

Recidivism Study and Cost Analysis for Vermont Court Diversion



Submitted to:

Willa Farrell, Co-Chief
Community Justice Division
Office of the Attorney General

Submitted by:

Robin Joy, J.D.
Crime Research Group
P.O. Box 1433
Montpelier, VT 05601
802-230-4768
www.crgvt.org

June 2019

Introduction

The State of Vermont has benefited from the Court Diversion program (hereinafter Diversion) for forty years. Diversion is an alternative to the traditional criminal justice system, providing a restorative response for individuals charged with a crime. Informed by risk-need-responsivity, restorative justice and public health principles, the program is supported by community members who assist the person charged in repairing the harm done to victims and the community. Through the program, the responsible person takes accountability for the crime. In addition, Diversion works to address the needs of the responsible person in hopes of reducing recidivism and reducing the workload on Vermont courts and corrections.¹ Diversion is available in all of Vermont's 14 counties and resides primarily in local non-profit agencies.

Initially, Diversion was limited to those charged with their first crime. From the beginning Vermont's State's Attorneys have had discretion to refer people with or without a criminal record to the program and many have done so. Referrals of people with criminal histories have increased since 2010, with the trend accelerating in the last few years. During fiscal years 2015 and 2016, Diversion programs reported that approximately 17% of people referred had prior involvement in the justice system, meaning prior Diversion participation or a conviction. It's important to note that Diversion participants with prior criminal involvement tend to be at higher risk for re-offense.

Vermont law (3 V.S.A. § 163) states the first purpose of Diversion is to assist adults who have been charged with a first or second misdemeanor or a first non-violent felony. Participation in the program is voluntary and upon successful completion of the program the State's Attorney dismisses the case. Two years after the successful completion the case is expunged. If the person does not complete Diversion, the case is returned for prosecution. Through Diversion, people have the opportunity to accept responsibility for their actions, repair the harm done, and avoid a criminal record.

To further its goal of creating an effective alternative to the traditional criminal justice system, the Vermont Attorney General's Office (AGO), which funds the Court Diversion Programs, contracted with Crime Research Group (CRG) to conduct a recidivism study and cost analysis. This study does not compare other elements, such as victim satisfaction, between Diversion and the traditional criminal justice system.

¹ [Vermont Court Diversion](#)

Methodology

The purpose of the recidivism study was to measure the recidivism rate of Diversion compared to that of the traditional criminal justice system. The AGO provided CRG with an extract from the Diversion case management system of participants and docket numbers for fiscal years 2014-2016. The data included some identifying information about the participant, the docket number, a description of the charge, start date, end date, and whether the participant was successful. The data did not include race/ethnicity, gender identity, or socio-economic factors that may be relevant. There were 1,160 unique adult participants.

The recidivism analysis for Diversion participants was limited to individuals who had a Vermont Superior Court Criminal Division docket. Cases involving juveniles filed in the Family Division were not analyzed. The names and dates of birth of Diversion participants were sent to the Vermont Crime Information Center (VCIC) to obtain criminal histories. Using information from the Court Adjudication Database for comparison, individuals who were convicted of a misdemeanor crime during the same period who did not participate in Diversion were identified. Using this group's criminal histories, a control group was created. More information on the development of the control group is detailed below in the recidivism analysis.

Court Diversion Participants

The names of 1,160 Diversion participants were sent to VCIC to obtain a match for criminal history records. Of those, VCIC matched 572 names with criminal history records in its system. The criminal history record may have existed prior to Diversion participation or following participation, including the charge for which an individual participated in Diversion. Of the 572 names with a criminal history record, 72 names were identified as those of people who are deceased.

The remaining 588 names sent to VCIC were not found to have a criminal history record. For purposes of this study, the 588 names that did not have a criminal history record will be considered living and charged with a first offense when referred to Diversion.

The results from VCIC are in Table 1.

Table 1: Results for All Court Diversion Participants Matched to Criminal History Records

Names sent to VCIC	Names matched	Names matched who are deceased	Names not matched	Total names excluding deaths
1,160	500	72	588	1,088

Types of Cases Referred to Court Diversion

Table 2 displays the number and type of charges, rather than individuals, referred to and handled by the local Diversion programs. This information illustrates the range of charges handled by Diversion staff members. These charges were calculated by merging the Diversion data with the Court Adjudication Database maintained by CRG. Only the cases where the docket number was recorded could be matched.

During the study period for fiscal years 2014-2016, the Vermont Superior Court Criminal Division processed 30,481 guilty misdemeanor charges. Based on matching docket numbers, Diversion handled approximately 6% of all Criminal Division misdemeanors.

Table 2

Number and Type of Charges Diversion Handled by County

	Null	Town Ordinance	Fish and Game	Public Order	MV	Drugs	Fraud	Theft	GNO	DUI	Arson	Assaults	Vapo	Domestic	Grand Total
Addison		1		39	3	5	5	19						1	73
Benningt..	3			54	48	8	2	56	4	2		28			205
Caledonia				41	26	6	8	23				15		3	122
Chittend..	6			145	64	22	10	85	3			43			378
Essex				2			4	6				5			17
Franklin				27	13	13	6	18	1			7			85
Grand Isle			1	2	5	1		1				2		1	13
Lamoille				22	33	7	7	22		1		9			101
Orange	1		2	22	1	13	1	15	1	2		22		3	83
Orleans	1			15	17	8	2	14	5			3			65
Rutland	1			73	40	12	14	44	3	4	1	20		1	213
Washing..	2		1	104	52	14	17	77	6	4	2	21		5	305
Windham			5	58	1	12	7	12	4			15		5	119
Windsor			4	72	65	9	4	18	6	2		18	1	1	200
Grand To..	14	1	13	676	368	130	87	410	33	15	3	208	1	20	1,979

Table 2 displays the number and types of charges each Diversion agency managed. Because an individual may have more than one charge, these numbers do not reflect the number of individuals. Each case handled by Diversion averaged 1.2 charges. Essex County had the highest average charge per case at 1.5 charges and Addison County had the lowest at one charge per case.

Public order cases made up the bulk of the cases referred to Diversion. Public Order cases include disorderly conduct and violations of conditions of release. With the statewide interest in diverting cases where the defendant is addicted to drugs, it's interesting to note that the number of drug cases referred to Diversion seems low.

Completion Rates for Diversion Participants

Table 3 displays the Diversion participants who successfully completed Court Diversion separating those who were matched with a criminal history record and those who were not matched with a criminal history record. Of the 500 Diversion participants who were matched, 15 records were missing data.

Table 3: Completion Rate for Diversion Participants

Court Diversion Participants	Successful	Unsuccessful	Missing Data	Total
Matched to a Criminal History Record	371	114	15	485
No Prior Record (Unmatched)	588	0		588
Total	959	114		1073

The total number of participants available for the study was 1,073. The 588 participants with no matched/prior criminal history record were all recorded as successful. The remaining 500 participants with a prior criminal history record included 371 successful completions and 114 participants who did not complete Diversion. Fifteen cases were missing data and were removed from the analysis. This reduced the number of participants who were matched with a prior criminal history to 485. The completion rate for all Diversion participants is 89.37%.

In Table 4, the 485 participants who were matched with a prior criminal history record are separated into first time participants with a Diversion case only, and participants who have prior convictions on their criminal history record as well as the charge that brought them into Diversion.

Table 4: Completion Rate for Diversion Participants for First-Time Participants and Participants with a Prior Criminal History Record

Diversion Participants	Successful - Unmatched	Successful - Matched	Unsuccessful	Total	Completion Rate
First-Time Diversion Participants	588	244	47	879	94.65%
Diversion Participants with a Prior Criminal History Record		127	67	194	65.46%
Total	588	371	114	1073	89.37%

Of the 485 participants who were matched with a criminal history record, 291 had no record prior to the Diversion charge meaning they were involved in the criminal justice system for the first time. Of those, 244 successfully completed Diversion. Adding this cohort to the 588 participants who were successful and did not have a criminal history record (879), establishes a successful completion rate of 94.65% for first-time Diversion participants. One hundred ninety-four participants (194) had prior convictions in addition to the Diversion case on their criminal history record, and of those, 127 were successful in Diversion for a completion rate of 65.46%.

First-time participants completed Diversion at a higher rate than participants who were referred and had a criminal history record. Table 5 displays the types of crimes for which Diversion participants with a prior criminal history had been convicted.

Table 5: Prior Convictions for Court Diversion Participants with a Criminal History

Category	Number of Convictions	Number of People
Public Order	236.0	83.0
Motor Vehicle-Other	171.0	79.0
Theft	104.0	42.0
DUI	58.0	47.0
Assaults	56.0	33.0
Drugs	52.0	33.0
Fraud	26.0	12.0
Domestic	18.0	12.0
Fish and Game	7.0	7.0
Gross Negligent Operation (GNO)	6.0	6.0
Violation of an Abuse Prevention Order (VAPO)	6.0	4.0
Sex offenses	4.0	2.0
Missing	7.0	7.0
Total	751.0	367.0

The bulk of prior convictions come from the category of public order which includes disorderly conduct and violations of conditions of release. Motor vehicle–other (primarily driving with a suspended license) and theft are second and third respectively and each of these two categories is almost double the next two categories: DUI and assaults. Prior convictions for drug crimes appear sixth.

Recidivism Analysis

For this study, recidivism is defined as a conviction for a new offense after completion of the Court Diversion program. The calculation of recidivism rates for Court Diversion participants is complicated by the fact that the records of successful participants are expunged after two years. This means that first time participants who successfully complete Diversion have no recorded criminal history after the case is expunged.²

For purposes of the recidivism analysis, the four cohorts to be analyzed have been defined and given a title for use in the tables below:

² Court Diversion follows a restorative justice approach addressing the needs of victims, the person responsible for the crime, and the community. Benefits to the offender include avoiding a criminal conviction record and making amends to victims and the community in a meaningful way. Through this process individuals are less likely to get in trouble with the law again.

1. Participants in Diversion for a first offense who were successful = First-time/Successful.
2. Participants in Diversion for a first offense who were unsuccessful = First-time/Unsuccessful.
3. Participants in Diversion with a prior criminal history who were successful = Prior Crm Hx/Successful.
4. Participants in Diversion with a prior criminal history who were unsuccessful = Prior Crm Hx/Unsuccessful.

VCIC received 1,160 names and were able to match 572 individuals with a criminal history, with 72 of those matched identified as deceased. As noted previously, 588 individuals did not have a criminal history record in Vermont. For the purposes of this study, it is assumed that 1) these 588 individuals had no criminal conviction when they entered Court Diversion; and, 2) they have not recidivated since completing Court Diversion.³ A total of fifteen cases were missing data which leaves 1,073 participants for the recidivism analysis. Table 6 shows the recidivism rate for all Diversion participants.

Table 6: Recidivism Rate for All Court Diversion Participants

Cohort	Total in Group	Number of Recidivists	Recidivism Rate
All Court Diversion participants	1,073	180	16.78%

The recidivism analysis for all 1073 Diversion participants included both successful and unsuccessful participants as well as those with a first offense and those with prior criminal convictions. One hundred eighty (180) individuals were convicted of a new crime after completing Court Diversion. The recidivism rate for this cohort is 16.78%.

Recidivism Rate for First-Time Participants in Court Diversion

Next, the study focused on participants with a first offense to determine if the Diversion recidivism rates were better than the traditional court system and/or better than those who had a prior criminal history. Using the assumptions outlined above, there were 879 first-time participants which includes the 588 participants who did not have a criminal history and 291 participants whose criminal history only reflected the Court Diversion charge. Of the 879 first-time participants, 832 successfully completed Diversion and 47 did not successfully complete Diversion. Table 7 shows the recidivism rates for first-time Diversion participants.

³ There are some faults with this assumption. First, a defendant may have an out of state criminal history. Second, criminal histories note when the defendant is deceased. Deceased defendants are not considered in the recidivism analysis. Although there is no way of knowing how many participants without criminal histories are deceased, sixty names were missing in the first-time and repeat offender categories.

Table 7: Recidivism Rates for First-Time Court Diversion Participants

Cohort	Total in Group	Number of Recidivists	Recidivism Rate
First-time Participants - All	879	6	.68%
First-time/Successful	832	2	.24%
First-time/Unsuccessful	47	4	8.5%

Of all the 879 first-time participants only six (6) were subsequently convicted of a new crime resulting in a recidivism rate of .68%. The 832 successful first-time participants secured a recidivism rate of .24%. And the first-time participants who did not successfully complete Diversion had a recidivism rate of 8.5%.

Recidivism Rate for Participants with a Prior Criminal Conviction

Participants with convictions in their criminal history records did not perform nearly as well as those with no prior criminal history, even if they successfully completed Diversion. Table 8 shows the recidivism rate for participants with a prior criminal history.

Table 8: Recidivism Rates for Participants with a Prior Criminal History

Cohort	Total in Group	Number of Recidivists	Recidivism Rate
Prior Crim Hx – All	194	174	89.69%
Prior Crim Hx/Successful	127	112	88.18%
Prior Crim Hx/Unsuccessful	67	62	92.53%

Of the 194 Diversion participants who had a prior criminal history, 174 were convicted of a subsequent offense. The recidivism rate was 89.69% for this cohort. The success of the participant in Diversion did not influence the recidivism rate. The recidivism rate for successful participants who had a criminal history was 88.18%. Further analysis of participants with prior criminal histories would be useful to gain a better understanding as to why they do not respond to the Diversion program as well as first time participants or to determine the strategies needed to improve their outcomes.

Participants with prior criminal histories were convicted of 284 offenses after leaving Diversion. Table 9 displays the categories of crimes and number of convictions committed after leaving Diversion for participants who had a prior criminal history.

Table 9: Crimes Committed Post-Diversion by Participants with a Prior Criminal History

Category	Number of Convictions
Public Order	57
Motor Vehicle-Other	48
Theft	36

DUI	32
Assaults	31
Domestic	16
Drugs	13
Fraud	5
Fish and Game	4
Violation of an Abuse Prevention Order	4
Robbery	3
Gross Negligent Operation	2
Sex offenses	2
Homicide	1
Missing	30
Total	284

In keeping with the trend for referrals to Diversion, public order and MV-other are the crimes committed most often when individuals recidivate, with theft, DUI, and assault running close behind. These are the same crimes that have the highest number of referrals to Diversion and are the same crimes reflected in this cohort's prior criminal history records.

It's important to note that this research did not include factors known to affect recidivism, such as employment, housing security, and supports in the community. For future research it would be valuable to see if these factors help explain the high rate of recidivism for participants with a prior criminal history.

Control Group Analysis

There were too few Diversion participants with prior criminal convictions to make a reliable control group for the recidivism analysis. The age, sex, race, and patterns of offending of the defendants were too disparate to make a matched control sample with any reliability, therefore, the control group for participants with a prior criminal conviction was not constructed.

It is necessary to note a few caveats on the control group for the first-time Diversion participants. First, the sex, race, and age of all those with first offenses referred to Diversion were missing from the Diversion data. In other analyses, this could be obtained from the criminal histories except that most Diversion participants did not have a criminal history. Without criminal histories for most of the participants this information was not available.

Second, because these demographic data were missing, the construction of the control group was limited to individuals with a misdemeanor conviction that took place during the study period and were eligible for Diversion but not referred; and, individuals with no criminal history prior to that conviction. Using these two data points, a control group containing 900 defendants was created. Of the 900, 80 earned a new conviction for a recidivism rate of 8.89%.

This recidivism rate is much higher than the total cohort of first-time participants at .68% and successful first-time participants at .24% and approximately the same as unsuccessful first-time Diversion participants at 8.5%.

Initial Findings on Recidivism of Court Diversion Participants

First-time Diversion participants have much better recidivism outcomes than the traditional criminal justice system with a recidivism rate of .24% for successful first-time participants and .68% for all first-time participants compared to a recidivism rate of 8.89% for the control group. Since 94.6% of participants referred to Diversion successfully complete the program, the 8.5% recidivism rate for participants who do not successfully complete the program is not significant. This outcome evaluation can only show a correlation at this point; further research is needed to show causation. Such research would include factors known to effect recidivism such as employment, housing security, supports in the community, and other factors not captured in the data.

Diversion participants with a prior criminal history have a much higher recidivism rate at 89.69%. Further analysis on the participants with criminal histories who participated in Diversion would help gain a better understanding of what could work to reduce the rate of re-offense by this cohort. What could be enhanced in the Diversion program to improve the recidivism rate of participants with a criminal history? Or alternatively, is it a population with risks and needs beyond the services that Diversion offers?

Court Diversion Cost Analysis

Methodology

CRG conducted a time study with three local Court Diversion programs. The methodology for keeping time for one month mirrors that used by the Judiciary in its Weighted Case Load Study⁴ and in the Criminal Justice Consensus Cost Benefit Working Group Final Report.⁵ The idea behind this methodology is that for one month a variety of tasks will be performed on a case so that when taken as a whole, this will approximate the cost of an entire case from start to finish. The counties were selected based on the scope of cases they handled. Nine employees logged the time they spent on Court Diversion cases during February 2019, for a total of 193.25 hours.

The nature of the time spent by Court Diversion staff varies depending on the nature of the case. In all cases, staff meet with individuals referred to Diversion at the Court House to explain the program, and subsequently have a more in-depth intake meeting with the participant, prepare for the restorative process, and provide follow-up case management support. This support might include helping a participant to connect with community-based treatment or other support services. Following the risk principle, when working with a low-risk individual,

⁴ [Vermont Judiciary Weighted Caseload Summary Final 09-9-09](#)

⁵ [Crime Research Group Criminal Justice Consensus Cost Benefit Working Group Final Report-2014](#)

Diversion will not include requirements that lead to deeper system involvement or divert a participant from pro-social activities.

When a case involves a victim, Diversion staff similarly explain the program and invite the victim to participate in the process based on their degree of comfort. Diversion staff have similar introductory meetings and preparation with victims who choose to participate in a restorative process, as well as helping victims access support services in the community. The nature of the agreement developed between the participant, victim and Diversion depends on the identified risk level of the participant, their needs, and the victim's priorities.

Table 10 shows the number of hours each employee logged during the study period:

Table 10: Employees of Court Diversion Hours Logged

Employee Number	Total Hours Logged
1	30.75
2	13.50
3	11.00
4	30.50
5	13.00
6	26.75
7	3.50
8	56.00
9	8.25
Total	193.25

During the study period, employees logged time on approximately 226 distinct dockets. For some case events, such as court time, restorative panels, and case opening/closing, employees grouped cases together making a complete count of individual dockets not possible. Staff hours include direct service hours and do not include staff meetings, supervisory time, and other work that is considered overhead. Table 11 represents the most serious charge handled during the time study and the number of dockets or cases for each category.

Table 11: Most Serious Charge and Number of Dockets

Most Serious Charge on Docket	Number of Dockets/Cases
MV-Other than DUI	119
Fraud/Theft	57
Public Order	16
Assaults	14
Domestic Violence	2
Drugs	1
Other	17
Total	226

Cases categorized as “MV-Other than DUI” are typically criminal DLS charges. Diversion staff compile information from the Department of Motor Vehicles and the Vermont Judicial Bureau to determine requirements a person must satisfy in order to obtain their driving privileges. Domestic assault cases referred to Diversion include intra-familial violence or violence between housemates. Diversion does not accept cases involving intimate partner violence.

Overall, employees spent on average .65 hours per case during the study period. Table 12 breaks down the average time spent on each type of case handled.

Table 12: Number of Hours Spent on Cases

Most Serious Charge on Docket	Average Time Spent per Docket/Case in Hours
Assaults	1.25
Domestic Assault	.75
Public Order	.56
Drugs	.50
Fraud/Theft	.48
MV- Other than DUI	.44
Other	1.51

The data provided by Court Diversion indicates that cases are open on average about nine months. The average time noted above, multiplied by nine months gives the approximate time spent per case as indicated by Table 13.

The average cost per case is calculated by multiplying the total hours per case by the average hourly rate of employees, calculated at \$19.23 an hour. The average cost of a case is reflected in Table 13.

Table 13: Average Cost of a Court Diversion Case

Most Serious Offense	Total Hours per Case	Average Cost Per Case
Assaults	11.25	\$216.34
Domestic Assault	6.75	\$129.80
Public Order	5.04	\$96.92
Drugs	4.50	\$86.53
Fraud/Theft	4.32	\$83.07
MV-Other than DUI	3.96	\$76.15
Other	13.59	\$261.34

As Table 13 depicts, the cases that take the most time and have a higher cost are the cases that involve a victim: assaults and domestic assault cases. This makes sense when reviewing the activities the Diversion staff undertake when working with victims as well as Diversion participants.

Diversion Costs Compared to Traditional Criminal Justice Costs

Table 14 compares the cost of Diversion cases to cases processed through the traditional criminal justice system which includes the costs for the court, prosecutor, victim advocate, and defense counsel. In cases referred to Diversion, the prosecutor reviews and charges each case, and the judge finds probable cause before the referral to Diversion, however, the costs of the attorney and court time are not included in the Diversion costs documented in this report; therefore, the actual costs may be slightly higher.

The costs of the traditional criminal justice system are drawn from the Criminal Justice Consensus Cost Benefit Working Group Final Report completed in 2014 and updated to account for inflation. Table 14 shows the cost of Court Diversion cases compared to the cost of the traditional criminal justice system.

Table 14: Cost of Court Diversion Compared to Traditional Criminal Justice Costs

Most Serious Offense	Diversion Cost	Traditional Criminal Justice Costs
Assaults	\$216.34	\$1,480
Domestic Assault	\$129.80	\$1,480
Public Order	\$96.92	\$1,098
Drugs	\$86.53	\$1,098
Fraud/Theft	\$83.07	\$1,118
MV-Other than DUI	\$76.15	\$596

Based on the cost of the Diversion workers alone, Diversion is much less expensive than the traditional criminal justice system. In addition, because the recidivism rate for first-time participants is so much lower than the traditional criminal justice system, and future crimes are not committed, the costs for investigating and prosecuting are avoided. For example, a person who is convicted of a misdemeanor assault may go on to commit more crimes throughout their life, which would increase the costs to the criminal justice system. The low recidivism rate for first-time participants in Diversion indicates that these future costs are not realized and there are savings to the criminal justice system overall.