventional institutions and family. Moreover, in the community, association with non-criminals mitigated criminal attitudes, self-concepts and skills.

In sum, according to the labeling literature, the most crucial steps in the process of building career deviance were likely to be the experience of being apprehended, processed, and publicly labeled. Hence, diversion emerged as an alternative to this labeling process,⁶ by minimizing penetration into the formal criminal justice system, and keeping the individual free of stigma and in the community as long as possible.⁷ Ostensibly, then, diversionary procedures avoided much of the stigmatization and negative transformation of identity associated with conventional prosecution and conviction procedures. According to O'Connor (1986: 35):

One of the merits of diversion is that the offender is not labelled and not stigmatised or otherwise conditioned by the system of criminality in which they become entrenched. It was in an attempt to avoid that labelling and stigmatising that real merit was seen in a diversion scheme for certain classes of offenders.

⁵A representative collection of such material is found in Perlstein, G.R. and Phelps, T.R. (eds.), Alternatives to Prison: Community Based Corrections, Pacific Palisades, California: Goodyear Publishing Co., 1975.

⁶See Ronald Roesch, "Pretrial Interventions in the Criminal Justice System" in Challenges to the Criminal Justice System: The Perspectives of Community Psychology, Theodore R. Sarbin (ed.), New York: Human Sciences Press, 1979.

⁷See Stanley Cohen, "The Punitive City: Notes on the Dispersal of Social Control", Contemporary Crises, 1979, 3(4): 339-364.

Critiques of labelling perspectives have endured. In his 1980 review article, Petrunik questioned the rise and fall of labeling theory. Generally, studies (Tittle, 1975; Hirschi, 1975; Gove, 1975) purporting to be empirical tests of hypotheses derived from labeling theory, have generated little scientific support for what they construed to be 'labeling theory'. Petrunik (1980: 224) pointed out that Tittle (1975: 175),⁸ in examining the labelling of individuals as criminals, stated: "the most that can be concluded is that social disadvantages (such as mental and physical disabilities) may have some effect on labelling and the labelling may have some influence on producing criminal behavior". Furthermore, Hirschi (1975: 198)⁹ reviewed what he referred to as "Tannenbaum's original labelling theory of delinquency" and argued that the lack of evidence for Tannenbaum's theory was "cause for serious concern". Gove (1975: 295) concluded that "the evidence reviewed consistently indicated that it was the behavior or the condition of the person that was the critical factor in causing someone to be labelled a deviant" and that "labelling was not the major cause of deviant behavior".

Finally, diversion must also be interpreted as an innovation that emerged from economic considerations, especially court

⁸Tittle, C.R., "Labelling and Crime: an empirical evaluation", in Gove, W. (ed.), The Labelling of Deviance: Evaluating a Perspective, New York: Sage Publications, Inc., 1975, pp.157-179.

⁹Hirschi, T., "Labelling theory and juvenile delinquency: an assessment of the evidence", in Gove, W. (ed.), The Labelling of Deviance: Evaluating a Perspective, New York: Sage Publications, Inc., 1975, pp.181-203.

back-logs and the mounting costs of prosecuting, detaining, and incarcerating offenders. Scull (1977) contends that it is welfare capitalism which creates structural pressures to curtail spending, including spending on costly systems of segregative (prison) controls. These pressures lead the state to divest itself of costly penal or quasi-penal institutions (e.g., asylums) and to develop an alternative system of 'care' in the community.

...this shift in social control styles and practices must be viewed as dependent upon and a reflection of more extensive and deep-seated changes in the social organization of advanced capitalist societies. In particular, it reflects the structural pressures to curtail sharply the costly system of segregative control once welfare payments, providing a subsistence existence for elements of the surplus population, make available a viable alternative to management in an institution...It is the pervasiveness and intensity of these pressures, and their mutually reinforcing character, which account for most of the characteristic features of the new system of community "care and treatment" (Scull, 1977: 152).

The policy of decarceration succeeded in the twentieth century because of the political economy of corrections and social control. Chan and Ericson (1981), in their examination of different levels of Canadian government (federal, provincial, municipal), contend that decarceration policy has its basis in the fiscal and economic crisis of the Canadian state. By analyzing financial management data¹⁰ and national accounts data,¹¹ Chan and Ericson (1981: 38) claim that their analysis:

¹⁰Expenditure figures quoted are drawn from the financial management data set, Statistics Canada, Canadian System of Government Financial Management Statistics, 1972.

¹¹Statistics on government surplus and deficit are derived from the national accounts system, Statistics Canada, Canadian

supports the idea that the welfare capitalist state is experiencing increased difficulty at the fiscal level in terms of its growth in relation to the private sector, especially when its role as a provider of social welfare services appears to be expanding rapidly.

They conclude that decarceration has not turned out to be a cheaper form of punishment. Ironically, it seems to have been accompanied by a substantial growth of the criminal control apparatus. The size of the prison population was not decreasing, while the number of people directed to community alternatives appeared to be increasing. Chan and Ericson (1981) conclude that decarceration, if it is indeed a policy to help relieve the fiscal crisis, has turned out to be an expensive enterprise, in some ways ironically contributing to the fiscal crisis.

Hylton (1981) examines the utilization of institutional and community correctional programs in the province of Saskatchewan, Canada, for the period from 1962 to 1979. His examination is organized around two questions: are institutional programs being replaced by community programs; and what effects do community programs have on the size of the correctional system? His evidence appears to contradict the premise that community programs replace correctional institutions and reduce reliance on such segregative social control strategies.

Hylton (1981) reports that Saskatchewan correctional institutions processed more offenders in 1979 than at any other time in their history (e.g., 1962). He claims that, all this occurs concomitantly with the expanded use of "alternative"

11(cont'd) Statistical Review-Historical Summary, 1970.

programs. Furthermore, Hylton (1981) indicates that although the utilization of correctional institutions did increase in the period from 1962 to 1979, the expanded use of community programs was far more significant. In Saskatchewan, the average time served under direct prison sentence was between 45 and 50 days, while the average time on probation was 11 months (Hylton, 1981: 206). The Saskatchewan instance shows that community programs have not reduced reliance on correctional institutions but, instead, have served to greatly expand the proportion of population under state supervision. Hylton (1981: 208) concludes that it is clear that savings have not accrued to the state as a result of the creation and use of community programs.

According to Ian Taylor (1983: 141), law and order expenditure in Canada has been increasing rapidly since the early nineteen sixties. A projection undertaken by the Ministry of the Solicitor-General in 1976 confirms that increases have occurred substantially in expenditure on the "administration of justice".¹² Taylor (1983) offers two explanations of these vast increases in law and order expenditure (for example, increases in the number of police officers, prisons and prison guards). The first explanation arises from public fears about crime and social order. Through channels, such as federal or provincial elections, the state creates and responds to public fears articulated through public opinion polls. Taylor (1983: 142)

¹²Ministry of the Solicitor-General, Canada Statistical Handbook: Selected Aspects of Criminal Justice, Ottawa: Ministry of the Solicitor-General (Reference No.6-1061) (Mimeo), 1976, referred to, in Ian Taylor, Crime, Capitalism and Community, Toronto: Butterworth & Co. Ltd., 1983, p.141.

claims that these increases are often filtered through liberal ideology, which misconstrues the origins and nature of law and order measures in capitalist societies:

The liberal explanation of these increases (in the number of police officers, prison and prison guards and in the rate of imprisonment) is focused on the irrationality of such expenditure. It is expenditure that has to be entered into because of government's inability to educate public opinion as to the true extent and character of crime in Canada. It is also irrational expenditure because it is unproductive and ineffective: expenditure on prison does characteristically yield social benefits in the form of ex-inmates who become happy and conformist members of the labour force. It does not appear to affect the crime rate.

The second reason for increased expenditure is that the Canadian criminal justice system is what Taylor (1983) refers to as a "provider of employment". Figures¹³ are provided to demonstrate that increases in employment opportunity in law and order professions (for example, correctional officers, police officers or probation and parole officers) are more pronounced in Canada than in other western societies.

Taylor (1983) concludes that authentic social order within a society arises from fair and legitimate social, work and economic relationships, not by a vast expansion of state discipline. He (1983: 145) notes that:

these are the conditions, indeed of the elusive 'community' which is so widely felt in the 1980's to have disappeared in capitalist societies...It is for

¹³For instance, according to the Ministry of the Solicitor-General (1979), the staff-inmate ratio in the Corrections Service rose from 1:2 in 1966 to 1:1.2 in 1979. Furthermore, Demers (1980: 52-53) reports that in 1966, there were 4,920 people employed in federal corrections and by 1979, there were 9,061 employed.

that reason that we have argued the importance of a strategy for 'deconstructing' the new law and order state of Canada and democratically reconstructing the state and redistributing its expenditure...

In sum, it appears that the attempts of the 1967 U.S. President's Commission on Law Enforcement and Administration of Justice, the ideological influences of differential association and labeling theory, and the economic or fiscal imperatives have contributed enormously to the emergence and expansion of diversion programs. At the time, it was believed that too many people were being swept within the scope of the criminal justice system (police, courts, and prisons), rendering it inefficient, costly, and arbitrary (Gorelick, 1975: 180). Thus, diversion received acclaim from some quarters as a viable alternative to difficulties associated with formal processing of offenders through the criminal justice system.

Diversion By Any Other Name

Diversion, in the widest sense of official discretion to not lay charges or otherwise proceed with the justice process, has been used informally and unofficially at all stages of the criminal justice process since its inception. According to Glinfort (1977: 2):

Individual and informal discretion has always been exercised by victims, police, prosecutors, courts and correctional personnel to avoid or limit the full impact of the criminal sanction for some offenders. Most criminal incidents are resolved informally in the community between the offender and the victim without reference to the police. At progressive steps in the criminal process, the use of warnings, community

referrals, out-of-court settlements, plea bargaining, suspension of charges, sanctions other than imprisonment and partial substitution of community programs for imprisonment further reduce the impact of the full enforcement mandate.

Virtually any new program involving the use of the community in the treatment of the offender, or any program with the purpose of avoiding or reducing official or formal intervention through the use of the criminal justice system, could be placed within a generic concept of diversion. In a paper prepared for the Meeting of the Continuing Committee of Canadian Deputy Ministers responsible for Corrections, Glinfort (1977: 4, emphasis in original) outlines the welter of possible interpretations of diversion strategies:

Initially, diversion was seen as a dismissal of charges following successful pre-trial intervention, but eventually was equated with any conditional pre-trial release. During the last few years the concept has been broadened in many jurisdictions to include alternatives to imprisonment. At the same time the label diversion has been attached to practically any new program involving community treatment or attempts to avoid official action.

It appears that the varying structures and functions of diversion practices or programs can be largely attributed to the lack of definitional clarity in the diversion concept. Klapmuts (1974) notes:

The confusion of diversion with community treatment, screening, decriminalization, crime prevention or the provision of services to non-criminal or pre-delinquent persons, and the lack of consensus on the goals of diversion are likely to result not only in unsystematic development of programs with limited impact but also in a potential threat to individual rights...As a potentially major instrument of social control, diversion from the criminal justice system should receive careful attention. A logical first step would be to achieve consensus on the exact meaning of the term

and to place some clearly defined limits on its application.¹⁴

In a Working Paper on Diversion, the Law Reform Commission of Canada (1975: 4) identifies four stages at which diversion may take place:

1. Community Absorption: individuals or particular interest groups dealing with trouble in their area, privately, outside the police and courts. In this stage, police officers are not engaged in resolving the trouble.

2. Screening: police referring an accident back to family or community, or simply dropping a case rather than laying criminal charges.

3. Pre-trial diversion: instead of proceeding with charges in the criminal court, referring a case out at the pre-trial level to be dealt with by settlement or mediation procedures.

4. Alternatives to imprisonment: increasing the use of such alternatives as absolute or conditional discharge, restitution, fines, suspended sentence, probation, community service orders, partial detention in a community based residence or parole release programs.

The central theme of the above four stages is comparative restraint; that is, restraint in the use of the criminal justice system if other alternatives are available. Informal discretion is exercised by victims, police, prosecutors, or courts and correctional personnel to avoid or reduce the full impact of the criminal justice system on particular offenders.

According to Selke (1982), the term diversion has been used synonymously with such programmatic concepts as probation, decriminalization, deferred prosecution, pre-trial screening and

¹⁴Cited in Elo K. Glinfort, Diversion: A Canadian Concept and Practice, Formal Criminal Justice Diversion, Ministry of the Solicitor General, Canada, October, 1977, p.5.

even social service referral. "No one definition of diversion seems capable of comprehending everything done in its name" (Law Reform Commission of Canada, 1975: 4). Many of these practices--probation, social service referral, parole release programs, decriminalization--clearly do not constitute what Rutherford and McDermott (1976) refer to as true diversion. True (or traditional) diversion entails that the offender is removed from, or directed out of the criminal justice system completely. The offender is thus not subjected to any treatment, service or follow-up. In contrast, the diversion programs mentioned above (probation, social service referral or parole release programs), require that the offender has been exposed to the criminal justice system to some degree. Rutherford and McDermott (1976) claim that such programs represent new diversion, where the offender ironically participates in programs, in addition to being screened out of the the system.

More recently, McMahon and Ericson (1987) trace the development of the Citizens' Independent Review of Police Activities, an organization established to reform the police in Toronto, Ontario. McMahon and Ericson note that during the 1970's in Toronto and other parts of southern Ontario, there were serious and recurring allegations of police wrong-doing which led citizen reform groups and official state reformers to seek a reform that might process and resolve allegations against the police in a more just manner. McMahon and Ericson (1987: 38-39) argue that most Canadian criminal justice reforms rest with state agents:

when signs appear that citizens might be organizing for reform, state agents move in to monitor developments, participate in events, and ultimately bring the reform effort within their sphere of influence.

Thus, it is predictable that such community-based, citizen-initiated reforms will fall within the influence of the state. The efforts of the community and of the state thus become inseparable. In other words, because the state seeks to monitor and evaluate such measures, the ideal of informality and community autonomy is compromised and co-opted by the state agents.

To conclude this section, it is clear that the subject of diversion remains very controversial, with some welcoming it as a benevolent, cost-effective reform, and others critical of its false promises of weakening state control. Vorenberg and Vorenberg (1973: 152, emphasis in original) claim that:

Diversion...has no real meaning in relationship to the criminal justice system in the absence of a context that tells us: (1) what the process is by which diversion takes place; (2) what the person is diverted from-i.e., what is diversion instead of; and (3) what he is diverted to.

At this point, there are many issues involved in the formalization of the diversion concept. These issues will be considered in the discussions to follow. Clearly, conceptual, theoretical and practical issues should be considered in weighing the merits of diversion.

A Divergence of Practice from Principle

Evaluation research is one means of appraising diversion operations. The British Columbia Ministry of Attorney General (1984), however, points out that there have been few systematic evaluations of diversion in Canada (Law Reform Commission, 1975; Cavoukian, 1979; Canagarayar, 1980; Pitcher-LaPrairie, 1980; British Columbia Ministry of Attorney General, 1984; Divorski, 1986; Jaffe et al., 1986). Moreover, only a couple of studies have been completed on adult diversion (British Columbia Ministry of Attorney General, 1984; Divorski, 1986). According to Roesch (1978), most of the existing studies have been purely descriptive and have lacked adequate research methodologies. Roesch concludes that research methods have been so inadequate that the question of whether or not a particular, diversionary approach works - in the sense of recidivism - cannot be answered on the basis of the available data (1978: 78). This situation has not changed since Roesch's comments over a decade ago.

Having recognized the methodological limits, the available literature is useful in exploring what the Ministry of the Solicitor General of Canada (1978) refers to as the promises and dangers of diversion. The concept of promise is articulated by the Ministry of the Solicitor-General, Canada, presenting diversion in the light of a near-panacea for several, related problems.

Diversion is a promise! It is a promise that the poor, the uneducated, the disadvantaged and the abandoned who come in conflict with the law will receive the support

and compassion of their communities. It is a promise that society is still capable of resolving relatively minor conflicts without recourse to the courts. Diversion...has the potential to reduce court backlog, provide compensation to the victims or the community, and present a mechanism to establish community support for many people in conflict with the law, while protecting the rights of the offender (Ministry of the Solicitor General, Canada, 1978: 10).

Contrary to these promises in principle, there exist the dangers in practice.

The greatest danger is that the Diversion process will become another layer of bureaucracy. What we may be doing is formalizing a solution that may create a phenomenon of an agency in search of clients...Another danger is that Diversion might not always provide for due process, the protection of the individual's rights under law...Another danger is that where a Diversion project exists, a police officer who previously might have dismissed an offender with a warning may feel compelled to refer the offender to the project...Above all, diversion schemes must not preclude decriminalization of certain types of non-violent offences (Ministry of the Solicitor General, Canada, 1978: 11-12).

These issues raise many questions in what Cohen (1985: 11) envisions as the "realm of words and the realm of deeds":

What is perennially at issue, is how surface reasons can differ from real reasons, or how people can say one thing, yet be doing something which appears radically different. Perhaps such gaps between appearance and reality or between words and action, exist because people cannot ever comprehend the real reasons for their actions. Alternatively, they understand these reasons only too well, but use words to disguise or mystify their real intentions. Or perhaps the stated verbal reasons are indeed the real ones, but because of the obdurate nature of the world, things somehow turn out differently (emphasis in original).

Although confusion has existed over the definition of diversion, the justifications and promises of its development have been widely cited. These justifications (humanitarianism, court overload and cost), to a large extent, are attributed to dissatisfactions in the administration of criminal justice to the criminal justice system.

First, a central point in the argument for rehabilitation and diversion is humanitarianism. According to Hillsman (1982: 361), during the 1960's, many offenders were afflicted with a wide array of problems: social problems (e.g., poverty), emotional problems (e.g., psychiatric and psychological), and physical problems (e.g., physically disabled) and their criminality tended to be neither violent nor particularly serious. Such non-criminal problems were ostensibly overlooked by prosecutors and judges as they went about their traditional task of processing cases. Reformers claimed that these offenders were in need of treatment or some form of service for their problems, rather than - or in addition to - the condemnatory aspects of prosecution, adjudication of guilt and penal sanction. In a Working Paper on Diversion, the Law Reform Commission of Canada (1975) acknowledged that too many forms of socially problematic behavior had been appropriated by the criminal law in recent history,¹⁵ and this trend needed to be

¹⁵Refer to Morris and Hawkins, "The Overreach of the Criminal Law", in The Honest Politician's Guide to Crime Control, Chicago: The University of Chicago Press, 1970.

reversed:

...the Commission suggested achieving this goal through diversion. Diversion in this context represented an approach which recognized that problems existed and could not just be defined away. The Commission sought solutions which minimized the involvement of the traditional adversary process and maximized conciliation and problem settlement. The full force of the criminal process could thus be restricted to offences, which raised serious public concern...It implied a recognition that diversion was not to resolve problems within the criminal justice system itself but should rather assist the system to concentrate on those problems by removing inappropriate problems for resolution in the community.¹⁶

As a result, "the basic direction of diversion reforms during that time was to provide a more humane and effective alternative to criminal prosecution for handling the growing, complex social problems or offenders" (Hillsman, 1982: 362).

Another commonly cited justification is that the formal criminal justice system is overburdened with cases (Vorenberg and Vorenberg, 1973; Roesch, 1979; Davidson et al., 1981; Hill, 1986). It is believed that diversion would reduce this court overload and consequential backlog, thus allowing prosecutors and judges to concentrate more of their time and attention on serious and repeat offenders (Gorelick, 1975; Roesch, 1979; Levine et al., 1980). A case-in-point, drawn from the British Columbia Ministry of Attorney General (1984), is that Crown Counsel regards diversion as very useful in the management of

¹⁶This was pointed out by E.K. Glinfort in an unpublished paper, Formal Criminal Justice Diversion, prepared for the November, 1974 Meeting of the Continuing Committee of Canadian Deputy Ministers responsible for Corrections, Quebec City, October 24-26, 1977, pp.6-7.

nuisance cases.¹⁷ Crown Counsels claim that diversion gives them the option to avoid having to face judges who do not want petty or nuisance cases before them.¹⁸ Diversion of these offenders would save everyone a great deal of court time, and ultimately allow the courts more time to attend to serious cases. According to Davis et al. (1988), exposure to the criminal justice system is both unnecessary and potentially harmful for a majority of petty offenders; reparation by way of diversion may be a less costly and less damaging alternative.

Gorelick (1975: 193) argues that, "diversion permits the increased use of discretion in the criminal justice system. Discretionary methods are thought to permit the reallocation of criminal justice resources from minor crimes to major ones..." In addition to alleviating court congestion, diversion further 'eases off' probation caseloads.¹⁹ For instance, with the option of diversion, probation officers spend less time in preparing pre-sentence reports. The Program Manager also claims that

¹⁷This was pointed out by Vancouver Crown Counsel in a study conducted by the Ministry of Attorney General in March, 1984, An Evaluation of Adult Diversion Program Processes, Costs and Outcomes: Vancouver Adult Diversion Program; Mid-Island Diversion Program; Victoria Community Diversion/Mediation Services, p.48.

¹⁸This point will be addressed in greater detail in later discussions of the Vancouver Adult Diversion Program in British Columbia.

¹⁹Information provided by the Vancouver Adult Diversion Program Manager in 1985. This supports earlier work by Robert M. Carter (1975) in Gary R. Perlstein and Thomas R. Phelps (eds.) Alternatives to Prison: Community-Based Corrections, Pacific Pallisades, California: Goodyear Publishing Co., 1975, p.24.

without a diversion program, probation officers would have to monitor many more cases, if the courts impose a period of probation on the offender.

Finally, it is believed that community alternatives such as diversion are less expensive than traditional court handling (Greenberg, 1975; Lundman, 1976; Davidson et al., 1981). The authors caution that the potential cost-savings of diversion are not easily calculated. Davidson and his associates (1981: 112) state that diversion is more cost effective if diversion is used for those facing formal system handling; if diversion - especially outright release - is less costly; and if the diversion program is effective in crime prevention.

This issue of cost-savings becomes more problematic, however, when a number of factors are considered. According to Davidson et al. (1981) and Blomberg et al. (1986), the long-term costs and cost-savings of any program hinge on the program's impact on recidivism. Cost-savings can only be realized if there is a resulting reduction in the number of offenders entering the formal criminal justice system (Davidson et al., 1981). This is problematic, since the evaluation literature does not allow a determination of recidivism effects of diversion. The issue of diversion with the provision of services warrants particular caution in assessing diversion's potential for cost-savings. The cost of such a service program must also be explored relative to the cost associated with traditional court handling. For instance, is diversion with the provision of services less

expensive than if the offender was to have been simply warned and released?

The promises of diversion have been well documented throughout the literature. It is important to note that, given the complexity and diversity of these claims, they cannot and have not been easily tested and verified. Hillsman (1982) questions how anyone can establish empirically whether diversion from traditional court processing decreases social stigma for offenders. Similarly, it is difficult to show that diversion from criminal prosecution provides a more humane alternative for handling all those so-called complex social problems of offenders. Provided it was possible to empirically demonstrate this, it is further difficult to test over a longer period of time. Finally, one questions whether diversion with or without services is more effective in terms of rehabilitation than traditional court processing. These represent some of the concerns which demand further examination.

Dangers of Diversion

Several issues represent dangers often associated with diversion. A number of major issues have been repeatedly raised: due process considerations; diversion's effectiveness in reducing recidivism; and concerns regarding net-widening and social control.

One of the most controversial and complex concerns in the area of diversion involves the role of due process. There has

been considerable concern expressed that the informality and inherent degree of discretion involved in diversion does not provide the individual with procedural safeguards adequate to protect legal rights (Gorelick, 1975; Nimmer and Krauthaus, 1976; Roesch, 1979; Davidson II et al., 1981; Hillsman, 1982; Feeley, 1983). In fact, diversion may undermine defendants' interests (Nimmer and Krauthaus, 1976: 209). The available literature addresses a number of due process issues: double jeopardy, right to a hearing or appeal, presumption of innocence, equal protection, and excessive arbitrary discretion.

The first issue of due process and diversion is double jeopardy. Diversion programs are inherently coercive. On the surface, participation in such programs may be voluntary, but in reality, an individual is given the fixed choice between diversion and prosecution. Given the possibility of conviction, if prosecuted, the individual understandably perceives diversion as being the only option. Roesch and Corrado (1983: 388) argue that diversion is seen as the lesser of two evils. In addition to coerced participation, the individual must also be successful within the terms and conditions of diversion in order for the charges to be dismissed.²⁰ Thus, "in diversion, cooperation is motivated by the threat of reinstated prosecution if the client does not cooperate and the promise of dismissal if he does" (Nimmer and Krauthaus, 1976: 212).

²⁰This is not the case with the Vancouver Adult Diversion Program. Once both parties (the Diversion Program Manager and the divertee) accept responsibility and Crown Counsel has approved the Diversion agreement, further formal justice processing of the offender is terminated.

Ericson and Baranek (1982) offer a clear look at the pressures on "defendants as dependants", essentially subject to the orders and decisions of the police, Crown attorney, defence lawyer and judge. The authors use interviews with 101 accused and interviews with police officers, defence counsel and Crown prosecutors to buttress their assertion that accused people become dependants, rather than defendants. Ericson and Baranek (1982: 40) maintain that the Canadian criminal process is driven by a crime control and social ordering imperative, not an adversarial (due process) ideal:

Our findings and our policy analysis raise some fundamental questions about the criminal process, showing it to be a rigorously ordered mechanism for social control at a considerable distance from an adversary system of justice.

As a consequence of this crime control and social ordering imperative, Ericson and Baranek (1982:3) point to structural pressures bearing on accused persons:

The options open to the accused are defined by the structure of the criminal process and how that structure is interpreted by the agents who man it, so that the accused's freedom to make choices that might potentially serve his own interests is clearly circumscribed, and often foreclosed.

A second issue associated with due process is the right to a hearing or appeal when diversion is terminated because of a perceived breach in the diversion contract. In general, if diversion is terminated, the case is returned to formal court processing, regardless of the already completed terms. Typically, the decision to terminate diversion participation lies solely in the hands of an intake person, and therefore

attention must be directed to the process and criteria by which this may occur (Davidson et al., 1981: 109). Reasons for termination may be vague or unspecified. The requirements of due process (for example, the right to have counsel, the right to a hearing or the right to an appeal) are usually not available to the individual.

The third due process issue turns on the presumption of innocence until proven guilty. In order for an offender to be accepted into a diversion program, he or she must first admit to the charge being laid. An admission of responsibility does not, in itself, constitute a finding of guilt in a court of law. According to Davies (1976: 764), there is a strong possibility that offenders, ignorant of their rights at law, may participate in mediation proceedings, whereas they would likely have been acquitted of the charges in a criminal court. With diversion, there is no safeguard against this presumption of guilt. Davies (1976: 764) further argues that the determination of guilt of an offender should be a judicial responsibility, not one that is to be decided arbitrarily outside a court room.

Another due process concern associated with diversion is equal protection of people before the law. As will be pointed out with respect to diverted shoplifters in British Columbia, the final decision to divert an offender is the sole responsibility of the Crown. Although there are pre-existing guidelines set out for the Crown,²¹ the issue becomes important

²¹See Appendix A for an example of these criteria.

when offenders who meet such established selection criteria are excluded from participation for unspecified reasons (Roesch, 1979: 97). Thus, the individual has no legal recourse for reviewing the situation.

A final due process issue is based on arguments that the informality and lack of public scrutiny of diversion programs may result in excessive and arbitrary discretion. Davidson and his associates (1981: 110) argue that "appropriate use of discretion and its limitations is a pervasive issue in diversion since it is related to each of the previously mentioned elements of due process". Scrutinizing discretion is critical in procedures for assuring voluntary participation,²² preventing biased selection of participants (i.e., when offenders who meet established selection criteria are excluded from participation for unspecified reasons) and so forth.

The 1978 Jones case illustrates the complexity of due process considerations in a diversion program. This case involved a defendant charged with shoplifting. Lois Jones was initially accepted into a Kamloops diversion project following charges of possession of marihuana and of shoplifting. She entered into a formal, written agreement to fulfill 20 hours of community service for each offense (i.e., a total of 40 hours), and to submit a written account of her involvement, commencing with her apprehension in the store.

²²The voluntary aspects of diversion were questioned by the Judge's reasoning in the 1978 Jones case, which is reviewed below.

The customary mandatory conditions were also set out: (1) report to her diversion supervisor; (2) advise the diversion supervisor of changes in address; (3) keep the peace; and (4) be of good behaviour.²³ She satisfied all of these conditions with one exception. In the last week of the agreement, she discontinued contact with the Probation Officer. She changed her residence, and the Probation Officer was unable to locate her. Moreover, on the day when the diversion agreement was to end, she appeared in court on a new drug possession charge.²⁴ At this court appearance, she was confronted with a resumed prosecution of the originally diverted federal charge of possession of marihuana.

The Judge expressed his concern that a concluded diversion agreement, such as the agreement in the Jones case represented an interference with the constitutional freedom of the individual. The Judge also indicated that it was doubtful that any accused person, faced with a choice of trial or no trial, could bargain freely, when it had been made clear that a failure to complete the agreement would result in a resumed prosecution. Furthermore, the Judge saw the participation of the Probation Officer in the negotiation of the diversion agreement to be that of an agent of the Crown. That being the case, the Crown was seen as a direct party to the diversion agreement. The Judge

²³This is also the case with the Vancouver Adult Diversion Program. Refer to Appendix B (Vancouver Adult Diversion Program Diversion Plan/Agreement).

²⁴This new charge involving possession for the purpose of trafficking was cleared. She was acquitted of this allegation.

construed the agreement as a plea bargain and sentence, all in one. As such, Crown did not act within the rule of law. The Judge ordered a stay of the proceedings of the case. Finally, before the Supreme Court of British Columbia, the presiding Judge concurred with the previous Judge and noted the following:²⁵

1. Diversion was not to be a substitute for penal sanctions.

2. Diversion programs should in no way be coercive or oppressive. Restraints on the liberty of an individual (for example, punishment and deterrence) should be imposed only by the courts.

3. When administering diversion programs, great restraint should be exercised as to who is appropriate for diversion.

4. In order to achieve equal justice and the aforesaid goals, firm guidelines should be imposed and adhered to.

In sum, according to Whitson (1979: 24), there was a cause and effect relationship between this case and the current procedural guidelines from the Ministry of Attorney General in British Columbia, requiring the Crown to abandon the prosecution of the charge when a decision to divert an alleged offender is made. He claims this procedural directive represents total compliance with the Jones decision.

There is also a significant conflict between the objectives of the Ministry of the Attorney General, and the bailiwick of the courts. This conflict reflects the jurisdictional separation of powers, and reflects the contradictions within the state

²⁵Cited in Whitson, A Policy Oriented Legal Analysis of Adult Pre-Trial Diversion in the Canadian Context, Ottawa: Solicitor General of Canada, 1979, p.22.

apparatus. In their analysis of the problem of relative autonomy and criminal justice in the Canadian state, Ratner and his associates (1987: 117) claim that:

the complex mixture of the interpretative powers of the courts, the surveillance and definitional powers of the police, and the disciplining powers of corrections is one that operates toward state autonomy but which is also encountered by hegemonic class interests intent on circumscribing that autonomy.

In other words, Ratner and his associates (1987) argue that within the Canadian state apparatus, there are processes working toward state autonomy, as well as class-based activities restricting that autonomy, resulting in contradictions for state policy and directives.

A second concern associated with diversion is its effectiveness in reducing recidivism. The claim made most frequently by diversion advocates to establish diversion's rehabilitative effect is that participants have a lower rate of recidivism than nonparticipants (Gorelick, 1975: 199). The available literature does not, however, support the notion that diversion programs have any substantial effect in reducing recidivism (Hillsman, 1982: 378). Details of several evaluative studies are available in Appendix E.

There is evidence that diversion has widened the net by increasing the number of offenders who come into contact with the formal social control apparatus. Several authors are concerned that community programs, such as diversion, expand the state's control over individual behavior and freedom (Morris, 1975; Nejelski, 1976; Roesch, 1979; Austin, 1980; Austin and

Krisberg, 1981; Teilmann Van-Dusen, 1981; Blomberg, 1983; Roesch and Corrado, 1983; Cohen, 1985; Decker, 1985; Blomberg et al., 1986). Roesch (1979: 95-96) claims that there is a clear danger that diversion programs substitute one form of social control for another. In addition to failing to provide a true alternative to adjudication, diversion programs extend the scope of social control and supervision of offenders. Cohen (1979: 348) argues that diversion practices widen the net to include those who, if the program had not been available, would either not have been processed at all or would have been placed in less intrusive options such as traditional probation. In the absence of a diversion program, the prosecutor or Crown Counsel would request a dismissal of charges because of lack of evidence, or lack of interest in proceeding with a minor case. Baker and Sadd (1981) suggest that prosecutors tend to block the referral of eligible or potential diversion candidates if they believe convictions are likely.

Austin's (1980) study of the San Pablo Adult Diversion Project concludes that there was some evidence that prosecutors were using diversion for cases that would receive either minimal sanctions (fines, probation, conditional discharge), or no sanction from the courts. As Austin (1980: 129) states, "knowing that the accused would 'get off' justified diversion for control, surveillance, and supervision".²⁶ The point, then,

²⁶Cited in Roesch and Corrado, "Criminal Justice System Interventions", in Handbook of Social Intervention, E. Seidman (ed.), Beverly Hills, California: Sage Publications Inc., 1983, p.388.

according to Morris (1975: 10) is that, the "guilty" we convict; the "innocent" we divert and supervise, rather than release outright.

Davidson and his associates (1981: 114) claim that net-widening stems from the way in which most diversion programs have been designed. Specifically, diversion is often not a true alternative, but has operated for the additional purpose of providing further services. Davidson and his associates (1981: 115) propose that net-widening arises from three characteristics of diversion programs in which services are provided:

1. intervention with service(s) may be more intensive and/or intrusive than that of the regular criminal justice system;
2. diversion programs may be abused by criminal justice system personnel employing the program as a means of avoiding due process requirements; and
3. diversion programs extend social control by means of providing services to those who would have otherwise not been handled by the system.

Cohen (1985: 54) points out that:

...where the police use to have two options--screen right out (the route for the majority of encounters) or process formally--they now have the third option of diversion into a programme. It is this possibility which allows for net extension and strengthening. For what happens is that diversion is used as an alternative to screening out and not as an alternative to processing.

Polk (1987) contends that net-widening is not an unintended consequence of the destructuring movements to reduce the size, scope and intensity of the formal deviancy control system. A closer examination of the theoretical premises of those responsible for regulating or directing diversion programs

reveals that net-widening is a direct (or intended) consequence of how such programs were initially conceived. Polk (1987: 358) argues that the initial assumption to decrease the volume of the justice system, by introducing such programs as diversion, is not simply a case of a good idea that "went astray". According to Polk (1987: 370, emphasis in original):

Deconstructing can only be different, and make a difference, if it is guided by ideas that lead to different practices. If we find, consistently (as we do), that the new deconstructing programs merely carry over the old ideas and old practices, there is little reason to expect that these can do anything but expand the prevailing system of social control within which the ideas originate. Deconstructing expands the network of social control precisely because it extends outward organizational practices, processes, and beliefs maintained by the formal justice and correctional system.

In other words, "the basic causal theories held by staff of particular forms of deconstructing were fundamentally no different than those held by personnel of more traditional justice agencies" (Polk, 1987: 368). The view presented here is that these personnel appeared to share the same general paradigm of social control--the business of expanding treatment or rehabilitative services and resources of the community. Moreover, this rhetoric of diversion as a boon to offenders, and embattled court staff, ignores the interests of correctional staff in securing employment, and extending their clinical and correctional bailiwicks.

Rutherford (1984) presents a more complex and anomalous outlook on trends in social control. The trend toward expansion of penal systems in several countries is hardly universal. Three

instances of substantial reductions in prison population size are brought forward: England (1915-1945), Japan (1950-1975), and the Netherlands (1950-1975). The experiences of these three prison systems demonstrate that although reductionist policies can be pursued successfully, there remain powerful tendencies towards expansion (Rutherford, 1984: 147-148):

...in the Netherlands and Japan, in the period since 1975, there have been pressures threatening to reverse reductionist gains made over the preceding twenty-five years. In the Netherlands, the size of the prison estate has slightly increased along with the number of unsentenced prisoners...In Japan, prison building plans exist which anticipate an increase in prison population during the 1980's...The availability of the prison system makes it especially vulnerable to new uses and serves to discourage inventive thinking as to alternative resolution.

To summarize, the dangers of diversion (denial of due process, ineffectiveness in reducing recidivism, net-widening) have been identified. The dangers of diversion have not however been easily tested and verified. As Binder (1977: 119) suggests, "there are many reasons for the divergence in opinion regarding the effectiveness of diversion. Uppermost is the fact that the outcome data are far from crystal clear". Pryor and Smith (1983) reiterate that the quality of research on diversion is lacking, whether done by proponents or opponents of diversion.

Diversion in British Columbia

The modern incarnation of diversion was first introduced to British Columbia by the former Attorney General, Mr. Alexander B. MacDonald, at a Federal-Provincial Ministers' Conference in

December, 1973. Subsequently, the government of British Columbia and the Minister of the Solicitor General Canada collaborated to prepare a response paper on federal and provincial diversion. A Federal-Provincial Subcommittee on diversion was convened as a result of a Deputy-Ministers' Conference held in June, 1974. Members of the Subcommittee identified a need for a widely understood, and generally accepted concept and definition of formal diversion.

The Federal-Provincial Subcommittee attempted to develop a more limited operational definition of diversion, with specific guidelines to be incorporated into experimental programs. The efforts of the Federal-Provincial Subcommittee, along with a Working Paper prepared by the National Law Reform Commission²⁷ generated a further awareness and interest in the area of diversion. By March, 1975, it was agreed upon that the Federal Ministry (Solicitor General Canada), and the provincial government would jointly sponsor a North American Conference on diversion.²⁸ It was then suggested by the B.C. officials that there was a need for an adult diversion program in Vancouver.

In developing models for the delivery of diversion services, the Attorney General of British Columbia (1981) noted that the demand for diversion varied throughout the provinces.

²⁷Working Paper 7 on Diversion by the Law Reform Commission of Canada, January, 1975.

²⁸Refer to Diversion: A Canadian Concept and Practice, A Report on the First National Conference on Diversion, October 23-26, 1977, Quebec City, produced by the Communication Division, Ministry of the Solicitor General, 1978.

Essentially, different communities differed with respect to the availability of resources, including private individuals or community groups to implement and develop diversion programs. The British Columbia Attorney General's Ministry devised a variety of operational models to reflect the different needs and available resources of a given community. The B.C. Attorney General considered two points: (1) diversion programs were not to function as a part of the criminal justice system; and (2) the involvement of criminal justice system personnel in the operation of diversion was to be minimized (1981: 11).

In light of these considerations, the Ministry policy visualized four operational models for the delivery of diversion services. The first model consisted of a network of private individuals independently delivering diversion services at the request of Crown Counsel. The second model involved diversion agencies employing staff. The third operational model entailed British Columbia Corrections Branch staff handling diversion services in those communities where alternative models were unsuitable. The fourth operational model involved directing the individual to some pre-existing community groups, service clubs or voluntary agencies. For example, the Nanaimo Mid-Island Diversion Program is a function of the John Howard Society of Nanaimo.²⁹ The Ministry officials preferred this model because such groups represented already a segment of a community's

²⁹See Ministry of Attorney General, Province of British Columbia, An Evaluation of Adult Diversion Program Processes, Costs and Outcomes: Vancouver Adult Diversion Program; Mid-Island Diversion Program; Victoria Community Diversion/Mediation Services, March, 1984.

existing social network, and could lend credibility to the program, while encouraging community acceptability. The cost of establishing agencies solely for the purposes of diversion services would be minimized by referrals to pre-existing social networks.

The Vancouver Adult Diversion Program

In 1977, under the auspices of the British Columbia Corrections Branch of the Attorney General's Ministry, a probation officer was authorized to design and implement the policy and procedures of an adult diversion program in Vancouver. On November 15, 1977, Vancouver Crown Counsel referred its first offender to the Vancouver Adult Diversion Program, located at 275 East Cordova Street, as an alternative to the regular court process. The Vancouver program adhered to the general definition of diversion as a visible, publicly accountable procedure, of referring offenders to an alternative community-based program, whereby a voluntary settlement of the offence is developed with the victim and the community (See Ministry of the Solicitor General of Canada, 1979). In a subsequent paper, the Department of Justice Canada and the Ministry of the Solicitor General Canada jointly defined diversion as a formal procedure:

1. whereby the processing of designated persons through the formal criminal justice process is suspended and these persons are dealt with through an alternative program;
2. undertaken at any point after a person has been

arrested or charged and prior to commencement of a trial;

3. undertaken on condition that future justice processing will be terminated if the diverted person fulfills the obligation specified by the alternative program;

4. which focuses on the alleged offence and on restoring the harm done; and

5. which involves interaction between the victim, offender and community and promotes the involvement of lay people in its development and management (Ministry of the Solicitor-General of Canada and Department of Justice, Canada, 1982: 1).

Diversion, as a formal procedure, involves some very distinct stages. First, the evidence of a charge must be reviewed in order to determine that it is sufficient to pursue formal justice processing. Crown Counsel must consider the pre-existing determined criteria or guidelines set out for them³⁰ to decide who will be referred to the Vancouver Adult Diversion Program. These guidelines represent policy as to the necessary preconditions to the offer of diversion, and minimal requirements which must be adhered to in order for diversion to take place. The final decision to divert an offender is the sole responsibility of Crown Counsel.

Beyond fulfilling the pre-determined criteria of Crown Counsel,³¹ the offender must satisfy the selection criteria of the Diversion Program itself. The offender must, during the Diversion interview, show some remorse and accept responsibility for the offence, by pleading guilty to the offence alleged in

³⁰See Appendix A (Guidelines for Crown Counsel)

³¹See Appendix A (Guidelines for Crown Counsel)

the report to Crown Counsel. The offence must be of a minor nature, in order that diversion of the offender would not endanger society. The offender must also be a first time offender (this information is confirmed through the Royal Canadian Mounted Police Crime Index). The offender must not have been previously diverted. Finally, the offender must be willing to meet the demands of an agreed upon plan, where appropriate, of reconciliation to the victim and community for the harm done. Once the selection criteria of the Diversion Program are met, a Diversion Plan/Agreement³² may then be signed by the Manager and the divertee. Thus, the decision to divert is a decision of the Diversion Program Manager. Finally, once both parties (the Program Manager and the divertee) accept responsibility and Crown Counsel has approved the Diversion Agreement, further formal justice processing of the offender is terminated.

The Ministry of the Solicitor General (1979: 1-2) suggests that adult diversion programs facilitate two types of voluntary settlements as an outcome of the mediation process: community service and compensation to the victim. Under the community service plan, the offender offers to repay the community for the crime, by completing a specified number of community work service hours, without pay. The offender is assumed to be a responsible person, one who is capable of and should take responsibility for the consequences of his or her own actions.

³²See Appendix B (Vancouver Adult Diversion Program Diversion Plan/Agreement)

Under the victim compensation plan, the offender offers to compensate the victim through a monetary payment or by completing a certain amount of voluntary work for the victim. This type of settlement facilitates active participation of the victim.

One additional service offered by diversion programs is referral. Often through the mediation process, personal or social difficulties are identified as requiring some assistance beyond the capacity of the diversion program itself. In these instances, diversion program personnel may contact available resources in the community and make referrals.

The Vancouver Adult Diversion Program corresponds to the objectives of diversion according to the Department of Justice, Canada and the Ministry of the Solicitor General, Canada (January, 1982):

1. to promote community tolerance and community responsibility for the management of some types of criminal behaviour;
2. to promote more effective use of criminal justice and community resources; and
3. to foster the restoration of social harmony between the offender, the victim and the community.

The commitment of the divertee is central to the operation of the Diversion Program. Through a signed agreement,³³ the divertee undertakes to meet self-directed obligations to him/herself, to the victim, or to society at large, in reparation

³³See Appendix B (Vancouver Adult Diversion Program Diversion Plan/Agreement)

for the harm resulting from the offence which gave rise to the diversion (Ministry of Attorney General, 1981: 8). Formal guidelines for diversion agencies³⁴ are provided to assist the agencies and their clients in developing and following through the Diversion/Plan Agreement.

Where appropriate, criminal justice personnel and resources, representatives of the community, and the victim are encouraged to participate in establishing the terms of the agreement. During this negotiation process, information about the victim, the offender, the offence, and circumstances around the offence is raised. In theory, these formal guidelines provide a basis for the Diversion Program Manager to arrive at terms favourable to all those involved. Ideally, the proposed Diversion Plan would represent "fair and relevant" terms for the offence committed. The agreement may be revised to meet new circumstances affecting either the divertee or the victim. The revised terms should not however be more demanding than the original terms.

An offender will be deemed to have been diverted only when the agreement is signed and approved by Crown Counsel. No charges will be laid in respect of the offence(s) for which a person is diverted once all those involved (i.e., the victim, the offender, the Diversion Program Manager, and Crown Counsel) have signed the Diversion Agreement. The way in which a divertee carries out his or her Diversion Agreement can nevertheless be

³⁴See Appendix C (Diversion Guidelines for Diversion Agencies)

brought to the attention of the courts if the divertee is brought before the courts. However, the offence(s) which lead to the diversion cannot be referred to as previous offences in subsequent court hearings. Once approved by Crown Counsel, the Diversion Plan/Agreement remains effective for three months.

Following screening and assessment, offenders who satisfy selection criteria may be required to carry out one or more of the following: a formal written apology; restitution and/or compensation; community work service hours; and referrals to other community agencies. If the offender rejects the option of diversion, or the offender's case is rejected by the Diversion Program Manager, the case is returned to Crown Counsel for disposition. An offender's case can be returned to Crown Counsel for a variety of reasons: the offender has denied the charge; the offender has a prior criminal record, or has been previously diverted; there are unrelated charges pending before the courts; or the Diversion Program Manager has been unable to contact the offender.

Shoplifting and Diversion

A key focus of this thesis is the application of diversionary powers in the disposition of minor, shoplifting charges. Although, there is no specific offence of shoplifting (i.e., theft by customer) as such under Section 294b of the 1988 Canadian Criminal Code,³⁵ this offence is nevertheless recorded

³⁵See Appendix G (Section 294 of the Canadian Criminal Code,

as shoplifting and throughout this study, the term "shoplifting" is used for ease of reference. Although diversion is not exclusively directed to shoplifters, shoplifters constitute a major proportion of participants in first-offender programs, such as diversion (Baumer and Rosenbaum, 1984). In this sense, a major goal of diversion is to reduce shoplifting by preventing repeat offences.

Shoplifting has been a growing concern throughout many countries. Thus, considerable efforts have been expended on the investigation of shoplifting and shoplifters. According to Singer (1978: 414), "relatively few shoplifters get caught, and judges are not quite sure what to do with offenders and how seriously to punish them when they are apprehended". The confusion and wide range of attitudes and opinions on the subject can be attributed to the fact that there is a wide variety of individuals who shoplift. Townesend (1972: 17) contends that,

There are no notable characteristics of shoplifters that stand out: a composite statistical profile would show a normal person of any class of society. Criminologists tell us that shoplifters are not made up of any specific characteristic, nor are they limited to any particular social standing, education or working class.

Russell (1973: 86) claims that the motives for shoplifting:

...may be an expression or a symptom of emotional problems, particularly those in reaction to early deprivation and associated with feelings of unfulfillment...The need for screening shoplifting cases seems important from a mental health point of view, as many have needs for social and psychiatric help which might not otherwise come to attention (emphasis added).

³⁵(cont'd) 1988)

Interesting words - they "need" our "help" underline how people are somehow reconceptualized as needing professional help. As mentioned earlier, such problems are often overlooked by prosecutors and judges (Law Reform Commission, 1975; Hillsman, 1982). Hillsman (1982) suggests that these offenders are in need of treatment or some form of service for their problems, not formal court adjudication.

Diversion from the regular court process is recognized by court officials as a viable alternative for handling shoplifting cases of this nature (Borgman, 1975; B.C. Ministry of Attorney General, 1984; Cleary, 1986; Adams and Cutshall, 1987). There are however, no studies (known to the author) on the variety, functioning, and effects of diversion policies and how these practices are applied to shoplifters as a grouping. Baumer and Rosenbaum (1984) claim that the bulk of pertinent data is based mainly on general diversion programs, rather than programs specifically designed for shoplifters. McBride and Dalton (1977: 106) suggest that "in developing proposals to establish diversion programs, one of the major questions addressed is that of defining the type of offender for whom diversion is a viable alternative". McBride and Dalton (1977: 110) note that the evaluation studies are rather narrow in exploring diversion programs:

Much is usually written about who the appropriate target populations are for specific programs and whether or not those programs reach their target populations...But perhaps equally important are the characteristics of those in the target population not served. Such differences may have major implications for a program's underlying philosophy and ability to reach its goals.

The British Columbia Ministry of Attorney General (1984: 78) suggests that diversion programs in British Columbia served to manage shoplifting cases:

Several informants suggested, somewhat cynically perhaps, that diversion in British Columbia had become a rather simple, efficient and inexpensive enforcement process for major retailers.

In light of the "minor" nature of the offence, and what is assumed to be the minimal likelihood of the offender re-offending, a preponderance of shoplifting cases are diverted (Ministry of Attorney General, Province of British Columbia, 1984). Moreover, the British Columbia Ministry of Attorney General (1984: 78-79) recommended even greater extensions of diversion to other offences:

...where the mediation, reconciliation, counselling and restitution resources of the program could be utilized effectively, in situations of citizen/citizen conflict (e.g., breaking and enterings, minor assaults), rather than just a heavy focus on major retailer shoplifting...the diversion process has some positive potential in this area which has not been taken advantage of. These cases can prove difficult and time consuming, and therefore be more expensive than "shoplifter-processing", but attempting this type of diversion would return the process to its original ambitious and idealistic intentions and make fuller use of the advantages that diversion programs have over typical court resources and practices (emphasis in original).

An Overview of Shoplifting

A review of the shoplifting literature provides an understanding as to why diversion programs, such as the Vancouver Adult Diversion Program, generally serve to manage shoplifting cases. The following is a selective review of key

issues relevant to the objectives of this study. The literature on shoplifting is clustered into four areas: (1) financial costs of shoplifting to society; (2) characteristics of shoplifters; (3) typologies of shoplifters; and (4) motives or reasons for shoplifting.

Costs of Shoplifting

It is significant that the most common issue addressed by the shoplifting literature is cost-savings. Overall, millions of dollars' worth of retail goods are stolen annually in the United States. This 'shrinkage' is seen as a business cost to be passed on to customers (Bradford and Balmaceda, 1983). Turner and Cashdan (1988: 855) concede that estimates of the dollar amounts lost to store theft range between 1% and 2% of all retail sales. Retailers generally agree that it is impossible to determine how much of the loss is due to shoplifting, and how much is due to internal pilfering (Murphy, 1986). There is no doubt that shoplifting is a significant predicament for the people of society who must pay more for their products, and for retailers who must try to deal with the problem.

Shoplifting also produces an enormous backlog of prosecutions which impedes the courts at public expense (Cunningham, 1975: 101). That is, in terms of costs, shoplifting is also very problematic for the criminal justice system. Table I outlines the findings of the British Columbia Ministry of Attorney General (1984), in their comparison of court prosecution and three different diversion program costs of

processing a typical shoplifting case.³⁶ Table I shows that the minimum court costs of processing a typical shoplifting case is \$121.93. According to the British Columbia Ministry, any delays, such as Probation reports or second appearances, escalate this figure enormously. Any case which requires Corrections involvement, such as a pre-sentence report or Probation supervision as a result of court disposition, is estimated to cost \$500.00. When a not guilty plea is entered, total costs for court alone are estimated at \$750.00. The Ministry contends that the 1980-1981 costs are probably the most accurate figures for comparison "under normal conditions". The costs in 1983-1984, for Vancouver are deflated due to an increased caseload whereas, the costs for Victoria are inflated due to a reduced caseload (Ministry of Attorney General, Province of British Columbia, 1984: 64).

In sum, the British Columbia Ministry of Attorney General (1984: 52-53) suggests that the total costs for processing a shoplifting case through the criminal justice system depend on the "level of penetration" of the alleged offender into that system. The greater the depth, the greater the cost:

Costs of the system start when the police are called to apprehend an offender...Crown costs begin with receipt of the information...Should they decide to approve the charge, appearance notices must be sent, the case prepared, court attended to...Court services begin with the issuance of appearance notices...Then case files must be opened, court sessions attended, court activity recorded and so on. This involves costs of court

³⁶According to the British Columbia Ministry of Attorney General, a typical shoplifting case means that the offender is a first-offender shoplifter, and has entered a plea of guilty to the shoplifting charge.

Table I
Cost of Diversion vs. Court Prosecution

	1980-1981	1983-1984*
Vancouver Diversion	112.00	57.00
Victoria Diversion	104.00	135.00
Nanaimo Diversion	205.00	189.00
Court Prosecution (Low Estimate)	not available	121.93
Court Prosecution (High estimate)	not available	500.00

*Note: 1983-1984 estimates are based on 1980-1981 costs and caseload

Source: Ministry of Attorney General, Province of British Columbia, "An Evaluation of Adult Diversion Program Processes, Costs and Outcomes: Vancouver Adult Diversion Program; Mid-Island Diversion Program; Victoria Community Diversion-Mediation Services", March, 1984.

facilities, judge and staff salaries...Corrections costs are involved if pre-sentence reports are required by the judge and depending on the nature of the disposition which may require community service work or Probation supervision.

The British Columbia Ministry (1984) notes that shoplifting cases (i.e., first-timers) are never found to result in jail sentences; therefore, Correction incarceration costs are not a consideration.

With all that in mind, there is much debate over prosecuting shoplifters to the fullest of the criminal justice system. Thus, according to the British Columbia Ministry of Attorney General (1984: 69):

...the extent diversion programs are able to offer more to the alleged offender (e.g., the opportunity to voluntarily accept and display responsibility for his/her actions; reconcile with the victim, receive counselling), offer more to the victim (e.g., reconciliation with offender; restitution; information and impact on the resolution of the offence) and more to the community (e.g., community involvement in the resolution process and diversion program activity; and the benefits of divertee community service work) for a cost comparable to minimum court processing alone, diversion is and remains an attractive alternative to the courts for shoplifting cases.

Characteristics of Shoplifters

The literature on shoplifting reveals that shoplifters are not readily defined as a grouping. They appear to possess no specific socio-demographic characteristics, such as race, social characteristics, or educational achievement (Cox, 1968; Sohler, 1969; Townesend, 1972; Singer, 1978). There are however three links between shoplifting and (1) sex of shoplifters, (2) age of shoplifters, and (3) previous criminal record. First, the literature emphasizes that most shoplifters have no previous criminal record (Gibbens, 1962; Gibbens and Prince, 1962; Cameron, 1964; Moak et al., 1988). Recidivism is not marked in this particular offence. Cameron (1964) reports that 90 percent of women officially charged with shoplifting has no prior criminal convictions. Gibbens (1962) reported that 80 percent of the 532 women studied are first-time offenders, and often range between 40 to 50 years old at the time of their first arrest. If they commit further offences, these are likely to be confined to shoplifting (Gibbens, 1962: 8).

Moak and his associates (1988), in their study on elderly first-offender shoplifters, appear puzzled by their finding that some elderly people begin to shoplift in old age, after a lifetime of abiding by the law. There is evidence to show that shoplifting rates are highest in adolescence and rapidly decline thereafter; they are lowest among the elderly (Arieff and Bowie, 1947). Consequently, first-time shoplifting among the elderly is far from common for this age group (Moak et al., 1988: 648).

Third, it is a commonplace that shoplifting is "a typical female offence" (Gibbens, 1962; Gibbens et al., 1971; Russell, 1973; Singer, 1978; Munday, 1986; Yates, 1986; Ray, 1987). One of the earliest is Gudden's work, published in Vienna in 1907.³⁷ Gudden concludes that 90 percent of all shoplifters are women and that the exhibition of goods offers them a chance to satisfy their impulses by "simply sticking out their hands". Pollack (1950) describes shoplifting as "one of the most specifically female types of crime".³⁸ Russell (1973: 81) indicates that between 70 and 85 percent of adult shoplifters are women. More recently, Yates (1986) suggests that although there is a distinction between shoplifting for gain or profit and non-sensical shoplifting (i.e. shoplifting not apparently

³⁷The work of Gudden (1907) was cited in Henry Angelino, "Shoplifting: A Critical Review", Midwest Sociologist, 1953, Vol. 1, No. 5, p.20. According to Angelino, Gudden's work was never translated into English. Therefore, a proper citation was not available.

³⁸Otto Pollack, The Criminality of Women, Philadelphia: University of Pennsylvania Press, 1950, cited in Coramae Richey-Mann, Female Crime and Delinquency, Alabama: The University of Alabama Press, 1984, p.31.

motivated by need or desire), in both cases, the shoplifter is likely to be female. Finally, according to Ray (1987: 234), because an estimated 60 to 80 percent of arrested shoplifters are women, authors have attempted to explain the crime of shoplifting in terms of "women's nature".³⁹ "Women's nature" refers to the roles of women as wives and mothers. Factors include: (1) physiological and hormonal changes; (2) psychosomatic complaints (e.g., headaches, backaches, insomnia and dizziness); (3) other physical explanations (e.g., low blood sugar); and (4) psychological and emotional symptoms (e.g., depression, low self-esteem, loneliness, confusion and feelings of guilt).

Contrary to the assumption that shoplifting is a female crime are those who claim otherwise (Angelino, 1953; Sohler, 1969; Munday, 1986). Briefly, these dissenters argue that shoplifting as a female crime is nothing more than a 'myth'. In fact, if one examines the data more closely, one finds that there are just as many male shoplifters, if not more, as there are females. For instance, Angelino (1953) discovered, in his study of shoplifting in Albuquerque, New Mexico, that in every year from 1937-1941, the male shoplifter outnumbered the female shoplifters in both the adult and juvenile groups. Of the 150 adult cases, 94 (63%) were males and 56 (37%) were females. Of the 138 juvenile cases, 107 (78%) were males and 31 (22%) were

³⁹See Mary Owens Cameron, The Booster and the Snitch, London: Free Press of Glencoe, 1964; Gerald D. Robin, "Delinquency Store Shoplifting", Crime and Delinquency, 1963(April), 9: 163-172; and Dennis Patrick Walsh, Shoplifting: Controlling a Major Crime, London: Macmillan, 1978.

females. The study is limited to only those apprehended and prosecuted by the law enforcement agencies. Sohier (1969) also claims that shoplifting is not necessarily a "typical female offence". In fact, there is a growing tendency for shoplifting to be committed in more or less equal proportion by both sexes (Sohier, 1969: 162). Munday (1986) reveals that shoplifting as a "women's offence" is wrong and outdated. New research in an area of the West Midlands shows a young man to be the "archetypal" shoplifting offender. Munday (1986) finds that there were 105 women compared to 172 men--more than one and a half times as many men as women.

Typologies of Shoplifters

The findings of the sociological literature confirms that, indeed, there are different kinds of shoplifters or shoplifting. These typologies include: (1) the professional (commercial shoplifter); (2) the amateur (snitch or petty pilferer); (3) the non-sensical; and (4) the kleptomaniac. These various types of shoplifters are classified according to their methods of operation and the use they make of stolen goods.

The professional or the commercial shoplifter obtains cash from the sale of stolen merchandise. For the professional shoplifter, shoplifting is a premeditated means of livelihood which must "pay off", or else he cannot afford to stay in the racket (Angelino, 1953: 18). Cameron (1964: 40) points out that "professional thieves, with a finer discernment of gradations in their own ranks, divide commercial shoplifters into heels and

boosters. Heels are the shoplifting specialists. They rarely get involve with other forms of crime, other than shoplifting. Boosters, on the other hand, engage in shoplifting as one of many other forms of crimes. The term 'booster', however, is loosely and generally used to include all professional shoplifters, whether they are specialists or not (Cameron, 1964). Richey-Mann (1984: 31) claims that professional shoplifters usually work in pairs, and are apt to use 'booster drawers', special clothing with secret pockets and the like. Although, professional shoplifters form a very small percentage of all shoplifters, they present the biggest financial problem to the store, police and courts (Arieff and Bowie, 1947; Angelino, 1953; Cleary, 1986).

Amateur shoplifters (snitches or petty pilferers) are by far the most numerous (Angelino, 1953; Cameron, 1964; Adler, 1975; Baumer and Rosenbaum, 1984; Cleary, 1986). They appear to be chronic thieves, shoplifting with some frequency and regularity (Cameron, 1964: 40). According to Adler (1975: 164), these shoplifters engage in shoplifting over many years, usually have no previous criminal record, are "respectable" people, exhibit no psychotic patterns, have no knowledge of arrest procedures, and, although they have thought about being caught, they have never thought about being arrested. Angelino (1953: 18) contends that:

Their motives for stealing are numerous and varied, the least of which is to make a living. Usually they steal to satisfy some temporary urge or need. Their stealing is mainly impulsive, done on the spur of the moment, unplanned and casual, making them easiest of all to

spot.

Again, the literature on shoplifting tends to focus on women as representing the greatest number of amateur shoplifters (Angelino, 1953; Richey-Mann, 1984). For instance, Pollak (1950: 35)⁴⁰ claims that the amateur shoplifter usually works alone, and her most commonly stolen objects are dry goods, lingerie, cheap jewelry, or other objects which can be easily hidden and carried away. Angelino (1953: 18) reports that between 70 to 99 percent of all amateur shoplifters are women. "Many women who have never shoplifted before--many of respectability, and many prominent socially, politically, and financially--are apprehended every year..." (Angelino, 1953: 19).

By definition, unlike the amateur shoplifter, the non-sensical shoplifter steals for no apparent need or desire. According to Yates (1986: 209):

The non-sensical shoplifter is likely to be female, older, married, foreign-born and not involved in other criminal activity...Non-sensical shoplifters are likely to be experiencing marital or family conflict, but they are much more likely to be experiencing illness in self/other, and to be socially isolated, this in spite of, and perhaps partly because of, the fact that they may be married (i.e marital problems). The psychological profile of non-sensical shoplifters shows that, like other shoplifters, they tend to lack self-esteem and be under-assertive...Apart from age and marital status, the two psycho-social factors that appear to exert the greatest influence on non-sensical shoplifting are *depression* and *social isolation* (emphasis in original).

X

Thus, the act of shoplifting serves as a release outlet for

⁴⁰Otto Pollack, The Criminality of Women, Philadelphia: University of Pennsylvania Press, 1950, cited in Coramae Richey-Mann, Female Crime and Delinquency, Alabama: The University of Alabama Press, 1984, p.31.

underlying life stresses and dissatisfactions. As Yates (1986: 210) claims, "shoplifting provides a temporary resolution of the crisis and so affords relief to the shoplifter". Yates (1986) speculates that the act of shoplifting is a "cry for help" by the shoplifter who is depressed, upset and in a difficult situation, yet unable to ask for help in more appropriate ways.

Finally, there is the compulsive shoplifter or the kleptomaniac. Russell (1973) notes that kleptomania has long been associated with the phenomenon of shoplifting. Kleptomania includes impulsive stealing of objects not needed for personal use or for their monetary value (Moak et al., 1988). Davidson (1952) calls kleptomania a compulsion--the patient has an urge to steal, knows it is wrong, tries to resist the impulse, but develops mounting tension which can be released only by yielding to the urge.⁴¹ In other words, for the kleptomaniac, the profit or gain motive is lacking. What is sought is emotional release from the pilfering itself (Angelino, 1953: 19). Angelino (1953) contends that this type of shoplifting is merely symptomatic of some sort of psychological disorder. Arief and Bowie (1947) believe that these shoplifters possess more or less a neurotic personality. Russell (1973) considers kleptomania not as a monomania (i.e., a craze), but classifies it with perversions as a pathological deviation of desire. Moak and his associates (1988) argue that kleptomania is a circumscribed disturbance

⁴¹H. Davidson, Forensic Psychiatry, New York: Ronald Press, 1952, pp. 11, 319, 326, cited in Donald Hayes Russell, "Emotional Aspects of Shoplifting", Psychiatric Annals, May 1973, 3(5), p.82.

with associated intra-psychic features and determinants; in kleptomania, the theft and the objects taken have symbolic significance.

It is clear that in view of these writers (Arieff and Bowie, 1947; Angelino, 1953, Russell, 1973; Moak et al., 1988), kleptomania is more of a psychiatric or psychological phenomenon, than a legal phenomenon. The threat of apprehension and punishment does not serve as a strong deterrent to the repetition of the act. These impulsive and compulsive acts are uncontrollable through conscious effort and willpower alone. Consequently, it is believed that some kleptomaniacs warrant appropriate psychiatric therapy or treatment (Singer, 1978; Moak et al., 1988) rather than incarceration.

Finally, a point of interest is that while there is considerable literature on compulsive shoplifting, experts also maintain that the true kleptomaniac is very rare (Arieff and Bowie, 1947; Gibbens, 1962; Russell, 1973; Bockner, 1976; Walsh, 1978; Baumer and Rosenbaum, 1984). Arieff and Bowie (1947) report that only 2 of 338 shoplifters referred to the Chicago Psychiatric Institute, were diagnosed as kleptomaniacs. Gibbens (1962) concludes that of the 532 cases brought before three Greater London Courts in the year 1959-1960, not one case was classified as kleptomania. A similar position is taken by Russell (1973: 82), who claims that, while such 'pure' cases of kleptomania do exist, they are rare in the court's experience with shoplifters. Bockner (1976) states that he rarely observes

psychiatric disorder in shoplifting cases; specifically, in over 30 years of practice he cites only one case of true compulsive stealing. Finally, Walsh (1978: 36) claims that "there is no such thing as kleptomania, and that there never has been and that usually where continual stealing takes place, it is easier to use an alternative explanation."

Motives for Shoplifting

Shoplifting is probably one of most interesting of all criminal offences, because it covers the whole range of motives, from cold, commercial, systematic stealing, to the half-understood and irrational taking by a person suffering from a mental illness or abnormal stress (Cox, 1968: 426).

It is the purpose of this section to review the main causes, motives, and precipitating factors alleged to produce shoplifting. These causes might be grouped as to whether they are primarily social, physical or psychological, keeping in mind that they rarely exist in pure form, but usually are mingled.

First, "much has been made of the poverty motive in the past for all crime, including shoplifting" (Walsh, 1978: 38). Ray (1987) maintains that there is a strong and clear relationship between shoplifting and economic hardship. According to Ray (1987), hardships include: (1) concerns about debts; (2) not enough money for basic necessities; (3) laid off or out of work; and (4) problems with finding employment. Basically, some shoplifters believe that it is all right to shoplift if they do not have the money for basic necessities, such as food. In other words, these shoplifters justify shoplifting by claiming they

are too poor to buy the things they need. A similar observation ~~is reported by Turner and Cashdan (1988)~~ in their assessment of the motivational patterns for shoplifting among American college students. A distributed questionnaire to 479 college students reveals that of all the reasons provided for their shoplifting, poverty is the most prevalent.

Second, as mentioned earlier, economic gain is another very common motive for shoplifting, especially in the case of professionals (Walsh, 1978; Baumer and Rosenbaum, 1984). Neustatter (1954: 118) claims that, "superficially, stealing should be one of the easiest crimes to explain...there is an obvious reason for theft; the thief gets something for nothing". Similarly, Bockner (1976) argues that the most common cause for shoplifting is simply stealing for gain. "Whether rich or poor, famous or unknown, people all have the desire to obtain something for nothing" (Bockner, 1976: 710). Yates (1986) completed a study of 101 shoplifters in the Metropolitan Toronto area. Information gathered during an initial, interview assessment procedure, in addition to probation notes and records, was used to compare groups of shoplifters (i.e., those shoplifting for profit or gain and those non-sensical shoplifters). She reported that most respondents--64 out of 101 (63%)--shoplifted for mainly profit or gain. Furthermore, Baumer and Rosenbaum (1984) refined the economic gain hypothesis; that is, people shoplift to acquire something they cannot justify purchasing. Often, under such circumstances, it is not because one cannot afford to buy, given current economic conditions, but

that one cannot psychologically justify purchasing something that he or she may already have. In this case, shoplifting is committed as a result of wanting something as opposed to needing it.

The need for excitement or risk-taking is another factor that is considered as a cause of shoplifting. It is believed that excitement may be a goal in itself for many shoplifters (Walsh, 1978; Baumer and Rosenbaum, 1984; Turner and Cashdan, 1988). According to Walsh (1978: 41-42):

Shoplifting for many may well offer excitement and be an exciting game, rather than an offence, as viewed from the offender's view point. Engaging in a forbidden act has various things attached to it, the reward accruing from the commission of the act (in this case, the worth of the stolen goods to the offender, rather than their monetary worth), the punishment accruing from the commission, and the excitement of committing the act, knowing it to be forbidden, together with further excitement arising from the uncertainty of the actual outcome...

Baumer and Rosenbaum (1984) claim that individuals with this extreme need and desire for excitement are high-risk takers. Turner and Cashdan (1988) report that the third most frequent reason given for shoplifting is a variant of 'fun' or 'thrill'. 68% of 487 of the responses to a distributed questionnaire characterize shoplifting as an intellectual test of sorts. Turner and Cashdan (1988: 860) state that the enjoyment of shoplifting is primarily referred to in terms of 'games', 'challenges', and 'adventures'.

Fourth, Cox (1968) contends that the most common defence for shoplifting involves some degree of absentmindedness. It is,

however, impossible to establish what proportion of shoplifting cases are due to absentmindedness (Cunningham, 1975). In cases involving absentmindedness, the actus reus--that is the accused's conduct in certain circumstances (Stuart, 1987)--is rarely disputed and as a result, such cases depend entirely upon evidence of mens rea (i.e. the mental intent or the guilty mind). Thus, the task confronting a court which has to try such a case is difficult (Cox, 1968). Absentmindedness has been attributed to various states: mind preoccupation (Appelbaum and Klemmer, 1974); chronic sleep loss (Cunningham, 1975); senility and pregnancy (Walsh, 1978); and debilitation and nervous exhaustion (Murphy, 1986). Although absentmindedness, in theory, is a legally acceptable defence for shoplifting, it is often very difficult to prove. It may often be used in mitigation, but is difficult to establish as grounds for a not guilty plea (Murphy, 1986: 227).

Fifth, depression features quite extensively in pleas of mitigation in shoplifting cases. Neustatter's (1953) opinion is that depression and tension often appear as precursors to theft and the stealing may be an integral part of a depressive psychosis.⁴² Arieff and Bowie (1947) point out that of the 338 cases of shoplifting referred to the Chicago Psychiatric Institute, 260 (77%) were diagnosed as suffering from a mental, emotional or physical disorder (or some combination of these), of which mild mental depression was the most frequent. It is

⁴²W. Lindesay Neustatter, Psychological Disorder and Crime, London, 1953, cited in G.M. Woodis, "Depression and Crime", British Journal of Delinquency, 1957, 8(2), p.89.

believed that, sometimes depression is due to some kind of illness, but often it is a state of chronic mourning which has been accentuated just before the crime of shoplifting (Gibbens, 1962). In many cases, chronic mourning is due to the death of a loved-one.

Gibbens and Prince (1962) conclude from a study of 532 British shoplifters that the most significant predisposing factor is depression. One should, however, question as to how a "predisposing" factor can be established after the act. They conclude that the act of shoplifting is a form of para-suicide or a "cry for help". The person is depressed to the degree that he or she shoplifts in hope to be apprehended, and eventually receive help. Woodis (1957: 93) states that the unconscious wish of a depressed criminal is punishment. The person may commit the crime to bring retribution on oneself. Yates (1986) argues that the act of shoplifting is not properly seen as criminal behavior, but is a pathological behavior generated from desparation. Yates (1986) theorizes that:

At the very least, shoplifting appears to be an act which calls attention to the perpetrator, and in this sense, is sometimes viewed as a "cry for help" by a person who is depressed, upset and in a difficult situation--to a person who does not like to, or is unable to ask for help in more appropriate ways.

Again as mentioned earlier, Yates (1986) claims that this is often the case with a non-sensical shoplifter (i.e. one who steals for no apparent need or desire).

Finally, "as there has always been a fascination with the possibility of finding a link between biological characteristics

and criminal behavior, it is not surprising that some of the attention has focused on a biological factor traditionally considered as an important determinant of female behavior--the menstrual cycle" (Horney, 1978: 25, emphasis added). According to Dalton (1961: 1752), this recognition of the social significance of menstruation in the various aspects of a woman's life has led to an investigation of the importance of the menstrual factor in crime. The findings, however, are extremely tenuous. In 1907, Gudden⁴³ claimed that 90 percent of female shoplifters offended during menstruation. Some scientists have argued that the menstrual syndrome (whether it is premenstrual, during menstrual or menopause) promotes psychological characteristics of emotional instability, insomnia, depression, irritability, and anxiety attacks (Pollack, 1950). Thus, it follows that these hormonal changes are associated with crimes most frequently committed by women. Angelino (1953) points out that Gudden's correlation between stealing and menstruation is weak, and does not explain stealing by males, or by juveniles of both sexes. Following an investigation of 386 convicted women prisoners, Dalton (1961) reveals that almost half (49%) the women committed their crime during menstruation or the premenstruum (days prior to menstruation). Menstruation seems of greater importance in crimes of theft (such as shoplifting, burglary, embezzlement and forgery): 56% of such crimes occurred

⁴³The work of Gudden (1907) was cited in Henry Angelino, "Shoplifting: A Critical Review", Midwest Sociologist, 1953, 1(5), p.20. According to Angelino, Gudden's work was never translated into English. Therefore, a proper English citation was not available.

during menstruation and the premenstruum (Dalton, 1961: 1752). Dalton (1961) concludes from her work that the highly significant relationship between menstruation and crime could indicate that the hormonal changes associated with menstruation cause women to commit crimes or that they increase the likelihood of detection or both.⁴⁴

Gibbens (1962) contests this link between women's biology and crime. He states that there is no evidence to support the claim that shoplifting occurs most frequently during premenstrual tension or during the menopause. Offences occur equally in every phase of the normal cycle. Walsh (1978) contends that although there is the possibility that shoplifting is produced by mental disturbances arising from the menstrual cycle, such an explanation at best explains only a small minority of cases. Walsh (1978) claims that premenstrual tension would not be a main precipitating factor for all shoplifters. Angelino (1953), and more recently Ray (1987), point out that psychological stresses appear to be related to shoplifting behavior, but such factors are present in both women and men (Ray, 1987: 238). Ray (1987) argues that quite often researchers have limited their questions to factors relating to only women and thus, have overlooked other possible factors (such as economic and societal) that are relevant for both sexes in explaining shoplifting behavior.

⁴⁴Cited in Julie Horney, "Menstrual Cycles and Criminal Responsibility", Law and Human Behavior, 1978, 2(1), p.28.

Summary

It is apparent that criminal justice administrators seek alternative methods for dealing with shoplifters. Fines, conditional discharges and community service orders have been customary dispositions, along with diversion from the courts (Hiew, 1981). In order to establish why shoplifting cases are frequently diverted, an understanding of a number of key issues is essential.

First, although shoplifting is a significant predicament for people of society, it is frequently treated rather summarily by criminal justice administrators. For instance, the B.C. Ministry of Attorney General (1984) claims that shoplifting cases never result in jail sentences. Shoplifting cases do however produce an enormous backlog of prosecutions which impedes the courts at public expense (Cunningham, 1975: 101). For these reasons, the B.C. Ministry (1984) suggests that diversion expenditures are comparable to minimum court processing alone, and diversion thus stands as an attractive alternative to the courts for shoplifting cases.

Second, the literature on shoplifting reveals that recidivism is not particularly high among shoplifters (Gibbens, 1962; Cameron, 1964; Moak et al., 1988). For the most part, shoplifters are first-time amateur (Angelino, 1953; Cameron, 1964; Adler, 1975; Baumer and Rosenbaum, 1984; Cleary, 1986) or non-sensical shoplifters (Yates, 1986). Unlike the minority of

professional shoplifter, the amateur and non-sensical shoplifters pose a minimal likelihood of re-offending. Furthermore, there is the kleptomaniac, a compulsive shoplifter, who steals objects not for profit or gain, but for emotional release from the pilfering itself (Angelino, 1953; Moak et al., 1988). Thus, some writers (Arieff and Bowie, 1947; Angelino, 1953; Russell, 1973; Moak et al., 1988) interpret kleptomania as more of a psychiatric or psychological phenomenon than a legal criminal act per se.

Finally, the foregoing discussion yields a number of motives for shoplifting. Although, they range from economic reasons (e.g., poverty, economic gain) to biological reasons (e.g., the menstrual cycle), the psychological or psychiatric reasons are of greatest interest to this thesis. Russell (1973: 86) claims that the motives for shoplifting:

...may be an expression or a symptom of emotional problems, particularly those in reaction to early deprivation and associated with feelings of unfulfillment...The need for screening shoplifting cases seems important from a mental health point of view, as many have needs for social and psychiatric help which might not otherwise come to attention (emphasis added).

According to Cupchik and Atcheson (1984: 344), "judges and Crown Attorneys continue to see an ever-increasing caseload of shoplifting offenders who seem to be involved in theft for special definable gain." Conversely, there are acts which make no sense in terms of gain, or where the judgment exercised by the offender seems to be severely impaired (Cupchik and Atcheson, 1984). Such individuals, according to Cupchik and Atcheson (1984), tend to be dealt with through alternative

channels (e.g., referrals to psychologists and psychiatrists), rather than the courts. Hillsman (1982) agrees, suggesting that these offenders are in need of treatment or some form of service for their problems, not formal court adjudication.

While diversion may seem desirable and unproblematic (i.e., it saves costs, reduces stigma and so forth), it remains a control measure, a point that will be elaborated in *Chapter V*. Briefly, it will be argued that diversion remains very controversial, with some welcoming it as a benevolent, cost-effective reform and others critical of its false promises of weakening state control. The Vancouver Adult Diversion Program, as a form of new diversion, has to some degree widened the social control net by an unintended consequence of "psychiatrizing" petty theft (i.e., shoplifting) cases. For the most part, the Vancouver Adult Diversion Program is successful in terms of its own operational definition of success, but is a failure when compared to the theory from which the policy (supposedly) was derived (Cohen, 1979).

CHAPTER III

RESEARCH OBJECTIVES, METHODS AND DATA SOURCES

Research Objectives

The interface between psychiatry and law is well demonstrated (Ericson, 1976; Webster et al., 1982; Cohen, 1985). As the clinician or psychiatrist observes a variety of shoplifting cases, he or she attempts to identify the pathology to the court and to indicate a willingness to accept many of these cases in treatment. This interface has, however, been challenged by critics of social ordering processes. Ericson (1976: 17) notes that:

There is a growing trend in modern penology to view all forms of rehabilitative treatment in the context of just treatment. That is, there appears to be a gradual shift back towards a classical law concept of punishing an individual in just proportion to the act he committed and his degree of responsibility in committing it, and viewing all efforts at treatment as falling within the judicial limits of this system of punishment. There is a concurrent push for removal from the criminal control system of any acts which cannot meet the criteria of a 'crime-responsibility-punishment' framework (emphasis added).

This position, according to Ericson (1976) has been recently advanced by the work of the Canada Law Reform Commission on diversion.¹ Ericson (1976: 23) adds that, "we are likely to continue believing that the problem is satisfactorily controlled as long as the psychiatrists are in full charge of the offensive individual, his treatment, and evaluation of therapeutic

¹See Law Reform Commission of Canada. Diversion (Working Paper 7), January, 1975.

results."

With this critical approach in mind, this study of diversion of shoplifters placed considerable attention upon whether or not shoplifters are an appropriate target population for the Vancouver Adult Diversion Program. Two central questions emerged from the study: (1) the nature of a psychiatric referral as an appropriate or mandated reaction to shoplifting ("psychiatrization" of deviancy); and (2) the validity of the net-widening perspective advanced by several social theorists, including Cohen (1985). First, shoplifters who faced a psychiatric assessment as a condition of diversion were explored. Factors determining the extent of psychiatric involvement with shoplifters were examined. These factors included: overall case profiles of people who were recommended for a psychiatric assessment; reasons for recommending a psychiatric assessment; and the nature of the assessment. The second question addresses the premise that diversion widens the social control net. In the case of diversion, it is clear that the term, "alternative to the regular court process" no longer means what it was intended. Klein et al. (1976: 10) suggest that "...the meaning of 'diversion' has been shifted from 'diversion from' to 'referral to'."² Rutherford and McDermott (1976) claim that the crux of this shift lies in the distinction between

²Klein, M.W. et al., "The Explosion in Police Diversion Programmes: Evaluating the Structural Dimensions of a Social Fad", in M.W. Klein (ed.), The Juvenile Justice System, Beverly Hills: Sage, 1976, cited in Stanley Cohen, "The Punitive City: Notes on the Dispersal of Social Control", Contemporary Crises, 1979, 3(3): p.349.

traditional (or true) diversion, in which the individual is removed from the system altogether by screening out, and new diversion which entails program(s) participation and influence, in addition to the screening process.

The case files of the Vancouver Adult Diversion Program provided the basis for the documentary study of diverted shoplifters. According to the British Columbia Ministry of Attorney General (1984), the vast majority of clients diverted by the Vancouver Adult Diversion Program were alleged shoplifters. For instance, in 1983, 76% of 1085 cases referred were shoplifting cases.³ By 1984, shoplifting cases constituted 85% of the 1080 diverted cases.⁴

A review of some of these shoplifting case files, indicated that some of the shoplifters diverted from the regular court process were requested to see a psychiatrist. Often, it was unclear why it was necessary to impose a psychiatric assessment as a condition of diversion. Furthermore, it was important to note that psychiatrists "invariably explained" the crime of shoplifting in the psychiatric lexicon of kleptomania, schizophrenia, depression, and the Pre-Menstrual Syndrome (PMS). It was these types of cases, exemplified by the case discussed

³This figure was provided by the British Columbia Ministry of Attorney General, An Evaluation of Adult Diversion Program Processes, Costs and Outcomes: Vancouver Adult Diversion Program; Mid-Island Diversion Program; Victoria Community Diversion/Mediation Services, March, 1984.

⁴This figure was provided by the Vancouver Adult Diversion Program Manager in a 1984 program evaluation, prepared on March, 1985.

below which created the interest and which formed the substantive objectives of this study.

Case No. 187

Mrs. X, a 36 year old housewife and mother of two children, was caught shoplifting goods valued at approximately \$130.00. As a condition of her diversion, she was referred for a psychiatric assessment. The following is a verbatim extract from the psychiatric evaluation of Mrs. X, embedded in the context of shoplifting studies:

In a survey of twenty-four shoplifters, two thirds were females and all of these females suffered from some type of depressive illness. The earlier literature emphasized the connection between menopause and shoplifting, but in fact it was not the menopause itself, but the connection with increased incidence of depression which seemed to have been responsible for shoplifting. Many of the patients were described as rather scrupulous, conscientious, and moralistic women. Some patients described their condition as being hopeless, demoralized and shoplifting or some other impulsive action, frequently a sexual escapade, constituted a bravado reaction.

It is also known that about forty percent of bulimic women shoplift and engage in an impulsive manner in all sorts of adventures. A strong connection between bulimia and depression on one side and obsessive, perfectionistic personality traits on the other side is well documented.

In this case, the connection between bulimia, demoralization, shoplifting, consequent guilt feelings, and recurrences of depression constitutes a vicious circle. Marital discord and the incident are precipitating factors in themselves not a sufficient but necessary cause for shoplifting.

The case of Mrs. X illustrates how psychiatrists attempt to explain shoplifting in terms of a psychiatric disorder. Again, the interface between psychiatry and the law is well

demonstrated (Ericson, 1976; Webster et al., 1982; Cohen, 1985) as the clinician, or the psychiatrist, in observing a variety of shoplifting cases, attempts to identify the pathology to the court and to indicate a willingness to accept many of these cases in treatment.

The Use of Documentary Sources in Social Research

In order to collect data from the Vancouver Adult Diversion Program case files, documentary analysis was chosen as the method of enquiry. The documents (the Diversion Intake Personal Information Sheet,⁵ the police report, the security report and the psychiatric assessment) contained a wealth of contextual data regarding the shoplifter, the circumstances of the offence, and the reasons for the disposition imposed (e.g., diversion without conditions and diversion with a request for a psychiatric assessment). The analysis of documents, according to Bailey (1987), should not be neglected, for quite often documents contain vital information about the phenomenon one wishes to study. In such cases, data merely exist in one form or another, but have not been drawn or compiled together by anyone (Baker, 1988).

Prior to examining the advantages and disadvantages of documentary analysis, it would be helpful to acknowledge some of the features that pervade documents. It is generally agreed upon

⁵See Appendix D (Vancouver Diversion Program Personal Information Sheet)

that documents vary greatly (Moser, 1958; Seltiz et al., 1976; Bulmer, 1984; Bailey, 1987; Baker, 1988). However, it is customary to distinguish between the sources of the documents by classifying them as primary or secondary documents (Mann, 1985). Primary documents provide information gathered at first-hand; that is to say, information produced by the people who experienced the particular event or behavior (e.g., an autobiography). Secondary documents provide information collected at second-hand; that is to say, information accumulated by people who were not present on the scene (i.e, transcribed from primary sources).

In addition to the primary-secondary distinction, documents vary widely in terms of degree of structure, and purpose for which they were originally written (Bailey, 1987: 290). The degree of structure adopted in writing documents can vary tremendously. It is clear that documents, such as the minutes of a meeting or financial records, often tend to be more structured than personal documents, such as diaries or letters. Furthermore, most documents are written for some purpose other than social research (Moser, 1958). Again, these purposes, like the degree of structure, vary greatly. For instance, information collected in the form of case records by social workers, psychiatrists and business personnel has limitations for a social science researcher in that it can only represent a highly specialized population. Thus, such records must be treated cautiously, through subjective interpretations.

Disadvantages

A balanced view of documentary analysis can only be achieved with an intimate understanding of its weaknesses, as well as its strengths. First, as noted above, many documents are compiled for some purpose other than research (Moser, 1958). In other words, the various goals and purposes for which documents are written can bias them. The value of such documents is diminished by the extent to which they are reflections of certain goals and purposes.

A written document, by its very nature, is only part of the total message conveyed and so documentary analysis cannot deal with it. Similar to content analysis, documentary analysis should be used as a last resort approach to research when more direct techniques of analysis (for example, interview, questionnaire or observation) are ruled out by circumstances, such as the subject no longer exists (Holsti, 1969). Thus, the technique is limited to very specific aspects of a given study. The analyst is unable to manipulate reality and similarly, he or she is restricted to examining only a part of his or her universe unobtrusively. Nevertheless, analysis of documented communications is very efficient as a supplementary source of data. Holsti (1969: 17) notes that "when two or more approaches to the same problem yield similar results, our confidence that the findings reflect the phenomena in which we are interested, rather than the methods we have used, is enhanced."

Second, since most documents are written on paper, they do not withstand the elements well unless care is taken to preserve them (Bailey, 1987). Quite often, documents are destroyed, or stored away and thus become inaccessible. As Bailey (1987: 292-293) points out, it is relatively rare for documents that are not about some event of immediate interest to researchers to be gathered in a public repository that is easily accessible to social researchers. Thus, many documents are seen as being irrelevant to pressing social issues and hence not essential to retain in archives for the possibility of future research.

In addition to lack of availability, there are many areas of study for which documents are incomplete. "Many documents provide an incomplete account to the researcher who has had no prior experience with or knowledge of the events or behavior discussed" (Bailey, 1987: 293). Documents can be incomplete because the information is not recorded intentionally or unintentionally, or simply because the information is not available. In any case, the incompleting document provides only a minimal part of the total message for the researcher.

A fourth limitation is that documents quite often lack standardization of format. For research purposes, standardization facilitates comparison across time for the same documents. If documents are not standardized for record-keeping purposes, comparison is difficult or sometimes impossible. Valuable information contained in a document at one point in

time presents a problem to the researcher if it is lacking in an earlier or later document.

Finally, "for a number of reasons...coding is one of the most difficult tasks facing the document analyst" (Bailey, 1987: 294). Bailey (1987) points out that since documents are generally written in words rather than numbers, attempts to quantify the information becomes quite difficult. Given that, the problem of validity arises. The problem of validity is, however, minimized in cases where there is high agreement on the definitions of the relevant categories. For instance, it is much easier to count incidences of specific words and their synonyms, than to count the occurrence of a particular theme. It is clear that validity is largely a definitional problem when the basic definitions involve several different sets of indicators. If the inter-correlation of the various indicators is obscured, then the validity of the category is questionable.

It is, furthermore, essential that the data be gathered within a systematic framework. The demand for systematic analysis is subsumed under the requirement of replicability or reliability. For results to be reliable, other researchers, at different times, under different circumstances, applying the same procedures to the same data must secure the same results (Carney, 1972).

Advantages

In spite of these weaknesses, there are several advantages of documentary analysis. One of the key advantages of studying documents is that they permit research on subjects to which the researcher does not have physical access, and thus cannot study by any other method (Chadwick et al., 1984; Mann, 1985; Bailey, 1987). The most obvious example are those subjects who are no longer alive.

Second, documentary analysis also has the advantage of being nonreactive. In general terms, the technique does not change the data being collected. Holsti (1969: 16) contends that a subject's knowledge that he or she is being studied may, in some circumstances, materially alter those aspects of behavior under analysis. Since the method of documentary analysis is usually applied long after the events themselves, the analyst has little or no effect on that which is being studied.

Third, documentary analysis is also advantageous in analysis of large volumes of documentary data. Given that the number of units of analysis can easily exceed what a single analyst can undertake, the solution is to analyze only a sample of it. Proper sampling techniques of documentary analysis will produce similar results as an analysis of the larger population from which the sample was selected. It is clear that the fundamental principle in sampling is representativeness. Proper sampling entails that one is able to select a few who can be taken to represent the many. Two key questions are: how representative

must the sample be of the population, and does the sample have to be representative in all respects? According to Babbie (1979), sampling representativeness is limited to those characteristics that are relevant to the substantive interests of the study. More specifically, "a sample is representative of the population from which it is selected if all members of the population have an equal chance of being selected in the sample" (Babbie, 1979: 165). According to Bailey (1987: 291), a larger sample means that one can have much more faith in the results; can obtain statistically significant results more easily; and can have more trust in generalizations from the results.

Finally, as long as records or documents exist, the technique of documentary analysis can easily study past periods of history or make comparisons over time. This technique is especially well-suited to study over a long period of time. The comprehensive, historical work of John M. Beattie (1986) is an exemplary study of this advantage of documentary analysis.⁶ In his study, he explored the question of how the English courts dealt with crime between the period 1660 and 1800. Given that the judicial records between 1660 and 1800 survived, he was able to choose a period long enough to provide a good sense of the chronology and pattern of changes in the criminal law and the system of criminal administration. His study provided evidence of the interrelationship of crime and the changing means adopted

⁶John M. Beattie, Crime and the Courts in England: 1660-1800, Princeton: Princeton University Press, 1986.

to deal with it, over a very long period of time. As Albig (1938: 349) notes:

The most valuable use of studies of content...is in noting trends and changes in content. Systems of classifications may be inadequate and unstandardize; nevertheless, if a system is used consistently over a time period, valuable facts may appear.⁷

This quotation indicates the importance of documenting and describing trends in the information being analyzed. Such descriptions of trends provide data which can be correlated with other possible corresponding changes. Documented content trends can be used to describe the development or progression of a given activity. Hence, the analysis of documents attempts to analyze documents by setting them in their context and time.

Summary

Given the advantages of documentary analysis (accessibility to inaccessible subjects; nonreactivity; larger sample size; and suitability for longitudinal analyses), this technique was chosen as the appropriate method of enquiry. Overall, the disadvantages of documentary analysis were minimal in this study.

Although a written document represents only part of the total message conveyed, information obtained from one document was verified or supplemented by information of another document. One case-in-point from the documents is as follows: a store

⁷Cited in Bernard Berelson, Content Analysis in Communication Research, New York: Hafner Publishing Company, Inc., 1952, p.29.

security officer indicated in the report that the shoplifter was under "some emotional stress" at the time of the incident, and other reports (such as a police report, a physician's report or a lawyer's report) verified this opinion.

Second, the documents (security and police reports, lawyer's report, reports of doctors, psychiatrists and psychologists, Diversion Intake Personal Information Sheet and Diversion Plan or Agreement) contained in the case files were standardized. The information for the data collection was easily accessible due to the standardization of format. Furthermore, the standardization of the various documents facilitated comparison across the period of study (1978-1986).

Third, for the most part, the documents analyzed were complete. For the times when information was sporadically missing, it was assumed that it was not recorded unintentionally (i.e., the person forgot to record the information) or it was simply not available. Quite often, the missing information of a document was available in other existing documents.

Finally, coding was one of the more difficult tasks of this study. To minimize disagreement on the definitions of relevant concepts, the categories under each variable were transferred and itemized as close to verbatim as possible from the documents contained in the case files. It is much easier, for instance, to record standard demographic variables, such as the sex of an offender than "private" variables, such as an offender's use of illicit drugs or alcohol. Where data was recorded, if the

offender claimed to be only a "social drinker", that was recorded differently from someone who claimed that his or her consumption of alcohol was a problem.

Data Sources

A sample of case files of the Vancouver Adult Diversion Program (established in November 1977) was used as the primary source of information for this study. A total of 189 shoplifting case files that were accepted into diversion during 1978-1986 were examined by the author. Generally, these case files were complete. Each case file consisted of a security and police report, a lawyer's report, a diversion intake personal information sheet, and a diversion plan stating the terms and conditions by which an offender is diverted. In some cases, reports of doctors, psychiatrists and psychologists were also included in the case file.⁸

Sampling Procedure

An initial review of the shoplifting case files revealed three types of files: (1) shoplifting cases without a psychiatric assessment requested (SL); (2) shoplifting cases with a request for a psychiatric assessment which was never completed (PAR); and (3) shoplifting cases with a completed psychiatric assessment (PA). With the exception of 1983 and

⁸It is noteworthy that the offender's voice was almost entirely absent from these official documents and reconstructions of the event (See the discussion in Ericson and Baranek, 1982).

1984, the total number of shoplifters diverted yearly was unknown.⁹ For each year (1978-1986), one file per month was chosen and one additional file was included from the month with the largest caseload. In other words, 13 files were selected from each year of the study period (1978-1986) from each of the three file types. This resulted in a total of 351 cases.

Then, due to the limited amount of time available for coding, a further procedure was used to select a smaller sample from the initial 351 files. A file from every second month¹⁰ was selected from each year (1978-1986). Again, the original additional files selected from the months with the largest caseload were included in this final sample. As a result, seven files were selected from each year, 1978-1986, across the three file types. This resulted in a total of 189 cases (63 shoplifting cases only/63 shoplifting cases with no psychiatric follow-up/63 shoplifting cases with psychiatric assessments). There were no repeat cases included; thus, the 189 cases

⁹The archival filing system used by the Vancouver Adult Diversion Program did not allow for an easy determination of the total number of files present within any given time period. However, based on figures provided by the British Columbia Ministry of Attorney General, An Evaluation of Adult Diversion Program Processes, Costs and Outcomes: Vancouver Adult Diversion Program; Mid-Island Diversion Program; Victoria Community Diversion/Mediation Services, March, 1984, approximately 825 (76%) of the total cases (1085) referred to the Vancouver Adult Diversion Program in 1983 were shoplifting cases. According to a program evaluation prepared in 1985 by the Program Manager, approximately 918 (85%) of the 1080 cases referred in 1984 were shoplifting cases.

¹⁰For the years: 1978, 1980, 1982, 1984 and 1986, a file was selected from January, March, May, July, September and November. For the years: 1979, 1981, 1983 and 1985, a file was selected from February, April, June, August, October and December.

represented 189 offenders.

The focus was initially placed on the factors which differentiated the three types of shoplifting case files (SL, PAR, and PA). An examination of the data, however, suggested that the focus be shifted towards identifying the factors which differentiated those cases without a psychiatric request (SL) and those with a psychiatric request (PAR). Consequently, as set out in Table II, the two groups PAR and PA were combined into one group (PAR). Thus, for the purposes of the statistical analyses, only two types of case files were considered: (1) shoplifting cases (hereafter **SL**) without a request for a psychiatric assessment; and (2) shoplifting cases in which a psychiatric assessment was requested (hereafter **PAR**).

Coding Scheme

The coding scheme was based on information that was available in the 189 case files. The variables were devised from information that was available in: (1) the Diversion Intake Personal Information Sheet;¹¹ (2) the police report; (3) the security report; and (4) the psychiatric assessment. Information collected from the 189 case files was systematically recorded on coding sheets. The variables selected for the analysis can be grouped into three basic clusters:

1. demographic variables;
2. offence variables; and

¹¹See Appendix D (Vancouver Diversion Program Personal Information Sheet)

Table II
Vancouver Adult Diversion Study Sample

	1978-1986 # of Cases
shoplifting cases only (SL)	63
shoplifting cases with psychiatric request (PAR)	126
Total	189

Source: Vancouver Adult Diversion Program case files

3. psychiatric variables.

Demographic Variables

The Diversion Intake Personal Information Sheet¹² for each of the 189 case files contained the following demographic variables for offenders. All variables are listed as they were presented at the time of Diversion intake:

1. age,
2. sex,
3. marital status,
4. level of education completed,
5. race,
6. employment status:
 - a. unemployed (offender had no current employment and did

¹²See Appendix D (Vancouver Diversion Program Personal Information Sheet)

- not belong to any of the categories below),
- b. employed,
 - c. self-employed,
 - d. student,
 - e. housewife,
 - f. retired,
 - g. government assistance (welfare, unemployment insurance, disability pension),
 - h. the offender's employment status was not available;
7. type of employment (current employment, where applicable):
- a. professional,
 - b. clerical,
 - c. skilled (technical, trade),
 - d. sales/clerk,
 - e. restaurant,
 - f. labourer,
 - g. type of employment was not applicable (offender had no current employment);
8. use of illicit drugs or alcohol:¹³
- a. yes, use of illicit drugs or consumption of alcohol was a problem,
 - b. no use of illicit drugs or consumption of alcohol,
 - c. the offender considered himself or herself a 'social drinker',
 - d. the offender used prescribed drugs only,
 - e. information not available;

¹³This information concerning alcohol or other drug use was supplied by the offender.

9. whether the offender had a previous criminal record
10. whether the offender had any medical problems, that is:¹⁴
 - a. physical problems,
 - b. mental (emotional) problems,
 - c. physical and mental problems,
 - d. no medical problems,
 - e. information not available.

These demographic variables constitute an overall case profile of shoplifters diverted from the traditional court process. This study differs from the central direction in the available literature, inasmuch as the focus is placed on diverted shoplifters, whereas most criminological studies on store theft focus on shoplifters in general (Arieff and Bowie, 1947; Gibbens and Prince, 1962; Cameron, 1964; Bennett, 1968; Won and Yamamoto, 1968; Munday, 1986; Yates, 1986; Ray, 1987; Turner and Cashdan, 1988). These studies usually seek to identify shoplifters by statistical analysis of the following: (1) sex; (2) age; (3) race or ethnicity; (4) marital status; (5) criminal history; (6) education level; (7) occupation; (8) work record; and (9) income level.

Offence Variables

The focus on the offender was completed by a focus on the offence, in a reflection of the Neo-Classical School of Criminology. The context and circumstances of the case thus

¹⁴This information was supplied by the offender during the Diversion interview.

remained salient to the case study. Offence-related information was obtained from the security and police reports contained in the 189 case files:

1. types of items in question,
2. total monetary value of the items in question,
3. place where the offence occurred,
4. what the offender was wearing at the time of the offence,
5. offender's demeanor at the time of the offence,
6. whether the offender was cooperative during the arrest,
7. offender's reason(s) for stealing:
 - a. psychological/psychiatric factors (variations of depression; absentmindedness; heard voices; all mixed up; wanted to get caught; blacked out; self-gratification; mental illness, such as schizophrenia),
 - b. could not afford it,
 - c. under the influence of alcohol and/or drugs,
 - d. situation was tempting,
 - e. an accident,
 - f. did not know why (offender claimed that he or she simply did not know why he or she shoplifted),
 - g. miscellaneous (e.g., they owed it to me; tired of buying them; for an illegal exchange; an old Chinese prank; wrongful previous conviction),
 - h. no reason given (reason not available);
8. the offender's reason for stealing was recorded by:
 - a. store security personnel,

- b. police,
 - c. Diversion Program Manager,
 - d. offender's family physician,
 - e. psychiatrist,
 - f. interpreter,
 - g. offender's lawyer,
 - h. someone other than the above (e.g. the Elizabeth Fry Society),
 - i. information not available
9. what eventually happened to the offender following the attendance of a police officer:
- a. offender was arrested,
 - b. summons was issued,
 - c. appearance notice was issued,
 - d. information not available.

The offence variables of this study correspond to studies of shoplifting in general (Bennett, 1968; Walsh, 1975; Munday, 1986), and studies of legal sanctioning of shoplifters (Cohen and Stark, 1974; Blankenburg, 1976; Lundman, 1978; Feuerverger and Shearing, 1982; Adams and Cutshall, 1987). Common offence variables in these two bodies of literature include: (1) method of shoplifting; (2) goods stolen; (3) amount stolen; (4) reasons for shoplifting; (5) time/day/month of the offence; (6) previous criminal history; (7) availability of money to pay; and (8) method chosen for "disposal" of offender (for example, cautioning, arrest).

Psychiatric Variables

At first glance, the psychiatric variables appeared rather descriptive, akin to the offender and offence-related foci. As set out below, these variables represented a different kind of construction of offenders' identities and needs. Information collected and analyzed for the psychiatric variables included the following:

1. whether the offender had any psychiatric contact prior to the present offence,
2. if so, who made the original psychiatric referral:
 - a. the police,
 - b. the offender,
 - c. Crown Counsel,
 - d. the offender's lawyer,
 - e. the offender's family physician,
 - f. someone other than the above (i.e. the Elizabeth Fry Society, hospital staff),
 - g. information not available,
 - h. not applicable;
3. to whom was the referral made to,
4. whether other family members had been mentioned as having seen a psychiatrist,
5. whether there had been a psychiatric referral since the offence, but prior to diversion,
6. whether the Diversion Program Manager had requested a voluntary psychiatric assessment as a condition of diversion,

7. if so, to whom was the referral made to,
8. the psychiatrist's diagnosis of the offender:
 - a. depression (chronic; periodic; agitated; reactive; situational; depressive neurosis; schizoaffective psychosis),
 - b. schizophrenia,
 - c. pre-menstrual syndrome,
 - d. bulimia (eating disorder),
 - e. dissociated state,
 - f. temperament unstable,
 - g. dementia-senility,
 - h. anxiety disorder,
 - i. cry for help,
 - j. no clinical diagnosis,
 - k. not applicable;
9. recommended psychiatric treatment:
 - a. psychotherapy,
 - b. counselling,
 - c. (continued) prescribed drugs,
 - d. hospitalization,
 - e. behavior therapy,
 - f. electrotherapy,
 - g. 'just treatment' (psychiatrist made no specific recommendation),
 - h. no recommended psychiatric treatment,
 - i. not applicable.

The psychiatric variables are thus characteristic of shoplifters diverted through the Vancouver Adult Diversion Program, with a completed psychiatric assessment. Usually, the shoplifting literature (Arieff and Bowie, 1947; Neustatter, 1954; Gibbens and Prince, 1962; Yates, 1986; Ray, 1987; Moak et al., 1988) examines some of the following in order to "better understand" the psychiatry and psychology of shoplifting: (1) medical history; (2) physical health; (3) psychological profile; (4) psychological stresses; (5) social stresses; (6) psychiatric diagnoses or analyses; and (7) recommended treatment.

Data Analyses

For the purposes of analyzing the data, the computer package, Statistical Package for the Social Sciences (SPSSx) was employed. Descriptive statistics or univariate procedures were used to describe and summarize the data under study. The descriptive analyses provided an overall case profile of shoplifters diverted from the traditional court process. Moreover, the focus on the offender was completed by a focus on the offence. For the most part, the demographic patterns of offenders and the context and circumstances of the offence remained constant throughout the study. Crosstabulations were generated in order to determine statistical relationships between certain demographic, offence, and psychiatric variables and diversion decisions. An attempt was made to differentiate those shoplifters who were diverted without a request for a

psychiatric assessment and those who were diverted with a psychiatric assessment requested. In other words, factors determining the extent of psychiatric involvement of shoplifters were examined by the bivariate analyses.

Summary

A sample of 189 shoplifting case files, accepted into the Vancouver Adult Diversion Program during 1978-1986, were examined. A variety of demographic, offence and psychiatric variables were devised from information that was available in: (1) the Diversion Intake Personal Information Sheet;¹⁵ (2) the police report; (3) the security report; and (4) the psychiatric assessment. Descriptive statistics or univariate procedures were used to describe the overall case profile of shoplifters diverted from the traditional court process and the context and circumstances of the offence itself. Bivariate analyses were undertaken to explore possible reasons as to why some diverted shoplifters were referred for a psychiatric assessment, while others were not. Thus, factors which were associated with the referral decisions were examined.

¹⁵See Appendix D (Vancouver Diversion Program Personal Information Sheet)

CHAPTER IV
FINDINGS AND DISCUSSION

Introduction

In an attempt to examine the conceptual, theoretical and operational issues pertaining to diversion, the Vancouver Adult Diversion Program was the primary focus for this exploratory study. A sample of 189 shoplifting case files accepted into the Diversion Program during 1978-1986 was examined. A total of 28 demographic, offence, and psychiatric variables were analyzed.

This study of diversion of shoplifters was undertaken in response to several concerns: (1) to establish demographic patterns of offenders; (2) to investigate referral patterns; and (3) to analyze the disposition of shoplifting cases. Considerable attention was focused upon whether or not shoplifters are the most appropriate target population for the Vancouver Adult Diversion Program. Of greater concern was the extent to which powers and interests of psychiatrists determined the nature of the diversion control policy. Ultimately, the premise of "true" or traditional diversion and the competing argument that the Vancouver Adult Diversion Program extends the net of state control were explored.

In generating the descriptive and inferential statistics, the computer package, SPSSx was utilized.¹ Descriptive

¹See Marija J. Norusis, Introductory Statistics Guide SPSSx, New York, McGraw-Hill Book Company, 1983.

statistics were used to describe and summarize the data. Specifically, the descriptive analyses provided an overall case profile of shoplifters diverted from the traditional court process. Furthermore, the focus of the offender was completed by a focus on the context and circumstances of the offence.

To further analyze the relationship between variables, chi square analyses (crosstabulation analyses) were performed on the data. The chi square statistic is used to test statistical independence between variables. Social researchers utilize a particular set of levels of significance in connection with tests of statistical significance: 0.05, 0.01, and 0.001 (Babbie, 1979: 492). For the purposes of this study, if the level of significance p was 0.05 or less, then the existence of a relationship between variables was concluded.

The basis for the crosstabulation analyses was to explore significant differences between the two different types of case files: (1) **SL** (shoplifting cases without a request for a psychiatric assessment); and (2) **PAR** (shoplifting cases in which psychiatric assessment was requested). The relationship between file type and demographic, offence and psychiatric variables was thus examined. In other words, bivariate analyses of the study data were attempted in response to the following questions:

1. Why were some diverted shoplifters referred for psychiatric assessments and others not?
2. Who are those that were referred?
3. What statistically significant factors appeared to influence

referral decisions?

The following represents the findings and discussions of these analyses.

Offender Characteristics

Age

The age range of the 189 offenders was between 17 and 76 years old. The average age of a shoplifter at the time of diversion intake was 38.5 years old, with a median of 36 years old. Table III compares the overall study sample with the two different types of case files: (1) shoplifting cases (SL) without a request for a psychiatric assessment; and (2) shoplifting cases in which a psychiatric assessment was requested (PAR). The average age of a SL offender was 35.5 years old, with a median of 28 years old; while the average age of a Par offender was 40 years old, with a median of 38.5 years old. Findings from the V.A.D. study show that 48% of the diverted shoplifters were between 21 and 40 years old. The numbers decline thereafter. The only categories in which the proportion of diverted offenders with PAR was less than SL diverted offenders were the youngest (17-20) and the oldest (71-80), 7 to 15 and 0 to 3 respectively.

According to the literature (Arieff and Bowie, 1947; Federal Bureau of Investigation, 1981), age-specific shoplifting rates are highest in adolescence and decline rapidly thereafter. They are lowest among the elderly (Federal Bureau of Investigation:

TABLE III
Age vs. File Type: V.A.D. Sample

Age Group	SL	PAR	Row Total
17-20	* 15 ** (68%) *** (24%)	7 (32%) (6%)	22(12%)
21-30	19 (39%) (30%)	30 (61%) (24%)	49(26%)
31-40	9 (21%) (14%)	33 (79%) (26%)	42(22%)
41-50	3 (11%) (5%)	24 (89%) (19%)	27(14%)
51-60	9 (30%) (14%)	21 (70%) (17%)	30(16%)
61-70	5 (31%) (8%)	11 (69%) (9%)	16(9%)
71-80	3 (100%) (5%)	0	3(2%)
Column Total	63(33%)	126(67%)	189(100%)

*Cell Count **Row Percentage ***Column Percentage
Note: Due to rounding off, totals may not add up to 100%.

Uniform Crime Reports, 1981; Arief and Bowie, 1947). Moak and his associates (1988: 648) observed in the United States that: "although shoplifting was becoming more common among the elderly, the behavior was far from normal for this age group".

Moak and his associates (1988) found that elderly, first-offender shoplifters were rare.

Sex

Table IV shows the sex distribution of the overall V.A.D. study sample, and the breakdown for the two different types of files. More than two thirds (68%) of the V.A.D. study sample were females. There were approximately twice as many females (68%) diverted for the crime of shoplifting as there were males (32%). By far the largest representation was at the female group.

Of 61 males in the V.A.D. study, 56% were referred to a psychiatrist for an assessment. Conversely, of the 128 females in the V.A.D. study, 72% were referred for a psychiatric assessment. The percentages appear to suggest that there is a somewhat greater probability for females of the V.A.D. study to be referred to a psychiatrist for an assessment as opposed to the males of the V.A.D. study. In other words, there appears to be a relationship between the sex of the shoplifter and the decision of the Diversion Program Manager. Referring to the available statistics in Table IV, chi square=4.14; DF=1; p=0.04, it is confirmed that there is a significant difference between the two groups (SL and PAR) tested (i.e., women offenders of the V.A.D. study are more likely to be diverted with a request for a psychiatric assessment than men).

TABLE IV
Sex vs. File Type: V.A.D. Sample

Sex	SL	PAR	Row Total
Males	* 27	34	61 (32%)
	**(44%)	(56%)	
	*** (43%)	(27%)	
Females	36	92	128 (68%)
	(28%)	(72%)	
	(57%)	(73%)	
Column Total	63 (33%)	126 (67%)	189 (100%)
Chi Square=4.14224 DF=1 p=0.0418			

*Cell Count **Row Percentage ***Column Percentage

According to the available literature (Arieff and Bowie, 1947; Cameron, 1964; Versele, 1969; Singer, 1978; Yates, 1986), the problem of shoplifting is often portrayed as predominantly involving women. This presumption, however, has been challenged (D'Elia, 1986). Angelino (1953) and more recently, Munday (1986) present evidence to prove that shoplifting as a female crime is nothing more than a "myth". Angelino (1953) finds, in his study of Albuquerque, New Mexico shoplifters, that in every year from 1937-1941, male shoplifters outnumbered female shoplifters in adult and juvenile groupings. Munday (1986) adds that the assumption that shoplifting is a women's offence is wrong and outdated. Recent research in an area of West Midlands, England shows a young man to be the "archetypal" shoplifting offender. In fact, according to Munday (1986), there are more than one and

a half times as many male shoplifters as there are female shoplifters.

Others (Sohier, 1969; Russell, 1973; Baumer and Rosenbaum, 1984; D'Elia, 1986; Ray, 1987) claim that the overrepresentation of females in most shoplifting studies can be attributed to some very obvious explanations. D'Elia (1986) and Ray (1987) point out that many shoplifting studies have been conducted exclusively with samples of women. D'Elia (1986: 12) continues: "it would be more accurate to say that the majority of shoplifters who form research samples are women" and not that the majority of shoplifters are women.

Second, Cameron (1964: 82) argues that women have a tendency to steal many more items than men in a single trip to a store. Therefore, the chances of a woman to be arrested is much higher:

The fact that women steal more objects than men in a single tour of the store suggests that in relation to the actual number of persons involved in department store shoplifting, men may very well be underrepresented in store arrest figures since the chance of being arrested is improved with each new theft.

In addition to the contention that women tend to steal more during one trip, it has been pointed out that most shoppers in retail stores are females (Arieff and Bowie, 1947; Sohier, 1969; Baumer and Rosenbaum, 1984).² It is believed that the higher number of female shoplifters can be explained by the fact that it is usual for most kinds (e.g., grocery, retail) of shopping

²This may be the case because men concentrate more on certain stores (e.g., automotive, hardware). To the best of the author's knowledge, there have been no studies focusing on this type of segregated shopping patterns.

to be done by housewives (Sohier, 1969). It should not be too surprising that, as more women shop than men, the opportunities and temptations for shoplifting are therefore present with much greater force for women than for men (Arieff and Bowie, 1947). Thus, women have a greater opportunity than men of being tempted to shoplift.

Finally, because the "housewife" has been stereotyped by security personnel as either the first or second largest group of shoplifters, there is the potential problem of selective surveillance and apprehension of women (Baumer and Rosenbaum, 1984). This belief among security personnel may become a self-fulfilling prophecy, where subsequent arrests further strengthen the initial belief (Baumer and Rosenbaum, 1984: 30).

Employment Status

Table V shows the employment status distribution of the V.A.D. study sample, and the breakdown for the two different types of files. A total of 56% of the diverted shoplifters indicated that they were unemployed or that their source of income was provided by someone other than their personal income (wages). Of those: 15% were simply "unemployed" (i.e., offender had no current employment and did not belong to any of the following categories); 14% were housewives; 12% were students; 10% were receiving some type of government assistance (e.g., welfare or social assistance, unemployment benefits, or disability pension); and 5% were retired.

Table V
Employment Status vs. File Type: V.A.D. Sample

Employment Status	SL	PAR	Row Total
Employed	* 30 **(36%) *** (48%)	54 (64%) (43%)	84(44%)
Unemployed	5 (17%) (8%)	24 (83%) (19%)	29(15%)
Housewife	4 (15%) (6%)	22 (85%) (17%)	26(14%)
Student	10 (45%) (16%)	12 (55%) (10%)	22(12%)
Govt Assistance	7 (39%) (11%)	11 (61%) (9%)	18(10%)
Retired	7 (70%) (11%)	3 (30%) (2%)	10(5%)
Column Total	63(33%)	126(67%)	189(100%)
Chi Square=15.11737 DF=5 p=0.0099			

*Cell Count **Row Percentage ***Column Percentage

Of the 84 employed offenders in the V.A.D. study, 64% were referred for a psychiatric assessment. Of the 29 unemployed offenders in the study, 83% were referred for a psychiatric assessment. Of the 26 housewives in the study, 85% were referred for a psychiatric assessment. Of the 22 students in the study, 55% were referred for a psychiatric assessment. Of the 18 offenders who were on some kind of government assistance (e.g.,

welfare or social assistance, unemployment benefits or disability pension), 61% were referred for a psychiatric assessment. Finally, of the 10 offenders who were retired, 30% were referred for a psychiatric assessment.

The data appears to suggest that there may be a greater probability for housewives and those who are unemployed (of the V.A.D. study sample) to be referred to a psychiatrist. The statistics (as outlined in Table V), chi square=15.12; DF=5; p=0.01, confirm that there is a statistically significant relationship between an offender's employment status and the Diversion Program Manager's decision to divert.

It is important to point out that the data on employment status may be misleading. Some of those who stated that they were unemployed may actually have been legitimately employed. It was possible that shoplifters denied employment as a way of avoiding problems with employers. On the other hand, shoplifters could have claimed to have been employed in order to demonstrate their productiveness in society. One must note, however, that once a shoplifter admitted to being employed, the probability is that the facts of the employment were then stated correctly for, so far as the shoplifter knew, these facts were about to be verified by the intake worker.

Employment Type

The data on the employment type of the 84 diverted employed offenders reveals that: 35% had a "professional" job; 21% worked in sales; 19% were labourers; 13% worked in the restaurant business; 7% had a clerical position; and 5% were trained in a trade or technical position. The data seems to suggest that shoplifting is not confined to a narrow range of occupations; that is, shoplifting is fairly ubiquitous.

Others (Cameron, 1964; Won and Yamamoto, 1968; Russell, 1973; Baumer and Rosenbaum, 1984; Turner and Cashdan, 1988) claim that rather than being a crime characteristic of lower socioeconomic groups, shoplifting appears to span the working and middle classes. Data from Cameron (1964) show that most shoplifters are "respectable", gainfully employed people or equally "respectable" housewives. She reports that many apprehended shoplifters are manual workers (craftsmen, operators, service workers, and labourers), or white-collar workers (professional, managerial, clerical and sales workers). Won and Yamamoto (1968) report that more than three-fourths of their sample of 493 supermarket shoplifters in Honolulu are from the middle-income bracket. Cupchik and Atcheson (1984) argue that those with a more prestigious, "higher" profile, and generally more vulnerable positions within business organizations tend to have more to lose if convicted of shoplifting. They may also fit the stereotype of who would "do

well" in counselling and thereby promote the V.A.D. Program's success rate.

Marital Status

Of the 189 V.A.D. cases, 44% of the diverted shoplifters were married and 56% were single, divorced/separated or widowed. Of the 63 SL offenders, 40% were married and 60% were single, divorced, separated or widowed. Of the 126 PAR offenders, 47% were married and 53% were single, divorced, separated or widowed. The results show that there were more "single" (residing alone) shoplifters diverted than married (or common-law) ones. In terms of marital status, it was found that there was no significant difference between the two groups (SL and PAR) tested.

Race

When the categories of race (White, Oriental, Black, East Indian and Native) were tested with the file type, the number of cells with expected frequencies of less than five were 5 out of 10 (50%). Consequently, the variable "race" was collapsed into a dichotomous variable (white and non-white) and again crosstabulated with file type. The results are outlined in Table VI.

The V.A.D. sample dossiers indicated that 70% of the 189 diverted shoplifters were white, while 30% were non-white. Of the 133 whites in the V.A.D. study, 73% were referred to a psychiatrist for an assessment. Of the 56 non-whites, 52% were

Table VI
Race vs. File Type: V.A.D. Sample

Race	SL	PAR	Row Total
White	* 36 **(27%) *** (57%)	97 (73%) (77%)	133(70%)
Non-White	27 (48%) (43%)	29 (52%) (23%)	56(30%)
Column Total	63(33%)	126(67%)	189(100%)

Chi Square=7.00693 DF=1 p=0.0081

*Cell Count **Row Percentage ***Column Percentage

referred for a psychiatric assessment. Looking directly at the available statistics, chi square=7.01; DF=1; p=0.01, the null hypothesis that no relationship exists can be rejected. Thus, there is a statistically significant relationship between a V.A.D. offender's race (white or non-white) and file type (SL and PAR). It appears that a caucasian person of the V.A.D. sample is more likely to be referred for a psychiatric assessment than a non-white.

Adams and Cutshall's (1987) study examined the relative effects of legal and extralegal factors on the decision to dismiss or to not prosecute shoplifting cases. Regression analysis revealed that race, as an extralegal factor, was a significant factor in the decision-making processes of prosecutors. The race of the offender was the fourth most

predictive factor of decision outcomes; specifically, white shoplifters were more likely than black shoplifters to have their charges dismissed. Their analysis noted that legal factors, such as the offender's prior criminal history and the number of charged offenses, were the most predictive factors. In other words, if the offender had a prior record or additional charges (pending), then race per se did not improve the ability to predict case dispositions. However, if an offender had no previous criminal record and only one charge of shoplifting, then the race of the offender was the fourth most predictive factor of decision outcomes.

Education

Of the 151 cases for which educational attainment was recorded, 44% had some post-secondary (i.e. university, vocational, college) training; 39% had at least high school (i.e. Grades 10-12); 11% had attended junior high (i.e. Grades 7-9); and only 6% had elementary schooling (i.e. Grades 1-6). It was established that approximately one half (76) of the 151 diverted shoplifters had Grade 12 education or some university leading to a B.A. degree. Of the 46 SL cases for which educational attainment was recorded, 39% had less than Grade 12, while 61% had Grade 12 or higher. Of the 105 PAR cases for which educational attainment was recorded, 30% had less than Grade 12, while 70% had Grade 12 or higher. The results from the data appear to suggest that the 151 cases for which educational attainment was available, the V.A.D. Program tended to divert

those who were more educated. In terms of education, it was found that there was no significant difference between the two groups (SL and PAR) tested.

Previous Criminal Record

Table VII indicates that 92% of the 189 diverted shoplifters had no previous criminal record. Of the 15 diverted shoplifters with a previous criminal record, only 7% were diverted without a request for a psychiatric assessment, while the remaining 93% were referred to a psychiatrist. Of the 174 diverted shoplifters without a prior criminal record, 36% were diverted without a request for a psychiatric assessment, while 64% were referred for an assessment. The figures appear to suggest that an offender (from the V.A.D. sample) with a previous criminal record is more likely to be referred for a psychiatric assessment than an offender without a previous criminal record. Given the available statistics in Table VII, chi square=3.99; DF=1; p=0.05, one can conclude that there is a significant difference between the SL and PAR groups.

Ironically, of the 15 offenders with a previous criminal record, 13 had previous shoplifting convictions. To be accepted into the V.A.D. Program, the candidate must be a first-time offender, and must not have been previously diverted. Of the 13 offenders with a previous criminal record, two had been previously diverted.³ It appears that previous criminal record

³For reasons unknown to the author, this is a violation of the V.A.D. guidelines. Adams and Cutshall's (1987) shoplifting research found that prior criminal history is the most

Table VII
Previous Criminal Record vs. File Type: V.A.D. Sample

	SL	PAR	Row Total
Yes	* 1 **(7%) *** (2%)	14 (93%) (11%)	15 (8%)
No	62 (36%) (98%)	112 (64%) (89%)	174 (92%)
Column Total	63 (33%)	126 (67%)	189 (100%)
Chi Square=3.99181 DF=1 p=0.0457			

*Cell Count **Row Percentage ***Column Percentage

was not the only consideration in terms of whether or not the V.A.D. Program Manager would divert shoplifters. Those 13 cases with previous shoplifting convictions had what the Diversion Program Manager considered as "extenuating psychiatric/psychological circumstances". It was these types of cases, exemplified by the case discussed below which justified diversion, despite the criminal record.

Case No. 140

Mrs. Y, a 52 year old housewife, was caught shoplifting goods valued at \$18.25. She had a previous shoplifting conviction. A psychiatric report indicated that she had been treated for

³(cont'd) predictive factor in terms of whether or not to prosecute a shoplifting charge. Prosecutors in the study were more likely to pursue judicial sanctions if offenders exhibited a pattern of repeated criminal behavior.

schizophrenia for the past four years. The psychiatrist believed that her act of shoplifting was related to her emotional condition. The unedited passage that follows is from the letter Mrs. Y wrote to the Diversion Program Manager:

"For many years previous to this incident I lived in a dream and fantasy world and was, at least, partially out of touch with reality. While my marital and social life during this period was nonexistent, the medication I was taking kept me sedated and emotionally numb. When I went off the medication I experienced a great emotional upsurge causing me to become depressed, anxious and generally upset. Object and persons lost old meanings while gaining new ones. At this time, my delusional dreams crumbled around me, while dissatisfaction and frustration with my life went on the increase. I felt both helpless and confused; all avenues at ever achieving happiness appearing blocked.

My shoplifting, I believe, resulted from my desparate grasping for straws, from searching for a concreteness or satisfaction, if only an illusionary one. The shock of being apprehended has resulted in my acquiring a keen perception of the reality of my situation. It has triggered in me an intense desire to change, has clarified the means by which wholeness and fulfillment in my life is to be found, and has instilled in me a true responsiveness to treatment and self-help."

Mrs Y's explanation was accepted by the Diversion Program Manager, in his decision to divert her from the traditional court process. In other words, although diversion is supposedly for the first-time offender, there are exceptions to the rule. Not surprisingly, criminal justice officials exercise such discretion in the diversion process, as in many other aspects of their work.

Alcohol and Other Drugs

Appelbaum and Klemmer (1974) point out that a certain amount of shoplifting is done by people who are under the influence of

drugs, including alcohol. According to the V.A.D. sample, this does not appear to be the case. Of the 189 diverted shoplifters, 157 of them addressed this issue. 48% of the 157 diverted offenders claimed that they did not drink or use any other drugs. 40% of them suggested that they considered themselves as "social drinkers", but were not under the influence of alcohol during the time of the offence. 9% of the diverted offenders pointed out that they were using prescribed drugs under the direction of a physician, at the time of the offence, while only 3% described themselves as alcoholics. In terms of this variable, it was found that there was no significant difference between the two groups (SL and PAR) tested. This is one form of behaviour that is stigmatized, and shameful (perhaps), so we cannot expect that official records accurately reflect actual patterns of drug use.

Characteristics of the Offence

Place of Offence

The most common shoplifting locations were department stores (Eaton's, Hudson's Bay, Woodward's, Sears, Zeller's, Woolco, Woolworth's, Marks and Spencer and Army and Navy). These stores constituted 51% of the locations for the thefts. Such places may be the preferred targets because of the wide variety of goods available within one store. The second most frequent category was food and liquor stores: Safeway, Super-Valu, IGA, 7-11, Stong's and government liquor stores (i.e., only one documented

case) constituted 29% of the 189 places for the thefts. Thus, department stores and food (or liquor) stores accounted for 80% of the thefts in this sample. Of the remaining 20%, 17% were committed in drug stores (London Drugs, Shopper's Drugmart, Boots, Pharmasave, and People's Drugmart); 2% in clothing stores (Field's, Fairweather's and Honest Nat's); and 1% in a stereo shop (A and B Sound).

The data on "place" appears to suggest that a majority (51%) of the 189 V.A.D. offenders being diverted are from department stores. However, if the various companies were explored individually, the numbers appear to vary. For instance, one company constituted over one third of all department stores, whereas several constituted only 2% each. The variation reflected by the data could be attributed to a variation in store security policies. It is possible that particular companies, not only department stores, practice a policy of "prosecute all shoplifters", and deploy sufficient staff to follow through on this policy, while, others might practice "informal justice" as one form of diversion.⁴ Future research into various store security policies would assist in clarifying the diversion data.

⁴Store security might handle the situations informally at the store level, rather than proceeding through the regular court system. Quite often, if a person is caught stealing, his or her name is placed on a blacklist and is forbidden to shop there again.

Items in Question

Food was most likely to be taken by the 188 V.A.D. shoplifters. There was no indication on file as to what one shoplifter had stolen. By far, 36% of the 188 diverted shoplifters stole edible item(s), including one offender who had stolen tobacco and another who had stolen liquor. By the same token, clothing and clothing accessories appeared to be almost as common: that is, 33% out of 188. The remainder consisted of: cosmetics and beauty aids (13%); books and stationery (5%); pharmaceutical goods (e.g., cold remedies, vitamins) (4%); hardware and sporting goods (3%); household accessories (3%); records and tapes (3%); and money (1%). On average, the value of the goods stolen by the 188 diverted shoplifters was \$27.00.

Cooperation of the Offender

Of the 189 diverted shoplifters, 27% of them were reported as extremely cooperative at the time of their arrest by the store security. Being cooperative meant that there there was no physical struggle during the arrest or not any verbal altercation over the facts of the incident. In other words, the shoplifter was easily apprehended and complied with the demands of the security officer. It was found that 6% of the 189 were non-cooperative and an indication of the level of cooperation for the remaining 67% was not available. Due to the high attrition of data here, future research would require a higher account of the variable if it is to be of any significance.

Offender Status

After a police officer attended the place of offence, 7% of the 189 diverted shoplifters were arrested, and 21% were issued a summons. The largest grouping - 64% - was simply issued an appearance notice. Information was not available for 9% of the 189 diverted shoplifters. The data might suggest that since most of the diverted shoplifters were first-time offenders, an issuance of an appearance notice was sufficient. Moreover, it appears that while shoplifting is taken seriously as a problem for store officials, it remains relatively minor for police officers, and relatively less serious than many other crimes.

Reasons for Stealing

Similar to the shoplifting literature, the V.A.D. study seems to identify shoplifting as an act reflecting a range of human behaviour from peer group influences to severe social and emotional maladjustment, with accompanying prominent depressive pathology (Cupchik and Atcheson, 1984). Generally, the reasons for shoplifting of the V.A.D. study were grouped into: (1) psychological or psychiatric factors; (2) economic factors; (3) under the influence of alcohol or other drugs; (4) temptation; (5) mere "accident"; (6) inexplicable circumstances ("I don't know why"); and (7) miscellaneous. The distribution of these reasons is set out in Table VIII.

Of the 189 diverted shoplifters, 65% indicated verbally the motivating factor behind their behaviour. First, 21% of the 189

Table VIII
Reasons for Shoplifting: V.A.D. Sample

Reasons	N	%
Reason (s) not given	67	35
"I don't know why"	40	21
Psychological or Psychiatric Factor	30	16
Economic Factor	28	15
Mere Accident	11	6
Alcohol or Other Drugs	6	3
Miscellaneous	4	2
Temptation	3	2
Total	189	100

diverted shoplifters stated they simply did not know why they shoplifted. These 40 shoplifters claimed they had no motive whatsoever for such a behavior. These individuals usually enter into a building with no intention of taking anything. But for reasons unknown to them, they attempt to "lift" something. Cases of this nature may complicate the Crown Counsels' decision whether or not to prosecute. Consequently, referring such cases to the Diversion Program enhances the possibility of further "assessment" of the unknown reason(s), and allows another basis to assess the appropriateness of prosecution.

Second, a minority of 16% of the offenders attributed their stealing to some psychological or psychiatric reason. Table IX

Table IX
Psychological or Psychiatric Factors

Psyc. Factors	N
Depression	11
Absentmindedness	11
Voices	1
All mixed up	2
Embarrassed to pay	1
Wanted to get caught	1
Blacked out	1
Self-gratification	1
Mental illness	1
Total	30

represents the distribution of psychological/psychiatric factors. Clearly, most of these shoplifters recalled that they were depressed or mentally preoccupied, and neglected to pay for the item(s). The following two cases demonstrate the presence of depression (Case No. 85) and absentmindedness (Case No. 90) as factors of shoplifting.

Case No. 85

Mr. Z, a 36 year old single man, was caught shoplifting a photo album valued at approximately \$7.00. In a report to the Diversion Program Manager, a courtworker explained the offender's behaviour as the result of a depressing situation:

"Upon his arrival to B.C., he arranged to room and board with a family who were looking for a French tutor for their two young children. The arrangement, however, was not satisfactory, because Mr. Z's English immersion teacher said that he should only speak English while taking the English immersion course. When his landlady found that he will no longer teach French to her children, she left a strongly worded eviction on his door, as well as moving his belongings to the hallway...

This gentleman is obviously depressed and distraught about the incident. It seems that the conflict with the landlady has assumed extra-ordinary significance, and that the separation from friends and family over Xmas left him feeling anxious and lonely. Recognizing that he was under emotional stress, he arranged several interviews with Ms. A, a social worker...I have spoken with Ms. A, who tells me that this man's emotional problems are related to a strict religious upbringing, where he was taught that pleasure in sex and in other areas was sinful..."

Thus, it was believed that due to all these factors of depression, Mr. Z subconsciously removed the album without having to pay for it.

Case No. 90

Ms. B, a single 50 year old welfare recipient, was apprehended for stealing three packets of shampoo, valued at \$5.00. The following is a verbatim extract from a letter sent to Crown Counsel by her lawyer:

"This is a request that the above-mentioned matter be diverted. Ms. B is 50 years old, has to my knowledge no previous criminal record and has a history of psychiatric problems which are controlled by weekly visits to a counselling psychiatrist. Her counselling psychiatrist has advised me that causing her to go through with a trial could aggravate her condition.

As a result of her psychiatric condition, she is somewhat confused and forgetful and it is conceivable that she just forgot to pay for the items or was so confused that she didn't realize that she was putting them in her bag..."

Cases #85 and #90 represent very common examples of psychological or psychiatric explanations of shoplifting.

Findings of depression and absentmindedness are consistent with studies (Cox, 1968; Cupchik and Atcheson, 1984; Yates, 1986; Ray, 1987) in the area of psychological or psychiatric explanations of shoplifting. Cox (1968) argues that the most common legal defence involves some degree of absentmindedness. The task confronting a court which has to try such a case is difficult. Often, great care is needed in analyzing the precise sequence of events in the store. According to Cox (1968: 429), "it can be clearly seen that the defence of absentmindedness does not hold water if the method of taking (e.g., the surreptitious concealment of the article) negates absence of intent." However, Cox (1968) claims that such a position is frequently complicated by the fact that at the time of the incident, the defendant is under unusual stress. Thus, such cases may be diverted from the traditional court system. According to Cunningham (1975:101), although it is impossible to estimate what proportion of shoplifting cases are due to absentmindedness, the accused in such cases almost always feels particularly aggrieved, even if acquitted.

Russell's (1973: 82) survey of shoplifters indicates that predisposing factors of: unfilled emotional needs, matrimonial stress, loneliness and depression are common. Yates (1986) contends that non-sensical shoplifters are generally more likely to be depressed than shoplifters for profit or gain. Quite

often, marital or family conflicts are the most prevalent stressors. Yates (1986: 210) adds that the combination of: being subjected to an unusual childhood stress; adjusting to a new country; and experiencing marital or family conflict (and possibly illness) in a state of social isolation, may produce a depressed and desperate state of mind. Thus, the need for judges and Crown Counsel to screen shoplifting cases seems important because individuals who display "atypical" behaviour are in need of psychological or psychiatric assessment and treatment which might not otherwise come to anyone's attention (Russell, 1973; Cupchik and Atcheson, 1984). Diversion, in this sense, screens out cases, based on the recommendations of Crown Counsels, and in turn, acts as a referral service for psychologists and psychiatrists.

The third most frequent response was economic necessity. Still, only 15% of the 189 diverted shoplifters cited economic hardship. As pointed out by several authors (Neustatter, 1953; Appelbaum and Klemmer, 1974; Turner and Cashdan, 1988), such individuals wanted or needed the item(s) but simply could not afford to pay. The following are examples of verbal reasons given by the 15% of the 189 diverted shoplifters: (1) "I needed it to live"; (2) "I had to get a Christmas present for..., but I couldn't afford it"; and (3) "This is the only way I can save some money." According to Neustatter (1953), the motive behind this type of theft is understandable and rational, as the shoplifter takes something of some need to him or her.

The fourth category of "mere accident" was used to explain 6% of the 189 cases. These shoplifters frequently deny knowing anything about the item(s) stolen. The following are very common remarks made under this category: (1) "It was all a mistake"; (2) "It was an accident"; and (3) "It just slipped into my...(e.g., purse)."

The fifth rationale is where the shoplifter is under the influence of alcohol or other drugs. Only 3% of the overall 189 diverted shoplifters attributed alcohol or other drugs to their behaviour of shoplifting. Three of the six diverted shoplifters claimed to have been under the influence of alcohol; the other half claimed to have been on prescribed medication during the offence.

A sixth factor - temptation - accounted for 2% of the overall 189 thefts. Comments such as the following were recorded: (1) "The situation was extremely tempting"; (2) "The opportunity was right and I knew I wouldn't get caught"; and (3) "Some said I wouldn't dare". Sohler (1969: 165) acknowledges that the main crime-producing factor of shoplifting is the ease with which it can be carried out. Because of its anonymity and relative immunity from punishment, it becomes an exciting game. A similar observation is taken by Turner and Cashdan (1988) who report that the third most frequent reason given by college students was classified as "challenge/fun". The act of shoplifting is seen as an intellectual test for challenge and adventure. Moreover, there is the motivation of "daring" (Turner

and Cashdan, 1988). According to Turner and Cashdan (1988: 860), "in the dare category, references were made to peer pressure, gaining social acceptance, and showing that one is cool".

The final category - miscellaneous - included the following reasons: (1) "They owed it to me"; (2) "For an illegal exchange for money"; (3) "A very common old chinese prank"; and (4) "I was once wrongfully convicted and wanted to get even with them." There were only 2% of the remaining 189 cases which were included under this category.

Psychiatric Contact

Medical Problems

An examination of Table X indicates that "mental" (emotional) problems were most frequently recorded for the overall study sample; that is, 46% of the 171 offenders.⁵ 36% of the 171 diverted offenders claimed they had no medical problems. There were 11% who indicated that they had both physical and mental (emotional) problems, and 7% who indicated that they had some physical health problems.

Of the 79 diverted shoplifters with mental (emotional) health problems noted on their records, 95% were referred for a psychiatric assessment. Of the 62 diverted shoplifters who claimed to have no medical problems, 32% were referred for psychiatric assessment. Of the 18 diverted shoplifters with

⁵10% or 18 of the 189 diverted shoplifters did not address the health issue.

Table X
Medical Problems vs. File Type: V.A.D. Sample

Medical Problems	SL	PAR	Row Total
Mental (Emotional)	* 4 **(5%) ***(7%)	75 (95%) (65%)	79(46%)
No Medical Problems	42 (68%) (76%)	20 (32%) (17%)	62(36%)
Physical & Mental	3 (17%) (5%)	15 (83%) (13%)	18(11%)
Physical	6 (50%) (11%)	6 (50%) (5%)	12(7%)
Column Total	55(32%)	116(68%)	171(100%)
Chi Square=66.29220 DF=3 p=0.0000			

*Cell Count **Row Percentage ***Column Percentage

physical and mental health problems, 83% were referred for a psychiatric assessment. Of the 12 diverted shoplifters who had only physical health problems, 50% were referred for a psychiatric assessment.

It appears that the majority (57%) of the V.A.D. sample had some emotional health problems. Furthermore, an examination of the statistics in Table X, chi square=66.29; DF=3; p=0.00, indicates that there is a statistically significant relationship between medical problems and diversion decisions. That is, the data appears to suggest that a diverted shoplifter (from the V.A.D. sample) with any mental (emotional) problems is more

likely to be referred to a psychiatrist than a diverted shoplifter without any mental health problems.

Psychiatric Contact Prior to Shoplifting

In addition to medical health problems, Table XI indicates that 47% of 170 diverted shoplifters⁶ had psychiatric contact prior to shoplifting. Of the 79 diverted shoplifters who had some psychiatric contact prior to shoplifting, 95% were referred for a subsequent psychiatric assessment. Of the 91 diverted shoplifters who had no psychiatric contact prior to the offence, 42% were referred for a psychiatric assessment. As indicated by the statistics in Table XI, chi square=51.30; DF=1; p=0.00, there is a statistically significant relationship between psychiatric contact prior to shoplifting and the two groups (SL and PAR) tested.

Russell (1973) argues that there is a need to screen shoplifting cases of this nature, because many have needs for social and psychiatric help which might not otherwise come to attention. Cupchik and Atcheson (1984: 354) suggest that store security personnel become more sensitive to the psychological state of offenders by diverting the more obvious cases from the justice stream toward clinical services. This would avoid costly judicial procedures, and more importantly, provide potentially more beneficial and suitable handling of those depressed offenders.

⁶Information was not available for 19 of the 189 diverted shoplifters.

Table XI
 Psychiatric Contact Prior to Shoplifting vs.
 File Type: V.A.D. Sample

	SL	PAR	Row Total
Yes	* 4 **(5%) *** (7%)	75 (95%) (66%)	79(47%)
No	53 (58%) (93%)	38 (42%) (34%)	91(54%)
Column Total	57(34%)	113(66%)	170(100%)

Chi Square=51.29863 DF=1 p=0.0000

*Cell Count **Row Percentage ***Column Percentage

Psychiatric Contact Between Arrest and Diversion

The data in Table XII shows that following the arrest, 52% of 179 diverted shoplifters⁷ contacted a psychiatrist, while 48% of them did not. Of the 93 diverted shoplifters who had contacted a psychiatrist following the offence, but prior to diversion, 100% of them were subsequently referred to a psychiatrist. Of the 86 diverted shoplifters who had not contacted a psychiatrist following the offence, only 29% were referred to a psychiatrist for assessment. Looking at the data, it appears that a shoplifter (of the V.A.D. sample) who has contacted a psychiatrist following the offence, yet prior to diversion, will more likely be referred to a psychiatrist for

⁷Information was not available for 10 of the 189 diverted shoplifters.

Table XII
Psychiatric Contact Between Arrest and Diversion
vs. File Type: V.A.D. Sample

	SL	PAR	Row Total
Referral since the offence, but prior to the diversion	* 0 ** 0 *** 0	93 (100%) (79%)	93(52%)
No referral since the offence	61 (71%) (100%)	25 (29%) (21%)	86(48%)
Column Total	61(34%)	118(66%)	179(100%)
Chi Square=96.93326 DF=1 p=0.0000			

*Cell Count **Row Percentage ***Column Percentage

further assessment. In other words, it appears that the V.A.D. Program Manager supports the initial referral of others (e.g., the offender's lawyer, Crown Counsel, the family physician), by recommending further psychiatric counselling. According to the statistics in Table XII, chi square=96.93; DF=1; p=0.00, one can conclude that there is a significant difference between the two groups (SL and PAR) tested.

Diversion Psychiatric Request as a Condition of Diversion

As a result of the sampling procedure, two thirds of the 189 diverted shoplifters selected for the V.A.D. study were required to seek psychiatric help as a condition of their diversion. This meant that during some stage of the diversion interview, the Diversion Program Manager decided to request a psychiatric assessment of some of the shoplifters. Information "capturing"

the diversion interview process was not available from the files analyzed. One could only speculate that the emotional state of a shoplifter during the diversion interview, in addition to previous psychiatric contact, might have some influence on the psychiatric referral.

Diagnostic Impressions

Of the 126 offenders who were requested to have a psychiatric assessment, a total of 63 psychiatric assessments were eventually received by Diversion. Table XIII provides a summary of the 63 psychiatric assessments. Clinical depression accounted for 52% of the 63 psychiatric assessments. Clinical depression included the following variations: (1) chronic depression; (2) periodic depression; (3) agitated depression; (4) reactive depression; (5) situational depression; (6) depressive neurosis; and (7) schizoaffective psychosis. With the exception 17 cases, psychiatrists invariably explained 73% of the shoplifting cases in the psychiatric lexicon of depression, schizophrenia, premenstrual syndrome and so forth.

Summary

Of the 28 demographic, offence, and psychiatric variables tested with the two different file types: (1) shoplifters diverted with no further conditions (SL); and (2) shoplifters diverted with a request for a psychiatric assessment (PAR), seven variables were found to be statistically significant. The

Table XIII
Psychiatric Diagnostic Impressions

Diagnosis	N	%
Depression	33	52
No clinical diagnosis	17	27
Schizophrenia	3	5
Dissociated State	3	5
Bulimia	2	3
Premenstrual Syndrome	1	2
Temperament Instability	1	2
Dementia (Senility)	1	2
Anxiety Disorder	1	2
"Cry for help"	1	2
Total	63	102

following demographic variables were statistically significant in terms of differentiating the two file types (SL and PAR): (1) sex; (2) race; (3) employment status; (4) previous criminal record; and (5) medical problems. Of the offence variables examined, none were statistically significant with referral decisions. Finally, of the psychiatric variables tested, two were statistically significant: (1) psychiatric contact between arrest and diversion; and (2) any psychiatric contact prior to shoplifting.

The findings of this study appear to suggest that an offender of the V.A.D. sample will more likely be referred to a

psychiatrist given the following conditions: (1) female; (2) white; (3) unemployed or a housewife; (4) has a previous criminal record; (5) has some mental (emotional) health problems; (6) has had some psychiatric contact prior to the offence; and (7) has contacted a psychiatrist following the arrest, but prior to diversion.

CHAPTER V

TWENTIETH-CENTURY REFORMISM: A DISCUSSION

...reform means improving something by changing imperfections, faults, errors, abuse or malpractice. It entails "forming again" in a manner that is different from before and somehow better. It intimately is linked with the idea of progress, in that successive reforms are part of a perpetual quest for a more efficient and humane system. In the criminal justice sphere, efficiency refers to the ability of a particular reform to prevent crime by deterrence and to be relatively cost-effective; humaneness refers to the reform's conformity with the moral sensibilities of its time. The common view is that we have progressed since the eighteenth century through stages of increasing efficiency and enlightenment: from the "bloody code" of capital punishment, for example, through the penitentiary, or the "museum of order," as the ideal form of control, to the proliferation of penal options in the twentieth century, the most recent examples of which are community programs...(Ericson, 1987: 21-22).

Diversion, as one major emerging reform strategy of the 1960's, has been the focus of this thesis. The thesis has contributed to the ongoing debate over the diversion movement via an empirical study of adjudication of shoplifting cases in a major Canadian city (Vancouver). It has attempted to demonstrate the functioning and effects of the Vancouver Adult Diversion Program policy and procedural practices on adult shoplifters. Diversion, like other "destructuring" attempts and community alternatives, received praise from some as the most viable alternative to difficulties associated with formal processing of offenders through the criminal justice system. Others, however, claim that "reforms" intended to change things for the "better" may result in effects directly contrary to those intended or expected (See Fattah, 1987: 76).

This concluding chapter represents an attempt to sharpen the analysis of the consequences of the diversion movement by offering an account for "what might have gone wrong." This entails a discussion of the following issues: (1) the definition of "diversion"; (2) "psychiatrization of petty theft"--the influence of powers and interests of other experts (namely psychiatrists) on the diversion policy; and (3) wider, stronger and different nets.

Definition of Diversion

Underlying the analyses of this thesis was the issue of whether "diversion", as referred to by the Vancouver Adult Diversion Program, represented a true "alternative" to the regular court process. According to Cohen (1979: 348), "...the term 'alternatives' is not quite what it implies." Rutherford and McDermott (1976) contend that the key to understanding this lies in the distinction between true (traditional) and new diversion. True (or traditional) diversion entails that the offender is removed from, or directed out of the criminal justice system completely. The offender is thus not subjected to any treatment, service or follow-up. New diversion, on the other hand, requires that the offender participates in programs, rather than being screened out of the system.

The original intention of the Vancouver Adult Diversion Program to divert from or direct out of the formal criminal justice system, has shifted to referral to programs connected

with the system. Evidence shows that the Vancouver Adult Diversion Program, as a process for managing shoplifting cases, is more a referral service for psychiatrists, than a "true alternative" to the regular court process. As Davidson and his associates (1981) contend, diversion has not tended to be a "true alternative", but has operated for the additional purpose of providing further services, and this holds true for the V.A.D. Program.

Psychiatrization of Petty Theft

As mentioned above, the Vancouver Adult Diversion Program, as a process for managing shoplifting cases, has become a referral service for psychiatrists. Its original intention to divert from the "system" has resulted in an unintended consequence of "psychiatrizing" petty theft. It appears that the Vancouver Adult Diversion Program, as a new form of diversion, has led to a more voracious processing of shoplifters, albeit in new settings and by professionals with different names (i.e. psychiatrists) (See Cohen, 1979). Cohen (1979: 350) contends that:

There can be little doubt that the intentions behind the new movement and - more to the point - its end results, are often humane, compassionate and helpful. Most clients, deviants or offenders would probably prefer this new variety to the stark option of the prison (emphasis added).

Cohen (1985: 174-175), however, questions the powers of "helping" professionals:

this is the power of the technical fix: when the power of professionals over other people is at stake, the language employed implies that the professional has ways to ascertain who are dangerous, sick or inadequate, that he or she knows how to render them harmless, rehabilitate them or both, and that the procedures for diagnosis and treatment are too specialized for the lay public to understand or judge them...It is naive to think of terms such as 'community', 'diversion', or 'in need of care' as standing for particular places, objects or behaviour...Most of the terms used by the helping professions combine a high degree of unreliability (in their diagnosis, prognosis and prescription of the right treatment), with an unambiguous set of constraints upon clients (emphasis added).

He further points out that the greatest advantage of the "program evaluation enterprise" is that it is not at all constrained by the lay public's naive utilitarian notion of what constitutes success and failure (Cohen, 1985: 177). The real heart of "what works" thus lies in the enterprise of classification. The enterprise of classification, Cohen (1985: 193) argues, is the centre of power:

Each part of the system starts with its own selection criteria to accommodate the 'right' client around whom the regime or service was designed and for whom a particular professional specialism exists. But if there are not enough 'right' clients - not enough, that is who fit the selection criteria for the diversion agency, community centre, half-way house of prison - then the norm changes. Other clients are admitted, the regime is altered accordingly and a new technology of selection has to be devised.

Like methods of punishment or treatment themselves, these classification systems may or may not 'work'. The 'failure' of a classification system rarely evokes troublesome ideological questions and never threatens professional interests. It simply calls for more and better classification...

One might argue that the Vancouver Adult Diversion Program, as a referral service for psychiatrists, is a 'success' due to

its on-going flow of court clientele. Each level diverts to the next level, and at each level, vested interests (e.g., job security, budgets) ensure that few are "truly" diverted. Each stage creates the deviant it wants and constructs its programs accordingly. Hence, each stage is dependent upon the previous for space, referrals and accountability. The more clients a program attracts, the more successful a program becomes; the more it will be used; and the more staff and budgets will be needed and allocated (Cohen, 1985). For the most part, each stage is successful in terms of its own operational definition of success, but is a failure when compared to the theory from which the policy (supposedly) was derived (Cohen, 1979).

Wider, Stronger and Different Nets

The foregoing discussions disclose a final issue regarding wider, stronger and different nets of social control. Austin and Krisberg (1981) claim that each reform movement (from the liberal direction - diversion, decarceration, due process and decriminalization; and from the more conservative direction - deterrence and just deserts) represents a series of 'unmet promises'. The criminal justice system, propelled by its own organizational dynamics, functions to resist, distort and frustrate the original purposes of these reforms. Austin and Krisberg (1981) argue that social control and organizational change must be understood as part of changes in the political and social milieu. Reforms that disregard ideological and

economic forces will result in unintended consequences.

Austin and Krisberg (1981) analyze reform movements to determine the extent to which each (intentionally or unintentionally) strengthens, expands, or creates new nets of social control. The three types of changes in social control nets are defined as follows:

1. Wider Nets: Reforms that increase the proportion of subgroups in society (differentiated by such factors as age, sex, class, and ethnicity) whose behavior is regulated and controlled by the state.
2. Stronger Nets: Reforms that increase the state's capacity to control individuals through intensifying state intervention.
3. New Nets: Reforms that transfer intervention authority or jurisdiction from one agency or control system to another (Austin and Krisberg, 1981: 169, emphasis added).

In their analysis of diversion, Austin and Krisberg (1981) argue that the original promises - to divert offenders from the stigma associated with a conviction; to reduce court congestion and costs; to reduce prison populations; and finally, to reduce crime - have not been met. Once placed under the control of the criminal justice system, diversion programs become a means for extending the net, making it stronger, and creating new nets.

Evidence from Rovner-Pieczenik's (1974) review of several adult pre-trial intervention projects, shows that in many cases pre-trial diversion is reserved for defendants whom the District Attorney is unwilling to prosecute or unable to prosecute successfully. Diversion programs thus extend jurisdiction over those cases which ordinarily would have been dismissed. A

similar phenomenon of expanding the net and making it stronger was found in British police juvenile liaison programs, where diversion became a third control option available to police, supplementing formal processing and the decision to screen and release (Morris, 1975).

Cohen (1979, 1985) argues that the major result of the movement towards diversion has been to increase rather than decrease the total number of individuals processed via juvenile justice system in the first place. Cohen (1985) suggests that alternatives have become not alternatives at all, but new programs which supplement the existing system, expanding it by attracting new populations. As pointed out earlier, the unintended consequence of the Vancouver Adult Diversion Program (i.e., the "psychiatrization of petty theft") has widened the net of social control. In order to maintain an on-going flow of clients, it is in the best interests of professions to enlarge the system by attracting more clients. Expansion is essential to program profit and professional interests (e.g., to secure a job, to justify existence, to attract grant and subsidies). "Success" of a program justifies expansion.

In an earlier evaluation of the Vancouver Adult Diversion Program and other B.C. adult diversion programs, the Ministry of B.C. Attorney General (1984) claims that the evidence on the issue of widening the net is mixed. There is evidence that pre-trial diversion simultaneously expands and contracts the net of alleged minor offenders dealt with by the justice system:

On the one hand, automatic charging of shoplifter policies by major retailers, Crown testimony as to prosecution policy and practice, the continuing flow of minor 294b¹ offenders through courts and Probation in jurisdictions with diversion programs, the "spill-over" of referrals from regions which have no diversion programs into those which do, and the higher proportion of Theft Under \$200² cases in courts in jurisdictions which do not utilize diversion all seem to indicate that with the absence of diversion, these types of charges and offenders would proceed to court. On the other hand, in jurisdictions where diversion is present there is evidence that some alleged offenders referred by Crown to diversion agencies who the agencies either rejected for diversion or were unable to locate when referred back to Crown are either dropped or stayed at the point. This seems to indicate that Crown were not always prepared to proceed to court with this type of case...Regardless of whether this is due to lack of resources, heavy workloads or the absence of a prima facie case against the alleged offender, one can conclude that the presence of diversion may indeed lead to widening the net of persons dealt with by affiliated justice system agencies in the absence of which no further action would occur (Ministry of Attorney General, Province of British Columbia, 1984: 71, emphasis in original).

For the most part, it appears that diversion can widen the social control net and similarly "siphon off" cases currently before the courts (Ministry of Attorney General, Province of British Columbia, 1984: 71). Quite clearly from Cohen's (1985) point of view, the Vancouver Adult Diversion Program, as a form of new diversion, has to some degree widened the net of social control by its unintended consequence of "psychiatrization" of petty theft cases. It consolidates the discretionary powers of state officials, providing an established means of dealing with

¹See Appendix G (Section 294 of the Canadian Criminal Code, 1988)

²According to Appendix G (Section 294 of the Canadian Criminal Code, 1988), prior to January, 1986, the value of what was stolen was not to exceed two hundred dollars.

"marginal" offenders.

While diversion may seem desirable and unproblematic for those (e.g., Vorenberg and Vorenberg, 1973; Davidson et al., 1981; Hill, 1986) welcoming it as a benevolent, cost-effective reform, it remains a very controversial control measure for others (e.g., Rutherford and McDermott, 1976; Austing and Krisberg, 1981; Cohen, 1985) who are critical of its false promises of weakening state control.

Suggestions for Further Research

First, as noted earlier, the representativeness of the study sample is questionable. Having drawn a sample from an unknown population, the scope of this study has been limited to the analyses of diverted adult shoplifters in a major Canadian city (Vancouver). Caution must be taken in terms of generalizing the findings and discussions of this study to other diversion programs. Future research should use representative sampling techniques, preferably comparing diversion programs from different jurisdictions to allow a comparative focus. Second, future studies should focus on the shoplifting population, because most studies address diversion programs in general, and not those specifically designed for shoplifters (Baumer and Rosenbaum, 1984). A fairly limited amount of literature (Borgman, 1975; Ministry of Attorney General, Province of British Columbia, 1984; Cleary, 1986; Adams and Cutshall, 1987) exists on the variety, functioning, and effects of diversion

policies and practices on shoplifters. Third, because the majority of the evaluative studies (Lundman, 1976; Nejelski, 1976; Jaffe et al., 1986; DeAngelo, 1988) on diversion have focused mainly on juveniles, future research should be directed more at adults. Of the few which do focus on adults, only a couple are Canadian (British Columbia Ministry of Attorney General, 1984; Divorski, 1986).

Finally, there have been problems which have repeatedly characterized much of the research done in the diversion field: (1) insufficient sample size; (2) failure to contrast results of program participants with results of comparable groups of individuals not diverted; (3) exclusion of program "failures" from the analyses; (4) inadequate data on important variables such as subsequent employment and recidivism; (5) insufficient post-program follow-up on participants and comparison group members; (6) limited attention to the program's impact on the criminal justice system; and (7) absence of or inadequate approaches to the determination of a program's cost-effectiveness (Pryor and Smith, 1983: 4-5).

The need for more rigorous evaluations has been repeatedly noted in the literature (Nejelski, 1976; Nimmer and Krauthaus, 1976; Cavoukian, 1979; Roesch, 1979; Levine et al., 1980; Feeley, 1983; Pryor and Smith, 1983; Roesch and Corrado, 1983; Jaffe et al., 1986). In Appendix F, Musheno (1982) outlines an interesting possibility that is frequently overlooked by evaluative studies on diversion. Nevertheless, despite the

limited amount of research available in this area, it was still possible to proceed on the assumption that the "best available research" in question provided direction for this study on diversion of adult shoplifters in Vancouver.

Research at the Store Level

According to Brantingham and Brantingham (1984: 43), each step in a processing sequence results in the resolution or loss of cases, and in a loss or distortion of information about criminals and criminal events. The best place to commence a study on diverted shoplifters would be in the store settings. Previously, it was found that the findings pertaining to "place of offence" were misleading. From the results pertaining to "place of offence", it appeared that a majority of the shoplifters being diverted had been apprehended in department stores. In particular, one retail company accounted for over one third of all department stores, while another accounted for only 2% of the diverted shoplifters. It seems plausible to suggest that the variation reflected by the data is attributable, in part, to variations in store security policies on shoplifting. For instance, one might find that the types of shoplifters prosecuted vary with different stores, with different security arrangements (e.g., in-house security versus contracted-out security). Certain stores might have a policy of prosecuting more females than males; more "white-collar" than "blue-collar" workers; and more young than elderly offenders. Consequently, in order to "make sense" of the diversion data, it would be useful

to have a better understanding of the various store security policies and their "in-house" apprehension and prosecution statistics.

Research at the Police and Crown Levels

An effort should be made also to evaluate the decision-making processes of the other, official participants (the police and Crown Counsels) who are crucial to the Vancouver Adult Diversion Program. Surveying Crown prosecutors and the police are important because the decision to offer an alleged offender the option of referral to the Diversion Program relies on the total authority or discretion of the Crown prosecutor and the police to screen and select cases for prosecution. Attention must be directed to the processes and criteria by which such decisions are made. This focus becomes important when offenders who satisfy, for instance Crown's, established selection criteria are excluded from participation for unspecified reasons. A questionnaire should be designed--to identify factors which are considered to be important to making recommendations for diversion--and distributed to a random sample of police constables and Crown Counsels. Also, respondents should be requested to describe their perceptions of the Diversion Program and recommend changes where they feel are needed. The purpose of this level of analysis is to focus on possible "hidden biases" of police constables and Crown Counsels.

Research at the Diversion Program Manager Level

As noted earlier, the policy and procedures were essentially designed and implemented by one individual, the Program Manager. Thus, the final decision to divert is, in fact, a decision of only this one individual. The findings of this thesis study so far, give only some indication of the "biases and preferences" of the Program Manager. To understand the diversion decision process, it would be worthwhile to focus on the Program Manager in greater depth.

First, an interview should be conducted with the Diversion Program Manager. The questions should focus on the factors which are crucial to his decision to divert. Second, to verify his responses, an intake information sheet should be developed--to identify those factors which are considered to be important to decisions--and filled out by the Program Manager during each diversion interview. In this respect, recording of information will be consistent and readily available. Finally, it is speculated that an offender's emotional state during the interview has some influence on the Program Manager's decision. Such a consideration could be recorded by observing a random sample of the diversion interviews. Moreover, the observational method permits the researcher to "capture" further the dynamics of a diversion interview.

Research at the Offender Level

Finally, it is recommended that the offender should also be considered. The focus of this level of analysis is to provide the researcher with a perspective of the Program other than just one of state officials. Participant observation, or interviews should be carried out to allow the researcher to 'get at' shoplifting behaviour, the shoplifters' accounts of their actions, and their reactions to official measures such as diversion or traditional prosecution. The focus should reflect the shoplifter's perception and level of awareness of the Diversion Program. It should further provide information as to what factors the shoplifter thought contributed to his or her diversion. By allowing the shoplifters to express freely (in interviews) their stories of their experience or involvement, the researcher would get a better picture of the phenomena of shoplifting.

APPENDIX A: GUIDELINES FOR CROWN COUNSEL

Source: Policy and Guidelines for the Diversion of Adults from the Criminal Justice System, Ministry of Attorney General, Province of British Columbia, August, 1981.

1. The Crown must believe that there is sufficient evidence to support a prima facie case against the accused and, without the availability of the diversion option, would have proceeded to trial with the case.

2. The Crown must be of the opinion that to divert the alleged offender would not endanger the community.

3. The offence which the person is alleged to have committed must not have been of such a serious nature as to threaten the safety or tolerance of the community.

4. Persons alleged to have committed an offences under sections 234, 235 or 236 of the Criminal Code of Canada will not be offered the option of diversion.

5. It shall be made known to the alleged offender offered diversion the circumstances of the alleged offence, that they have the right to consult Counsel of their choice, that they need not accept the diversion option, that they may have access to the court if they wish in order to dispute the charge and that if they are convicted of a subsequent offence, the court may be informed of the fact that they had previously participated in a diversion program. If there appears, however, to be an attempt to delay the decision due to the persistent unavailability of Counsel, then the prospective divertee will be directed to seek other Counsel or to make the decision without the benefit of Counsel.

6. If the alleged offender appears to be attempting to delay unnecessarily the making of a diversion agreement or, if such an agreement cannot be reached among the parties concerned within a reasonable time, the Crown shall proceed to court with the charge.

7. Conversations which may have occurred between candidates for diversion and Crown Counsel with respect to the offence which gave rise to the offer of diversion shall not be used against the accused should a diversion agreement not be entered into.

8. A person will be deemed to have been diverted when a diversion agreement is approved by a Crown Counsel and no person who has made such an approved agreement shall be charged with the offence(s) which gave rise to the diversion or to any other

offence on the same facts.

9. A record of those persons who have been diverted will be maintained by the Ministry. Such records will not be entered into the CPIC network and shall not be maintained for a period longer than two years.

APPENDIX B: VANCOUVER DIVERSION PROGRAM DIVERSION PLAN/AGREEMENT

Name: _____ Date: _____
DOB: _____

I acknowledge responsibility for the circumstances which resulted in my involvement with the Vancouver Adult Diversion Program.

The circumstances have been made known to me. I understand that I: have the right to consult legal counsel of my choice; need not accept the diversion option; and may have access to the court if I wish to dispute the allegation. I understand that if I am convicted of an offence in the future, the court may be informed that I participated in a Diversion Program.

- ___ Apology
- ___ Community Service ___ hours unpaid work
- ___ Compensation of \$ _____
- ___ Police Case # _____
- ___ Kitsilano House referral for: ___ Community Service
___ unpaid hours; ___ Counselling;
- ___ Special Assistance
- ___ Specialized Service referral to: _____

Notify Charles H. Warren at 275 East Cordova Street, Vancouver, B.C. (660-3700) of any address or telephone number change.

Signed Probation Officer

Date Date

Crown Counsel's Approval

Signed Date

APPENDIX C: DIVERSION GUIDELINES FOR DIVERSION AGENCIES

Source: Policy and Guidelines for the Diversion of Adults from the Criminal Justice System, Ministry of Attorney General, Province of British Columbia, August, 1981.

1. The alleged offender and, where appropriate, the victim should be encouraged to participate actively in the development of the terms of the agreement. The diversion candidate, along with the individual or representative from the agency which will supervise the completion of the agreement shall sign a written document outlining the agreement. While the participation or approval of the victim is not a necessary precondition to the making of the agreement, every reasonable step should be taken to encourage his or her participation.

2. In the case of a corporate victim, it is desirable that a representative of the corporation be involved in the development and approval of the agreement.

3. Where a victim is not opposed to the diversion option, but does not wish to participate in the development of an agreement, he or she should be informed of the nature of the agreement.

4. All diversion agreements must be approved by Crown Counsel.

5. The conditions of the agreement should, to the extent possible, bear some logical relationship to the harm or damage incurred as the result of the offence. The objectives of diversion do not include retribution or, except in an incidental way, deterrence, and hence, the conditions of the agreement must not be punitive in their intent.

6. Wherever possible, the plan outlined in the agreement should involve a task which is rewarding in its own right, giving the divertee a sense of accomplishment and the victim and the community a visible demonstration of goodwill on the part of the divertee.

7. The conditions of the agreement should be realistic in the sense of being within the capability of the divertee to fulfill and it is incumbent upon those involved in the drawing up and approval of the agreement to discourage the divertee from making promises which he or she is unlikely to be able to fulfill.

8. Divertees should be required to acknowledge responsibility for the circumstances which gave rise to the diversion.

9. Diversion agreements may be revised, if necessary, to meet new circumstances affecting either the offender or the victim

but, the terms of the revised agreement should not be more demanding than were those originally agreed to.

10. Diversion agreements should be capable of being completed within a relatively short time. Except in exceptional circumstances, the agreements must be capable of being completed within three months.

11. A prospective divertee and the alleged victim have the right to have Counsel present at any time.

12. The individual or group supervising a diversion agreement shall inform Crown Counsel of the outcome of the diversion as soon as possible after the terms of the agreement have been fulfilled or the agreement has been breached.

APPENDIX D: VANCOUVER DIVERSION PROGRAM PERSONAL INFORMATION

SHEET

NAME _____	EDUCATION _____
ADDRESS _____	EMPLOYMENT _____
_____	_____
TEL. # _____	HEALTH _____
SEX _____	LIQUOR USE _____
AGE _____	DRUG USE _____
BIRTHDATE _____	S.I.N. _____
BIRTHPLACE _____	INVEST. POLICE FORCE _____
ENTERED CANADA _____	COMPLAINT _____
ENTERED B.C. _____	CASE # _____
RACIAL ORIGIN _____	DATE OF OFFENCE _____
MARITAL STATUS _____	COURT HISTORY _____
NEXT OF KIN _____	VICTIM'S NAME & ADDRESS _____
_____	_____
REMARKS _____	

INTAKE PERSON _____	
DATE THIS INFORMATION OBTAINED _____	

APPENDIX E: EVALUATIVE STUDIES ON DIVERSION AND RECIDIVISM

Initially, two major reviews of American empirical data in the mid-1970's raised serious doubts about the impact of early diversion programs on defendants (Hillsman, 1982: 371). Rovner-Pieczenik (1974) and Mullen (1974) reviewed several diversion projects throughout the United States, in relation to a variety of issues, including recidivism. Both researchers concluded that due to inadequate research designs (i.e. none had established a valid control group for comparisons), questions regarding program effectiveness could not be established. Rovner-Pieczenik (1974) acknowledged that many of the 15 projects reported some positive effects, including low recidivism rates, but cautioned that research design problems severely limited the ability to generalize from these results.

One of the most controversial studies of diversion was carried out by Robert Fishman (1977). Fishman (1977) reported a 41 percent recidivism rate across 18 examined diversion projects in New York City. Thus, he concluded that diversion efforts ought to be discontinued, given the high findings of recidivism, coupled with a high proportion of violent crimes. He argued that his negative conclusion could be generalized to other projects as well, suggesting that "unless there was better comparable data with different results, the findings from these 18 projects were indeed the best estimate of the outcome to be predicted for

a universe of projects" (Fishman, 1977: 303).¹ However, Fishman's study was severely criticized for a variety of flaws in the design and data collection. Roesch and Corrado (1979) and Zimring (1974) criticized Fishman's study (1974) largely because of the unrepresentativeness of the sample, the lack of an adequate control group, and overgeneralization of the results.

Roesch (1978) suggested that instead of basing conclusions largely on a combined analysis of all 18 diversion projects, a distinction should have been made by examining differential success rates of participants with certain types of characteristics. Roesch (1978) found that if Fishman's data were examined more closely, 30 to 39 year old persons had a recidivism rate of only 29 percent, and persons 49 to 71 years had a recidivism rate of only 24 percent. With that in mind, Roesch (1978) suggested that diversion may be seen as an effective alternative for some people. Roesch (1978: 78) recommended that:

The task for criminal justice research...is to ask more specific questions: "what treatment, by whom, is most effective for this individual with that specific problem, and under which set of circumstances?" Future research on diversion, and other criminal justice research, should focus upon this basic question. If our decisions about allocating resources are made on the basis of an overall evaluation, as in the case of the Fishman study, then clearly we should arrive at those decisions by the most sound and reliable methods available.

¹Cited in Roesch and Corrado, "Criminal Justice System Interventions", in E.Seidman (ed.), Handbook of Social Intervention, Beverly Hills, California: Sage Publications, 1983, p.389.

Baker and Sadd (1981) addressed many of the methodological concerns raised by the Fishman study in 1977. They sought to employ an appropriate control group design in their study of Manhattan and Brooklyn diversion programs. One of the major questions explored by Baker and Sadd was the effect of diversion on recidivism. Recidivism was measured by number of rearrests, convictions, and severity of the offence(s). These measures were examined across various time periods (six months after intake, and 12 months after intake). Comparisons of both the experimental and control groups demonstrated no significant differences on any of the recidivism measures.

In 1986, Jaffe and his associates examined the effectiveness of juvenile diversion by comparing two communities in southwestern Ontario: one city had a diversion program (Windsor), and one did not (London). In addition to examining the young offenders' attitudes toward the diversionary interventions, the rate of recidivism was also explored. Jaffe and his associates (1986: 60) hypothesized that the diversion program youths in Windsor would have a more positive attitude about their intervention and would be less likely to recidivate than a matched sample of youths in London. They found that there were no overall significant differences in the attitudes of those youths diverted and those youths handled by the court. Jaffe and his associates (1986) further concluded that there were no significant differences between the Windsor and London programs with respect to the percentage of juveniles who recidivated. In Windsor, the diverted juveniles had a recidivism

rate of 41 percent, while those handled through the regular court process in London, had a slightly higher (but not statistically significant) recidivism rate of 44 percent.

APPENDIX F: COMMUNAL VS. BUREAUCRATIC PROGRAMS

Musheno (1982) introduces an interesting consideration--the organizational characteristics of a program--that is frequently overlooked by evaluative studies on diversion. Musheno (1982) reports that whether a diversion program increases or widens the net of social control depends on the organizational style for implementing adult diversion policy. He distinguishes between communal styles and bureaucratic styles of implementation. Communal programs tend to have a heavy reliance upon community volunteers and an organizational development style of management. Bureaucratic programs are dedicated to a significant professional, bureaucratic staff orientation. According to Musheno (1982: 283), "those staffed with largely professional, bureaucratic employees frequently develop vested interests to protect and even expand control over assigned tasks".

To determine whether organizational factors have an impact on social control, Musheno (1982) examined the Tempe, Arizona Diversion Program. This was a court-based adult diversion program with a communal (i.e., voluntaristic) organization. Using a time-series experiment, it was hypothesized by Musheno (1982) that for all charges relevant to diversion, there would be a statistically significant decline in the number and proportion of cases fully prosecuted with the implementation of the Arizona Diversion Program. Furthermore, the proportion and number of cases dismissed would remain stable or increase due to

the Program. Musheno (1982) concluded that there was no indication of an expansion in the net of social control. He claimed that it was clear that the diversion program had drawn from the full prosecution pool of cases rather from those cases which were traditionally dropped by the prosecutor (1982: 290). Although this study focused only on the one diversion program, Musheno (1982: 290) points out that, "...this study presents a replicable approach for conducting process evaluations of 'macro-policies' or mandates initiated at the federal level and delivered at the local level."

Except where otherwise provided by law, every one who commits theft

(a) is guilty of an indictable offence and is liable to imprisonment for ten years, where the property stolen is testamentary instrument where the value of what is stolen exceeds one thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for two years, or

(ii) of an offence punishable on summary conviction,

where the value of what is stolen does not exceed one thousand dollars.

*Note: Prior to January, 1986, the value of what was stolen was not to exceed two hundred dollars.

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