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**To:** Jim Greiner  
**From:** Yiping Li  
**RE:** Sally Hillsman Baker & Susan Sadd, *Diversion of Felony Arrests: An Experiment in Pretrial Intervention*, US Dep. Justice, Natl. Inst. Justice (1981).  
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**Title:** Diversion of Felony Arrests: An Experiment in Pretrial Intervention  
**Authors:** Sally Hillsman Baker and Susan Sadd  
**Location:** Brooklyn and Manhattan Criminal Courts  
**Sample:** N = 666, n(experimental) = 410, n(control) = 256  
**Timeline:** 1977 to 1979  
**Target group:** Indigent defendants  
**Intervention type:** Divert defendants from prosecution and penal sanctions to social service programs and employment through the Court Employment Project  
**Research papers:** <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=77609>  
**Partners:** Vera Institute of Justice, National Institute of Justice

## **Abstract**

Pretrial diversion programs arose from the recognition that the criminal justice system was strained by heavy workload and concerns about the quality of justice and rehabilitating offenders. The Vera Institute of Justice conducted a randomized controlled trial in which defendants either participate in the diversion program or proceeded through the criminal justice system as normal. The researchers found that the diversion program did not make a significant or meaningful difference in the deposition of criminal charges.

## ***I. Policy Issue***

Pretrial diversion programs came about after the Report of the President's Commission on Law Enforcement and the Administration of Justice came out in 1967 highlighting the ineffectiveness of the criminal justice system. Among these, the Vera Institute of Justice launched the Court Employment Program as the first pretrial diversion program in the United States. The goals of CEP and other pretrial diversion programs were threefold: 1) to reduce time spent in detention and in the criminal justice system so that defendants, especially younger ones, did not have too much contact with other offenders; 2) to avoid prosecution and prevent conviction by providing defendants with a way to demonstrate

that they were worthy of leniency; 3) to improve indigent defendants' access to education and employment. At the same time, pretrial diversion programs were a way to reduce the workload of the courts and to reduce the cost of operation.

However, the use of pretrial diversion programs was contentious in that it could be seen as a sentence imposed without due process. Furthermore, there was a lack of empirical evidence to support its effectiveness. First, there were concerns that those selected to participate in pretrial diversion programs would have had their charges dismissed either way and that the programs imposed even more of a burden on these individuals. Second, there was no evidence on whether pretrial diversion programs reduced the stigma attached to defendants. Third, it was unknown whether pretrial diversion programs were able to reduce recidivism and change the defendants' behaviors.

An examination of all available evidence on pretrial diversion programs could not inform policy makers and researchers whether the programs were of any use. Researchers were able to identify a major methodological flaw that could resolve the issue if addressed: an adequate comparison/control group. Did the Court Employment Program have an effect on recidivism, employment, and educational status of diverted defendants compared to defendants processed normally?

## ***II. Context of Evaluation***

CEP first began in 1967 and had been running for 10 years and doing its own evaluations before researchers made a systematic and empirically motivated attempt to study its effects. Since its conception in 1967, it received funding from the City of New York and many jurisdictions across the United States replicated its model with the assumption that it was a highly successful program.

Before 1977, CEP would select defendants who had no prior contact with the system and/or were charged with misdemeanors. However, starting in 1977, there was a shift to exclusively selecting defendants facing felony charges. Almost all of the defendants in the Brooklyn and Manhattan Criminal Courts who were diverted by CEP faced felony charges in 1977, the year of the RCT. Still, most of these defendants had little to no previous criminal record, since prosecutors were less likely to divert those with prior records.

Even before the implementation of CEP and other pretrial diversion programs, there had been increases in usage of prosecutorial discretion and dismissal rate in New York. Therefore, there was a high possibility that the courts would have dismissed the charges against the defendants participating in CEP.

## ***III. Details***

666 defendants who met the eligibility criteria, agreed to participate, and whose counsel approved the diversion to CEP participated in the RCT. Instead of a truly randomized design, the researchers predetermined time periods during which they placed defendants in the experimental group until a quota is reached (n = 410). At that point, all other

defendants during that time period were processed normally and proceeded to trial instead of being diverted (n = 256).

The researchers conducted three interviews with the entire sample, one at the initial intake, one six months after, and one 12 months after. Because of the lack of contact information, the researchers only interviewed 533 at the first interview, 466 at the second, and 441 at the third. The researchers also collected the criminal records of all members of the sample from the New York City Police Department and the New York City Criminal Justice Agency. Finally, the researchers attempted to verify the participants' employment, education, and public assistance status. The researchers used t-tests and chi-squares to compare the experimental group against the control group.

#### ***IV. Results and Policy Lessons***

The results showed that the CEP made no significant and meaningful difference in the disposition of criminal charges, in the employment status of the diverted defendants, or in their recidivism rate. While there were some statistically significant differences in disposition patterns, these were not substantively meaningful because half of those diverted would have had their case dismissed anyway and others would not have faced very serious consequences. Because prosecutors controlled the flow of cases into the diversion program and defense attorneys viewed it as a way of saving scarce legal resources, the program became an alternative to dismissal or a lenience sentence rather than an alternative to a serious conviction. The results suggested that CEP would not be effective in jurisdictions whose defendants and crime patterns share similarity with New York City.

#### ***V. Quality of the Study***

The researchers were thorough in the discussion of explanations and confounding variables that could have led to the pattern of results found such as trends developing independently from CEP. With regards to methodological issues, there was a noticeable attrition rate in the sample in that there were only data for 441 out of 666 defendants. The authors did not report the breakdown between experimental and control group of the remaining 441 defendants. Therefore, the study might have lacked the statistical power because of an unbalanced design instead of the effect of CEP truly not being present. Furthermore, the authors did not report any p-value or statistics that would support their claims of significance so it is unclear what statistical analysis they used to treat the data.