

STATE OF NEW JERSEY
ADMINISTRATIVE OFFICE OF THE COURTS



PROPOSAL FOR STATEWIDE
IMPLEMENTATION OF A UNIFORM
PROGRAM OF PRETRIAL INTERVENTION
UNDER NEW JERSEY COURT RULE 3:28

Revised December, 1974



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State of New Jersey
Administrative Office of the Courts
Division of Criminal Practice
Pretrial Services

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SUMMARY

Pretrial intervention, as a formalized program for the removal of adult defendants from the ordinary course of prosecution has, since the promulgation of R. 3:28 late in 1970, resulted in the development of seven independent programs serving five New Jersey counties.

The plan that follows proposes the creation of a unified State-wide system of pretrial intervention programs designed to make this alternative form of prosecution available to all qualified persons charged with offenses in the State.

Part I of the plan sets forth the objectives, goals and anticipated indirect benefits of the proposed program, describes the development of pretrial intervention in New Jersey to its present stage, and traces the evolution of R. 3:28, through three amendments, to the present form adopted on April 1, 1974 (pp. 1 - 19).

In order to provide a basic theoretical and philosophical groundwork for the proposed Statewide program, guidelines are proposed for program operation (pp. 19 - 57).

Based on consideration of the standards recommended by the National Advisory Commission on Criminal Justice Standards and Goals; the American Bar Association Standards for the Prosecution and Defense Functions; and the American Law Institute's Model Code of Pre-Arrest Procedure, the guidelines proposed for New Jersey are, in capsule form:

1. The purposes of pretrial intervention are, with equal priority, the rehabilitation of defendants and the conservation

of criminal justice resources.

2. The primary goal of pretrial intervention is to secure sufficient change in each defendant to deter the commission of criminal acts, and to provide no less-but no more--service or supervision than is necessary for such deterrence.
3. Pretrial intervention programs should be multi-problem oriented, able to deal effectively with any defendant problem from drug-abuse to unemployment to need for psychotherapeutic services. Programs should, whenever possible, arrange for rehabilitation services to be provided by non-judicial agencies.
4. Program staff should reflect the character and needs of the participant population and should include both professionally trained and non-professional counselors; staff selection should emphasize personal qualities related to counseling over academic qualifications. Members of minority ethnic, racial and linguistic groups should be represented among the staff proportionate to such representation among program participants.
5. Eligibility for pretrial intervention should be broad, permitting practically any motivated defendant to participate. Only those defendants for whom rehabilitation is not an appropriate criminal-justice objective should be excluded.
6. Enrollment in a program of pretrial intervention should not be conditioned upon a plea or admission of guilt.
7. Enrollment should, to protect defendants' rights, be permitted up to the point of indictment, but in order to conserve judicial resources, generally prohibited thereafter.
8. No defendant should be required, as a condition of the dismissal of charges, to participate in a program of pretrial intervention for a period longer than one year.
9. All revelations made by and all reports about defendants in pretrial intervention programs should be confidential and should not be admissible against such defendants in any subsequent proceedings.
10. All pretrial intervention decisions should be given in writing to the defendants and should be made with regard

to standards of fairness and equal application of program restrictions.

Part II sets out the bases in rule and statute for pretrial intervention: R. 3:28, and N.J.S.A. 24:21-27a(1) (pretrial intervention for "first offense drug possession or use), and supporting rules and statutes, and recommends re-amendment of R. 3:28 to facilitate development of a Statewide program and to improve the efficiency of program operation (pp. 58 - 70).

The recommended amendments provide, in essence, for

- (a) a pretrial intervention component program in each county or vicinage.
- (b) dismissal of charges at any time during R. 3:28 postponement periods.
- (c) all actions, except the first postponement, to be taken on notice to the prosecutor rather than with his/her consent.
- (d) inadmissibility at subsequent proceedings of admissions or reports by or about defendants denied enrollment as well as for those returned to prosecution after enrollment.

Eligibility for pretrial intervention enrollment is controlled by two sets of criteria and one set of guidelines (pp. 70 - 75). The selection criteria limit enrollment to adults residing in New Jersey or its environs who are charged with offenses in New Jersey; the exclusion criteria permit enrollment of any defendant except those charged with motor vehicle offenses (N.J.S.A. Title 39). The guidelines for exclusion recommend for consideration in decision-making factors relating to: (a) the heinous or minor nature of charges; (b) the length and character of prior conviction records; (c) any

substance-abuse by the defendant; (d) the stage of criminal proceedings reached before application for enrollment; and (e) the probation or parole status of defendants.

Eligibility for pretrial intervention under N.J.S.A. 24:21-27 a(1) is set forth, and mandated use of pretrial intervention programs for defendants diverted under this statute is proposed.

Criminal justice proceedings to be followed by the programs (pp. 75 - 91) cover (1) intake procedures from referral to the program, through pre-enrollment evaluation, to the first R. 3:28 postponement; (2) second and third postponements; (3) termination and return to ordinary prosecution, and due process requirements prior to termination; (4) dismissal; and (5) procedural variations for use in cases under N.J.S.A. 24:21-27.

Pretrial intervention program staff positions, functions, qualifications and proposed salaries are described at pp. 92 - 99.

Although reasonable flexibility in internal administrative procedures among component programs is necessary because of particular local needs, certain required procedures are proposed relating to initial interviews; files and local record confidentiality and data collection; relations with local police departments; and systems for securing prior-record information from the New Jersey State Police, State Bureau of Identification (pp. 99 - 103).

Requirements for the development and implementation of individual programs of participation provide for programs ranging, according to the needs of participants, from minimal supervision to frequent counseling contact and broad rehabilitative, employment,

substance-abuse services (pp. 103 - 108).

Part III of the plan proposes a uniform Statewide system of pretrial intervention programs centrally administered by Pretrial Services, in the Division of Criminal Practice (pp. 109 - 128).

Such a system conforms to Supreme Court policy relating to uniformity, and central administration and evaluation in court services. The alternative approach, location in the County Probation departments, is not recommended. Such placement would likely result in inability to establish uniformity because of the lack of procedural and administrative uniformity among the 21 autonomous departments and because of the great size variation among the various departments; and diversion of present Probation Service efforts to plan and implement extensive, basic, systemic reforms among the departments.

The proposed system would, during its first 12-month period of operation, evaluate the applications of approximately 13,200 defendants and accept for enrollment 6,600 defendants, and accept an additional 3,600 cases under N.J.S.A. 24:21-27a(1), for a total caseload of 10,200 participants.

Participant caseload projections are, for lack of coherent criminal justice-system data, based on raw probation caseload statistics.

For administrative facilitation it is proposed that 12 programs be created, and located one in each County or Vicinage. Based on caseloads of 40, program staff sizes would range from 12 (Morris) to 42 (Essex). The total program costs for the proposed Statewide system, and for a central administrative component is estimated to be \$4.06 million, including \$2.8 million for 224 program personnel and \$1.2 million for administrative and other costs.

Problems involved in integrating the existing programs into the Statewide system are discussed and solutions involving reallocation of existing grants are proposed.

Methods and approaches to evaluating the effectiveness of the proposed Statewide program of pretrial intervention include provision for individual and comparative program evaluation; evaluation in comparison to normal criminal justice dispositions and cost benefit analysis (pp. 128 - [to be completed]).

The appendices contain (A) all forms needed for pretrial intervention operation, (B) summary reports on the Hudson County Pretrial Intervention Project and the Newark Defendants' Employment Project (C) probation caseload data and salary range charts and,

DEFINITIONS

The following terms are used in this proposal with the meanings assigned below:

- (1) "Pretrial intervention", a formalized program for selecting from the criminal justice process--after the filing of a complaint but before trial or entry of a plea--adult defendants who appear capable, with the assistance of supervision, counseling or other services, of showing that they are not likely in the future to commit criminal or disorderly acts; for removing such defendants from the ordinary course of prosecution by postponing further criminal proceedings; and for dismissing charges against such defendants upon completion of a program of supervision, counseling or other services, and upon a showing that the interests of society may best be served by such a dismissal. The shorthand referent, "PTI", is used in this proposal.
- (2) "Defendant", a person formally charged by complaint, indictment or accusation, with a criminal or penal offense who is involved in the ordinary course of prosecution before trial or entry of a plea of guilty.
- (3) "Participant", a defendant for whom proceedings have been postponed or suspended pursuant to R. 3:28 or N.J.S.A. 24:21-27a(1), and who is participating in a PTI program.
- (4) "Enrollment", postponement of ordinary criminal proceedings pursuant to R. 3:28 or N.J.S.A. 24:21-27a(1).
- (5) "Rejection", denial of enrollment in a PTI program or a defendant's voluntary decision not to seek or continue to seek enrollment.
- (6) "Termination", return to the ordinary course of prosecution of a participant enrolled in a PTI program.

- (7) "Dismissal", dismissal of charges against a participant, by Order of the Court, after successful completion of the PTI program.

[Comment: Since pretrial intervention is a new and still developing concept for which a common national terminology has not yet developed, concern for communication requires that terms be defined.

Pretrial Intervention is a form of diversion program, which in other jurisdictions is described by such terms as "deferred prosecution"; "early or pretrial or court diversion"; "in-lieu of prosecution"; "accelerated rehabilitative disposition"; "pre-indictment or pre-trial probation" among others.

The term "pretrial intervention" used in New Jersey has also been adopted by the American Bar Association's Commission on Correctional Facilities and Services in creating the National Pretrial Intervention Service Center, and is used by the National Advisory Commission on Criminal Justice Standards and Goals.

The term "diversion" has recently come into criminal-justice usage to describe any new program that diverts--in the generic sense--defendants or offenders from established processing and treatment, particularly before entry of judgment of conviction. While "diversion" programs are developing for the alternative processing of juveniles ("juvenile intake", "juvenile diversion"), and of adults prior to the filing of a complaint ("police-diversion"), this proposal is limited to the special program for the pretrial intervention alternative to ordinary prosecution for adults once the jurisdiction of the courts has attached.]

PART I

BASIS FOR THE PROPOSED
PROGRAM OF PRETRIAL INTERVENTION

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A. OBJECTIVES AND GOALS

The goals and objectives of pretrial intervention are discussed generally in the New Jersey Guidelines, infra, but are set forth here more succinctly in order to provide the groundwork for this proposal.

Methods of assessing the attainment of goals and objectives are described in the section on evaluation, infra, p.130, et seq.

1. Objectives

Since the introduction of pretrial intervention into New Jersey late in 1970, program operation has evidenced sufficient success and potential long-term impact on the criminal justice process of the State to lead the New Jersey Supreme Court to develop in its Administrative Office of the Courts, Division of Criminal Practice, a Pretrial Services section to explore the feasibility of implementation of PTI throughout the State.

This proposal, prepared at the direction of the New Jersey Supreme Court, represents the Court's acceptance of the pretrial intervention concept and its intention to expand the program State-wide.

Between 1970 and 1974, PTI program development was haphazard. The programs that have developed have been derived at least in part from the proposals and plans of the first two programs, Newark Defendants' Employment Project, and Hudson County Pretrial Intervention Project and, because of the requirement of R. 3:28 that each program

receive specific Supreme Court approval, there has therefore been some degree of procedural consistency.

Other programs developed or were planned however in different manners, targetting on selected defendant problems (alcoholism, drug abuse) and derived programmatic theory and philosophy from sources other than the first programs.

The primary objective of this proposal is therefore:

(a) the creation of a program of pretrial intervention for the State of New Jersey that is solidly grounded on an integrated theory within the criminal justice system, promulgated by the State's judiciary at the highest level, and

(b) to create a uniform and integrated system within the judicial service to put into practice a Statewide program of pretrial intervention; and

(c) to evaluate the effectiveness of both the theory and the practice;

(d) to continue to develop and refine the theory and practice through the development of standards for decision-making; the continuous evaluation of pretrial intervention as an effective criminal justice component, and by maintaining the highest standards of due process and equal protection for all defendants and participants.

2. Rehabilitation; Maximization of Effectiveness in Control of Criminal Behavior

(a) Based on the assumption that ordinary prosecution and current correctional practices produce, at best, no-effect at high cost, and at worst exacerbate tendencies toward criminal behavior, it

is an objective of pretrial intervention to process defendants in a manner that will effectively deter criminal or penal behavior, and

(b) To achieve such deterrence by the application of rehabilitative/supervisory procedures requiring the least necessary expenditure of time and resources, and by placing the responsibility for rehabilitation/change on defendants to the greatest possible extent.

(c) It is further an objective to discover the levels of work necessary to achieve such deterrence, through analysis of social, economic and criminal characteristics of defendants and to develop from such analyses devices for prediction of future criminal or penal behavior among such population of defendants.

3. Conservation of Criminal Justice Resources

An objective of equal priority is the reduction of the workloads of standard criminal-justice agencies effected by removing defendants from the ordinary course of prosecution and correction, permitting thereby the concentration of resources on matters involving criminality which can only be controlled by ordinary prosecution and application of sanctions.

4. Indirect Objectives: Anticipated Benefits Applicable Beyond Pretrial Intervention

As a criminal justice component system, the pretrial intervention experience proposed here will produce learning applicable to other components:

(a) A State judiciary-administered and evaluated pretrial intervention program will produce experience useful to planning for

similar systems for pretrial release and juvenile intake (diversion) services, (and may provide the administrative situs for the State-wide implementation of such systems), and useful as an example for the conversion of the county probation departments into a unified, State probation service.

(b) The pretrial intervention program, because of its program-prosecution-judiciary interaction and reporting requirements will develop, Statewide, mechanisms for bringing adequate evaluation data to both prosecutors and judges on non-criminal-justice rehabilitative programs, and refine and encourage thereby the use of community-based correctional dispositions at the post-conviction level.

(c) The pretrial intervention program's staffing needs and requirements will have the effect of bringing into the criminal justice field, at equal levels with those presently involved, talented and effective men, and women, who do not have B.A. degrees and/or who are members of minority racial and ethnic groups.

(d) Pretrial intervention, through its evaluation process, will contribute to standards for refinement and equal application of discretionary decision-making. The program's evaluations and anticipated detailed knowledge of defendant characteristics will provide data-bases for planning for change and for evaluation of other criminal justice components.

5. Primary Measurable Goals

(a) To make the PTI opportunity available to all eligible defendants throughout the State by dissemination of information at the

prosecution entry-point (municipal courts), through attorneys and other criminal justice agencies, and through community agencies and groups.

(b) R. 3:28 Cases

- (i) To evaluate for eligibility and acceptance for enrollment, 13,000 defendants charged with criminal and penal offenses.
- (ii) To enroll 50% (6,500) of such defendants.
- (iii) To include, among enrollees, at least 20% persons with prior conviction records.
- (iv) To reach dismissal for 70% of enrollees.
- (v) To maintain among the dismissed population a re-arrest rate no greater than 10%.

[Comment: The basis for these specific goals is drawn from the experience of the Hudson County PTI Project, the model from which this proposal is derived. See summary report, Appendix B , infra. The goals conform also to national PTI program experience see, p.16 , infra, Note 4.

Non-recidivism (v), is measured in terms of rearrest because of the spotty reporting of dispositions in New Jersey's CDR (Criminal Disposition Reporting) system. Rearrests include those defendants arrested after dismissal, less those for whom dismissal or acquittal might be reported.]

(c) N.J.S.A. 24:21-27 (CDS-PTI) Cases

- (i) To evaluate for eligibility and acceptance for enrollment 4,000 additional defendants charged with CDS offenses.
- (ii) To enroll pursuant to §27 eligibility criteria 75% (3,000) of such defendants.

- (iii) To reach dismissal for 85% of such enrollees.
- (iv) To maintain among the dismissed population a rearrest rate no greater than 5%.

[Comment: No base-line data is available for §27 cases, although this statute has been in effect in its present form since 1971. Because eligibility is limited to "first-offense" CDS possession or use cases, it is estimated that acceptability for enrollment and success (dismissal) will be greater, and rearrest lower than for R. 3:28 matters. Many cases under §27 will involve simple marijuana possession.]

(d) Reduction of Probation Caseload

Since it is anticipated that many PTI participants represent potential probationers (the potential PTI population is derived from figures from the probation system) it is anticipated that removal of defendants from ordinary prosecution will reduce the number of persons added to adult probation supervision by an estimated 20%.

[Comment: During 1972-73, 17,600 convicted persons were placed under probation supervision from Municipal and Superior Courts. Reduction by 20% (3,520) is equal to only 75% of the estimated success for R. 3:28 cases.

If all PTI defendants are potential probationers the reduction could reach a high of 27% (all R. 3:28 dismissals). It is probable however that some PTI cases would be incarcerated if convicted, or fined; or might be dismissed or acquitted during ordinary prosecution.

It must also be noted that other factors effect the probation work-load and that this factor, as a measurement of PTI success, cannot be entirely accurate. (The probation-load decreased by 2% during 1972-73, and such changes as the recent amendment to R.3:21, requiring statements of reasons for sentences, might effect the use of the probation disposition.)

Measurement of the effect of PTI by removing §27 cases from probation-caseloads would not be meaningful. Such cases are presently assigned or not assigned to probation supervision in no discernable pattern.]

B. PRETRIAL INTERVENTION DEVELOPMENT IN NEW JERSEY, 1970 to 1974

Pretrial intervention is a criminal justice reform movement that had its beginnings less than a decade ago and that has, since 1970, begun to spread rapidly across the nation. New Jersey was an early entrant into the field in 1970.

1. Background and Pilot Programs

Diversion after complaint but prior to trial or plea is certainly neither new nor innovative in concept. Criminal justice systems, historically, show a process of development of procedures to mitigate the harshness of the criminal process, recognizing that certain groups or individuals do not merit full prosecution or the application of the often rigid criminal sanctions required by statute for justice to be done and the safety of society to be preserved.

The traditional, informal discretion of states' attorneys to decline to prosecute in the interests of justice is of course diversion in its prototypical form. Civil commitment of defendants found incompetent to stand trial is a form of diversion; the system of juvenile justice represents, in its entirety, diversion from criminal prosecution.

Traditional prosecutorial discretion has been used, perhaps most often, in matters involving majority-culture defendants when the mere threat of prosecution has been deemed sufficient to deter criminal conduct or in which restitution could be used as a device for adjusting a criminal situation by giving the

victim specific satisfaction. But in practice, such procedures are virtually invisible to the public and unreviewable and are therefore capable of unequal application.

In 1967, two pilot projects were initiated to test a formalized, pretrial intervention procedure. Project Crossroads, in Washington, D.C. and the Manhattan Court Employment Project reported, at the end of their pilot phases in 1970-71, substantial successes in identifying defendants capable of rehabilitation and in reduced rates of recidivism among successful participants.

As a result of the pilot successes the U.S. Department of Labor and the Law Enforcement Assistance Administration undertook the financing of PTI programs across the country.[1] Today there are close to 60 programs [2] operating under a variety of names, procedures and financial sources that can be

[1] The prominent features of the MCEP-Crossroads model, upon which later programs were based include: (1) selection of defendants at the earliest possible time after arrest; (2) a voluntary probationary period of 3 to 6 months during which all proceedings are held in abeyance with the consent of the prosecution and the courts; (3) use of "para-professional" counseling staff with emphasis on "ex-offenders", whose backgrounds are similar to those of the participant population; (4) delivery of vocational services as the primary rehabilitative tool and; (5) eligibility criteria limiting participation to youthful unemployed defendants, without significant conviction records, and excluding crimes of violence, major property crimes and addicted defendants.

[2] Source: National PTI Service Center, ABA Commission on Correctional Facilities and Services, Washington, D.C.

labelled "court diversion" or "pretrial intervention" programs.

By 1973, as a result of the rapid spread of PTI programs, federal agencies began to award grants to evaluate diversion programs generally. Such groups as National PTI Service Center, National Center for State Courts, National Council on Crime and Delinquency, among others, are currently involved in PTI studies.

2. DEVELOPMENT IN NEW JERSEY: R. 3:28

Both the Manhattan Court Employment Project and the Project Crossroads programs involved judicial approval of postponement and dismissal of charges after recommendation of the prosecution. In both instances, in order to initiate the programs, prosecutors agreed to make such recommendations based on their traditional discretionary powers.

Because of the ambiguities about the extent of prosecutorial discretion in New Jersey expressed in State v. Winne, 12 N.J. 152 (1953), the Supreme Court was asked to promulgate a rule authorizing the pretrial intervention procedure. R. 3:28, then entitled, "Defendants' Employment Programs", because it was designed to permit operation of the Newark Defendants' Employment Project (N.D.E.P.), was enacted in October, 1970. The rule provided for program approval by the Supreme Court, and designation of specific judges to rule on program cases. Under the rule, postponement of criminal or penal proceedings was allowed for no longer than 6 months, with postponement

and dismissal by the designated judges only upon recommendation of the program director and with the consent of the prosecutor and the defendant; return to the ordinary course of prosecution was required for those defendants for whom such return was recommended by the program director.

R. 3:28 was amended effective September, 1973 to make clear that programs other than those providing employment oriented rehabilitative services--drug and alcohol detoxification programs in particular--were capable of approval for operation under the rule.

In April 1974, based on the experience of program operation and because of a concern for protection of defendants' rights, R. 3:28 was changed into its present form. The rule was re-titled "Pretrial Intervention Programs" to use the preferred terminology. While the designated-judge format was retained, because of concern that the commission of future crime after dismissal by successful program participants could result in extreme negative effects on programs, the rule was amended to permit only Assignment Judges to order pretrial intervention or dismiss charges against defendants charged with certain heinous offenses.

In order to ensure uniform development of PTI programs within the court system, and to facilitate State-wide development, paragraph (b) was amended to require program administration

under the offices of the Trial Court Administrators or Chief Probation Officers.

Because of the anticipated expansion of New Jersey's programs, and because of the increased danger of abuse arising out of such development, and a concern for defendant protections, paragraph (c) (3) was amended to grant to participants recommended for return to ordinary prosecution, a right to a hearing before a designated judge on such recommendation and to provide for written notice of the reasons for such a recommendation.

In order to secure the staff participant relationship of confidentiality deemed necessary to effective rehabilitative efforts and because, in the context of this relationship, participants often make admissions or disclosures that could be used against them if they are returned to ordinary prosecution, paragraph (c) (4) was added to ensure that such disclosures could not be used in evidence against the defendant during any proceedings following termination.

Finally, in recognition of the special needs of drug cases, and also recognizing that a reasonable end to postponement periods needed to be established, paragraph (d) was amended to provide that postponement periods for cases involving dependency upon a controlled dangerous substance could be extended up to, but not beyond, one year.

As program development proceeds to become a State-wide system and as the number of defendants offered pretrial inter-

vention increases, problems involving the governing rule will undoubtedly arise and further amendments may be required. The responsiveness of the rule-making process is particularly appropriate therefore to the needs of this developing concept and program area.

3. New Jersey Programs

Newark Defendants' Employment Project

Developed from the models of Project Crossroads and MCEP, the Newark Defendants' Employment Project, New Jersey's first and the nation's third PTI program, began operation in October 1970. The program which is funded by grants from the State Law Enforcement Planning Agency to the City of Newark is operated, under contract, by Community Information & Referral Services, Inc., a private non-profit corporation.

N.D.E.P.'s program is multi-problem oriented, designed to handle defendants charged with any offense and excludes only those defendants who are opiate-addicted. While defendants who are residents of Newark make up the great bulk of N.D.E.P.'s participant population, all residents of Essex County are eligible for enrollment in the program and judges have been designated in each municipality for this reason.

The Staff of N.D.E.P. consists of personnel who supervise or counsel enrolled defendants according to the needs of each case, and who make referrals to appropriate community or gov-

ernmental agencies when specialized services are needed and available. Staff within Community Information and Referral Services Inc. provide participants with vocational placement services.

N.D.E.P. has compiled a record that indicates that the pretrial intervention system ought to be continued in Essex County.

By the end of 1973, N.D.E.P. had considered the applications of more than 1500 defendants and had enrolled 760 pursuant to R. 3:28. 33% of the enrolled defendants who exited the program were considered to be program failures and were returned to the ordinary course of prosecution. Defendants who completed the program, and for whom charges were dismissed, represented 67% of the enrollees; and of these, N.D.E.P. reported only 5% to have been re-arrested subsequent to dismissal.

Of interest in assessing N.D.E.P. operation are two salient characteristics of the participant population: 55% were unemployed at the point of enrollment, and 67% were charged with non-indictable offenses.

N.D.E.P. presently continues operation under a private group. In line however with the policy of court control expressed in R. 3:28(b) the program will be transferred into the administrative jurisdiction of the Trial Court Administrator for Essex County during 1975.

Newark TASC/Pretrial Intervention Program

This program was approved for operation under R. 3:28 on April 1, 1974, but final grant approval has just recently been arranged; the program is scheduled to begin operation late in , 1974. Based on the federal TASC model, TASC/PTI will focus exclusively on defendants who are drug-abusers.[3] The program involves screening of defendants arrested in Newark for drug-use, diagnosis by a Central Intake Unit operated by the New Jersey College of Medicine and Dentistry and referral for treatment, pending and after R. 3:28 approval, to the drug-abuse prevention and control programs operating in the Newark area.

While the most frequent contact with participants will be by drug-abuse programs, it has been planned that staff of the Newark Municipal Court's Pretrial Management Division will monitor treatment programs through direct defendant contact, and will compile reports for use in decision-making by the designated judges and the Essex County and Newark prosecutors. Administratively, the court processing of TASC/PTI defendants under R. 3:28 has been planned to be managed under the direction of the Newark Municipal Court Administrator, for non-indictable offenses, and for indict-

[3] TASC (Treatment Alternatives to Street Crime) is a model developed in 1971 by the White House Special Action Office on Drug Abuse Prevention (SAODAP), which provides essentially for PTI handling exclusively for drug-dependant defendants.

able matters, by a Pretrial Intervention Coordinator under the direction of the Essex County Trial Court Administrator.

Hudson County Pretrial Intervention Project

Pretrial intervention in Hudson County was approved by the court late in 1971. Although procedurally and programatically the Hudson County PTI Project is similar to N.D.E.P., a significant change was the installation of the program under judicial administration. Using grants from S.L.E.P.A., the program operated until the end of 1972 as a program of the Administrative Office of the Courts. At that time a grant for continuation of the program was awarded to the Hudson County Board of Chosen Freeholders and administration of the program was transferred to operate under the office of the Hudson County Trial Court Administrator. Judicial administration enabled the assignment of three probation officers on detached service to work alongside counseling staff, whose roots were in the community, to provide one-to-one services to PTI participants.

By the end of 1973 the Hudson program had interviewed over 1000 defendants who sought enrollment in the program; just over 50% (540) were found eligible and interested in participation. Successful program completion led to dismissal in 70% of enrollments; and among these successful cases, 8.5% were re-arrested subsequent to dismissal. While participant entry and success

data is similar to that of N.D.E.P.[4], the program in Hudson County concentrated upon indictable offenses with close to 70% of the participants so charged. Some 40% of these were persons who had previously been convicted of criminal or penal offenses.

The Hudson County program is described infra in greater detail in Appendix B.

Jersey City and Union County Alcohol Rehabilitation Programs

In mid-1973 two programs were approved that were designed to deal specifically with the revolving-door syndrome that has characterized alcohol-abusers, and that limited R. 3:28 pretrial intervention to defendants charged with offenses within the jurisdiction of the municipal courts. Both programs, which are S.L.E.P.A. funded, involve criminal justice personnel in a minimal way. The Union County program's PTI procedure is managed by a single probation investigator who gathers reports for the Court. In Jersey City, three staff perform this function, in addition to providing counseling and community services. The great bulk of funding for both programs has gone into development of alcohol detoxification and rehabilitation programs at

[4] The experiences of the N.D.E.P. and Hudson County PTI project are similar to the average experience of PTI programs nationally: 70% rate of dismissals and 7% recidivism rate. Testimony of Arnold Hopkins, Assistant Staff Director, A.B.A. Commission on Correctional Facilities and Services, Hearing before the Subcommittee on National Penitentiaries of the Senate Committee on the Judiciary on S. 798, Community Supervision and Services Act, 389 (March 27, 1973), hereafter cited as Hearing on S. 798 (1973).

Runnels Hospital (Union County) and the Jersey City Medical Center. The programs differ of course from N.D.E.P. and Hudson County PTI project in that the great majority of the participants are charged with public intoxication--a victimless offense.

While pretrial intervention is an appropriate method of diverting alcohol abusers charged with crimes and offenses against persons or property, use of the procedure for those intoxicated in public may be wasteful. In recognition of this, both programs have developed procedures for direct referral by police to the detoxification and rehabilitation centers and have, to date, rarely used the procedure approved under R. 3:28.

Because of a lack of precise definition of police discretionary authority, and in order to avoid civil or criminal liability for false arrest, both programs have developed procedures for arrest and booking prior to referral for detoxification, and with the permission of the court, withdrawing the complaint at the earliest possible time.

Bergen County Pretrial Intervention Project

The PTI program in Bergen County, approved by the Court in April 1974, became operational in June 1974. Bergen County PTI substantially replicates the Hudson program except that the program is administered by the Bergen County Probation Department. To supplement probation officers' work with PTI participants,

the Bergen program uses volunteers from its probation volunteer program and provides vocational services out of the Probation Department's Job Bank.

4. N.J.S.A. 24:21-27

In 1970, with the passage of the Controlled Dangerous Substances Act, the New Jersey legislature enacted a "conditional discharge" statute that was amended to its present form in the following year. (The text of the statute appears at p. 63, infra.)

While §27 permits pretrial intervention as well as "conditional discharge" (suspension of sentencing, for "supervisory treatment" after plea or adjudication of guilt), the statute neither prescribed a program or other format for implementation of the legislative intention, nor defined "supervisory treatment".

As a result, use of the statute was slow[5] and procedural development has depended entirely upon the orientation of criminal justice agencies in the various counties.

In Union County for example, defendants are released, without supervision, from the municipal courts and the County Prosecutor takes an active role in all such cases. In Morris County,

[5] In 1972-73, 3,600 §27 cases at the municipal level; the procedure is rarely used in the County and Superior Courts for indictable offenses: during 1972-73 only 173 indictments were suspended pursuant to §27.

the procedure for handling §27 is close to pretrial intervention as shown in this proposal; in other counties §27-defendants are placed under probation supervision. There have been no evaluations of the effectiveness of the statute as a crime-control or as a decriminalization device, and since no data on defendant characteristics, program referral or recidivism rates have been kept, it will be difficult to conduct an evaluation retrospectively.

C. GUIDELINES FOR OPERATION AND DEVELOPMENT OF PRETRIAL INTERVENTION IN NEW JERSEY

In devising guidelines for pretrial intervention in New Jersey the following sources were considered, but not necessarily followed:

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts and Corrections, 1973.
2. American Bar Association Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function, Approved Draft, 1971.
3. American Law Institute, Model Code of Pre-Arrestment Procedure, Tentative Draft #5, 1972.

These sources have recommended standards and procedures that are necessarily broad because national in scope. The guidelines that follow are designed for application, particularly, to New Jersey's criminal justice system and have been used as the basis for the program and procedures of this proposal.

1. The purposes of pretrial intervention are:

(a) To provide defendants with opportunities to avoid ordinary prosecution by receiving early rehabilitative services, when such services can reasonably be expected to deter criminal behavior, and when there is an apparent causal connection between the offense charged and rehabilitative need, without which cause both the alleged offense and the need to prosecute might not have occurred.

(b) To provide an alternative form of prosecution for defendants--whether or not in need of rehabilitative services--who might be harmed by the imposition of criminal sanctions as presently administered, or by the mere affixing of the label of one convicted of a criminal or penal offense, when such an alternative can be expected to serve as sufficient sanction to deter criminal conduct.

(c) To provide a mechanism for permitting the least burdensome form of prosecution possible for defendants charged with "victimless" offenses, and for those charged with offenses in which there is a victim but which were committed in circumstances which the legislature probably did not intend to punish.

(d) To assist in the relief of presently overburdened criminal calendars in order to focus expenditure of criminal-justice resources on matters involving serious criminality and severe correctional problems.

Guideline 1(a) states a rehabilitative model on which the pilot programs appear to have been based. An extension of the concept of incompetency to commit crime, the rehabilitative model emphasizes that social, cultural or economic deprivation result in a defendant's choice or environmental compulsion to commit crime in order to resolve problems: lack of employment and lack of job skills cause property crime. Since such criminal solutions are not generally chosen by those not so deprived[5], PTI serves as an equalizing mechanism to mitigate the harshness of the conditions that appear to cause crime for such a group. Thus, recognizing that giving special assistance to particularly crime-prone groups is justifiable, the pilot programs limited enrollment to the young and the un-and under-employed.

[5] No implication is intended that the socially, and economically advantaged do not commit property crime; they do. But such crime-solutions (embezzlement, stock-fraud, price-fixing) have not been the focus of PTI programs.

The rehabilitative model applies especially to those whose anti-social behavior is caused directly by such problems endemic to poor populations as alcoholism and opiate-addiction. The TASC and alcohol-diversion programs, particularly, are designed along such rehabilitative lines.

The rehabilitative model does not however make full use of the possibilities of the PTI concept. It is well recognized by now that prisons are "crime-schools", that criminal records prevent rehabilitation by preventing employment, and that full prosecution causes serious disruption of defendants' lives. The negative effects of the application of criminal sanctions, as presently designed and administered, apply as well to many persons facing criminal charges who cannot be labeled "disadvantaged". To assist deprived defendants in avoiding such negative effects, but to require others to acquire criminal records would be discrimination not resting on rational ground. Guideline 1(b) provides, then, that the PTI procedure should be available to any defendant so long as non-discriminatory criteria are met.

Guideline 1(c) provides for the use of PTI as a mechanism for minimizing penetration into the criminal process for broad categories of offenders accused of victimless crimes (drug-possession and public intoxication in particular), without relinquishing criminal justice control over such persons while statutes proscriptive of such behavior remain in force. The New Jersey legislature has provided just such a pretrial intervention

procedure for first drug-possession or use offenses. N.J.S.A. 24:21-27, 28.

The technique of prosecutorial down-grading is often used to lower exposure to criminal sanctions in instances not, of necessity, intended by the legislature to be punished. A minor assault on a police officer is often reduced to the disorderly-person offense of assault and battery; an actual breaking and entering of a non-serious nature might be downgraded to "being in a place with intent to steal" [N.J.S.A. 2A:170-3]. PTI provides an opportunity in appropriate cases to lower exposure even more.

By removing from ordinary prosecution those who can be deterred from criminal behavior by short-term rehabilitative work or supervision, it is anticipated that the current levels of Criminal Justice over-load will be sufficiently diminished so that concentration upon instances of behavior, capable of correction only by ordinary sanctions, can be intensified. (Guideline 1(d)).

2. The purpose of pretrial intervention in removing defendants from ordinary prosecution is to deter future criminal or disorderly behavior. It is neither the duty nor the right of criminal justice agencies to require behavioral change or rehabilitation beyond that necessary for such deterrence. Thus, PTI programs should impose upon defendants the least restrictive program requirements required to attain this goal.

The mere fact of arrest and the securing thereby, of control

over the life of a defendant cannot mean that problems unrelated, causally, to the alleged offense, should be the subject of treatment or rehabilitative services: a homosexual defendant charged with embezzlement should not, as a result of PTI enrollment, be required to undergo "treatment" for homosexuality.

Regard for personal liberty, alone, is sufficient reason for minimal intervention; and, in practical terms, it is economically, simply not feasible to provide broad treatment. Criminal justice agencies exist to control criminal acts; diversion of funds into treatment of problems unrelated or only minimally related to criminal activity would deplete financial resources and involve the criminal justice system in general social-assistance without warrant.

The deterrence of criminal behavior in many cases requires intensive work: counseling, psychotherapy, drug-abuse prevention and control, employment placement. These cases should receive the bulk of the staff's time. For many defendants, however, no more than an unsupervised pretrial probationary period is necessary, when no need for rehabilitative services can be discerned.

While each participant should be evaluated and treated individually, PTI programs should--in order to ensure that unnecessary work is not done and that all necessary assistance is given--develop a system of participant classification according to service need. Such classification might be developed around the following format:

- (a) Participants who exhibit no need for social-adjustment or

psychological counseling, who are employed and are reasonably stable in their personal lives and who appear to understand the nature and consequences of the criminal acts with which they are charged.

This group should be handled by no more than a regimen of supervised reporting in person or by telephone--in some instances no reporting need be required. At the end, for example, of a 3-month period, if no further arrests have taken place, recommendation should be made that charges be dismissed.

For certain members of this class--extending the minimal restriction concept--justification can be reached for dismissal of charges after the 3-4 week period before an enrollment application is normally made--especially for those charged with minor offenses--if such defendants can be classified as "self-correcting". Such defendants are those for whom the mere fact of arrest and threat of prosecution is sufficient to shock or frighten them into deterrence from criminal behavior, and for whom a reasonable prediction can be made that crime would not, in any case, be committed in the future.

(b) Participants with a single major problem area, capable of treatment or adjustment: unemployment; alcoholism, when motivated to participate for example in A.A., but otherwise who show evidence of basic social and economic stability.

Such participants need only be referred to treatment or specialized service agencies and should be required to report to

the staff no more than necessary to assure that the treatment or assistance is being given and is having effect, and that the participants' motivation is maintained.

(c) Participants with a multiplicity of problems associated with the alleged offense: e.g. drug-addiction and lack of motivation to seek treatment, and unemployment, and family instability, may be required to attend counseling sessions conducted by staff, report for supervisory purposes, and be referred to and followed up in specialized treatment.

(d) Participants in need of psychotherapeutic services. In addition to social service assistance, counseling for such persons should be conducted by professionally trained counselors who can refer to and work in conjunction with psychotherapists.

Such a classification system would serve, additionally, as an administrative guide for program staff and be helpful to prosecutors and judges in approving case-handling methods.

3(a) PTI programs should be multi-problem oriented: no restrictions should be placed on participation because of the type of participant problem.

(b) PTI programs should not, beyond one-to-one or group counseling, provide treatment or other specialized services when governmental or private service agencies provide or are capable of providing such services. Where needed services are not available, it should be the responsibility of program administrators to encourage non-court agencies to provide such service before under-

taking direct services within the program.

Recognizing, as does the National Advisory Commission, that "[m] any problems underlying the commission of crimes are prevalent enough to justify specialized programs", (Courts, p.33), many programs have attempted to focus attention on particular defendant-problems: TASC on opiate addiction; alcohol diversion, on alcohol abuse; other programs on the youthful unemployed and first-offenders.

While the need for special approaches to special problems cannot be discounted, there is no reason why a single program cannot develop procedures within the criminal justice process to apply the PTI alternative to all appropriate cases.

Single-problem-oriented programs, in focusing on particular defendant problems rather than equally on criminal justice reform, take a limited view of the general premises on which PTI is based.

The National Advisory Commission, (Courts , 33), cites, "two common prerequisites for diversion: (1) undersirability of criminal prosecution because of undue harm to the defendant or his underlying problem, because of the apparent futility of prosecution in preventing future offenses, or because formal prosecution fails to meet the needs of the victim, and (2) availability of assistance such as treatment, counseling or mediation procedures."

PTI should be available to any defendant to whom these standards apply; concentration on a single problem does not permit

broad application. R. 3:28, not being restrictive by way of charge or defendant status permits the multi-problem approach. Today the programs in Hudson and Bergen Counties, and the Newark Defendants' Employment Project (except for exclusion of addicts) take such an approach.

The single-problem format will tend to raise equal-protection problems. In a jurisdiction that uses PTI only for alcoholics it is an unwarranted discrimination--considering the two prerequisites cited above--to permit program access to alcohol abusers but not to CDS abusers who, except for the choice of drug-of-abuse, are alike.

Finally, the development of single-problem oriented programs will tend to the development of various criminal justice procedures, an unhealthy trend administratively, that leads to discriminatory treatment. The simultaneous existence of programs operating under R. 3:28, and the PTI procedure of N.J.S.A. 24:21-27(a)(1) exemplifies the problem.

Pretrial intervention, as a criminal justice process, recognizes the need for an alternative, more humane form of prosecution. The primary focus, then, is the mechanism for separating the group of potential PTI participants from those who need to be prosecuted in the ordinary course.

Removal from ordinary prosecution is of course a useless gesture unless the causes of criminal behavior can be controlled.

But to what extent should judicial-based programs go in behavioral-control and change? Traditionally the New Jersey Courts through their probation departments have provided supervision and counseling for probationers; in relatively rare instances specialized services have been provided. General social-service and medical/psychological-treatment assistance is the responsibility of and has been provided by other governmental agencies, and is available from a wide range of social-service agencies. The courts should look to such non-criminal justice agencies to expand and improve services and to provide treatment and rehabilitative assistance to PTI participants. The direct involvement of the judiciary in treatment and the solution of social problems unrelated to criminal behavior can only take funds and energy away from more basic and sorely needed criminal justice reforms, and should in principle be avoided. Only in instances where no resources are available to treat the needs of PTI participants should the judiciary reluctantly take on the responsibility of providing specialized treatment. At the same time those agencies capable of fulfilling the need should be encouraged to take over.

4. Program Staff should be selected according to the needs of the participant population to the end that the goal of deterrence from criminal behavior will be achieved. Recognizing the variety of participant characteristics, problems, needs, and cultural variations, the staff should include both professionally trained and non-professional members who are thoroughly familiar with community and governmental service agencies and programs. In accordance with participant population needs, the staff should contain persons with expertise in such specialized problem

areas as CDS-abuse, alcohol abuse, vocational testing and placement, and counseling. "Counseling personality" should take priority, in staff selection, over academic or specialized training qualifications. Court Liaisons should be required to have Bachelor's degrees, but exceptionally qualified persons without B. A. degrees may be employed.

It is important that participants, and defendants who are potential participants, feel that the PTI program can and will be responsive to their needs, and understanding of their cultural orientations. Defendants are otherwise unlikely to make sufficient initial response to continue participation, and without the actuality of such responsiveness and understanding, no meaningful relationship can be created between staff and participants.

The staff therefore should comprise men and women who live or have lived in the community from which participants are drawn, and who themselves represent cultural, racial, ethnic and linguistic variations in reasonable proportion to the participant population.

The staff should comprise, whenever possible, carefully selected persons who have themselves been drug-abusers, inmates or probationers, but who have proven success at overcoming both the causes and the effects of such backgrounds.

Professionally trained staff (M.S. vocational, clinical, rehabilitation counseling, M.S.W.), should be hired to work along

with and to assist the staff of non-professional Court Liaison counsellors. Such personnel--especially those trained and experienced in drug-abuse prevention and control--should be given the responsibility of evaluating the effectiveness of drug and alcohol abuse, and other specialized service agencies in their general and individual treatment of participants, and of assuring that the service needs of participants are identified accurately.

While the value of professional training and academic background cannot be discounted, such background alone does not assure effective staff-participant relations or effective rehabilitative results. All staff members, therefore, having direct participant contact should be selected primarily for qualities of warmth, empathy and genuine interest in helping participants. Studies of the research investigating therapeutic skills show that, "...[non-professional] counselor aides...chosen for their ability to relate, turned out [to have] provided significantly higher levels of empathy to their clients than did professional counselors, who were selected primarily on the basis of academic professional credentials. As evidence accumulates, it is becoming clear that the human interpersonal relationship is central to the therapeutic process."

"Basically, the personality of the therapist is more important than his techniques...and...it is not surprising that non-professionals in all studies to date appear to be as effective

or more effective than the average trained professional." [6]

For non-professional Court Liaisons, the experience of the PTI projects in New Jersey, of the pilot Manhattan Court Employment Project and Project Crossroads, as well as that of other subsequently initiated PTI programs, has shown that mere achievement of a bachelor's or professional degree is of little relevance to the ability to relate to participants. While achievement of an academic degree often indicates personal organization and task-completion orientation, the major focus should be on "counseling personality," and exceptionally qualified persons without bachelor's degrees may be employed in counseling positions.

5. Eligibility for PTI should be broad enough to include all defendants likely to put forth sufficient effort to effect necessary behavioral change, or otherwise show that future criminal behavior will not occur.

Rehabilitation and the special deterrence of individuals upon which PTI focuses, are in some instances not of primary importance. The general deterrence or vindication of social values which results from the imposition of ordinary criminal sanctions or the punishment of offenders, may provide sufficient justification for the exclusion of certain defendants from PTI programs and for requiring them to undergo ordinary prosecution.

Exclusion from PTI participation is also justified in instances in which the harm likely to result from ordinary prosecution and conviction is minimal.

[6] C. B. Truax and K. M. Mitchell, "Research on Certain Therapist Interpersonal Skills in Relation to Process and Outcome", Handbook of Psychotherapy and Behavior Change, 299 at 301, 337, 341 (1971).

The experience of the Hudson County PTI Project shows that defendants capable of rehabilitation or of showing otherwise that criminal behavior will not occur, include those charged with serious and non-serious offenses and those with prior convictions as well as "first-offenders."

While there is no question that a prior conviction record is useful to predict probable failure, lack of data makes such prediction imprecise at best. For this reason, guidelines used in the Hudson County project exclude only "habitual offenders" or persons whose prior records indicate a pattern of criminal behavior. Exclusion by type of charge, because there is little data, should not be done until and unless it can be shown that the type of charge does, with some reliability, predict an inability to accomplish deterrence from future criminal behavior. To be fair then, all defendants, irrespective generally of charge or record, should be afforded the opportunity of proving their motivation to succeed in the program.

Selection of defendants motivated to succeed--even when practically all have the opportunity of showing motivation--is a "creaming" process, a reference that has been used pejoratively to describe programs not worth the effort because few risks are taken. [7] PTI should, unashamedly, be designed to "cream": to put defendants who are likely to fail into participation in a pretrial program that cannot quickly change behavior or attitude

[7] S. Brakel, "Diversion from the Criminal Process: Informal Discretion, Motivation and Formalization", 48 Denver Law Journal 211, 236 (1971).

or predict law-abiding future conduct, is to waste precious criminal justice resources (spending both for pretrial participation and prosecution) and doubly disruptive to such defendants. It is the responsibility of standard correctional agencies to undertake appropriate reforms to assure that deterrence can be accomplished in such cases.

In certain circumstances social and law enforcement policy require that rehabilitation be considered a secondary priority. Thus the Hudson PTI Project has excluded in practice defendants charged with murder, or political crimes, or vicious assaults and armed robberies, because society's expectation that persons who commit such offenses not go unpunished requires a determination, through ordinary prosecution, of legal innocence or guilt.

The program's prohibition against enrollment of gambling offenses and drunk-driving charges has been based, with a similar disregard for rehabilitation, on the belief that imposition of criminal sanctions deters others from committing these offenses. (And in the case of drunk-drivers, accomplishes special deterrence and public safety by revocation of the right to operate a motor vehicle.)

Finally in matters in which the criminal process is, essentially, summary and in which a record of conviction usually does not result in social disapprobation or employment disability, the PTI alternative may be more expensive, disruptive and time consuming

than the ordinary course of prosecution and need not therefore be applied. All motor vehicle offenses should be included in this category along with the offenses usually resulting in fines.

6. Enrollment in PTI programs should be conditioned upon neither informal admission nor entry of a plea of guilt. Enrollment of defendants who maintain their innocence should be permitted.

While R. 3:28 requires neither informal admission nor entry of a plea of guilt for enrollment in New Jersey's PTI programs, other jurisdictions do make such requirements, and discussion continues about the detriments and benefits of admission of guilt.

First, by definition, pretrial intervention cannot involve entry of a guilty plea; the programs following the M.C.E.P./ Crossroads model, that generally use "PTI" to describe themselves, do not make such a requirement. Other programs that can be described as "diversionary" do, however, and it is to dispel confusion that this guideline prohibits formal pleas of guilt.[8]

[8] N.J.S.A. 24:21-27, "Conditional Discharge for Certain First Offenses", permits both suspension of proceedings before trial (§27(a)(1))--a PTI procedure, and suspension after plea or finding of guilt (§27(a)(2))--a diversionary, conditional-discharge procedure, for first drug-possession or use charges.

See also, State v. Roundtree, 119 N.J. Super 586 (1972), involving a policy to require guilty pleas before any suspension of proceedings.

An excellent, extensive discussion of the legal issues involved in the guilty-plea requirement is contained in Legal Issues and Characteristics of Pretrial Intervention Programs, National PTI Service Center, A.B.A. Commission on Correctional Facilities and Services, 44-52, (April 1974).

The position in favor of requiring informal admission is exemplified by the testimony of the representative of the U.S. Department of Justice at hearings on S. 798, "Community Supervision and Services Act" a federal pretrial intervention bill:

"...[A] fundamental objection...has not been corrected. S. 798 contains no provision requiring an accused to acknowledge his guilt or responsibility for the offense charged, a step which is generally regarded as a pre-requisite to successful rehabilitation. Indeed, it is difficult to conceive of the utility of a diversion program for the rehabilitation of offenders who stoutly maintain their innocence." [Emphasis added.][9]

The Citizen's Probation Authority (Genesee County Michigan), a pre-charge diversionary program, for similar reasons requires that, "...participants uniformly assume moral responsibility for their alleged offenses... [which is]...in no sense an admission of legal guilt."[10]

The requirement of informal admission of guilt was not ultimately included in S. 798, and it has generally come to common agreement that the PTI concept would be radically altered even by such a less-than-guilty-plea requirement into a form of post-conviction probation.

[9] Testimony of Mike McKeivitt, Assistant Attorney General, Hearing on S. 798 (1973), supra note 4, at 397.

[10] Id., at 497.

The view that acknowledgement of guilt is a prerequisite to rehabilitation merits comment. This position, for which no experience is cited, represents a penitential rather than a rehabilitative philosophy, and likely is based on an assumption that all defendants share majority values and can, without intervention, understand the motives behind anti-social behavior. Requiring acknowledgement of responsibility assumption or moral responsibility, or admission of guilt may, or may not be indicated as an early step in a counseling relationship, and often is contradicted. Acknowledgement, responsibility and understanding of offending behavior, in the context of a guilty defendant's life may more often be the goal of counseling rather than its means. Where admissions are required most defendants probably do so, but it is likely that in the majority of cases such an admission is no more than a payment of the price for a ticket of enrollment.

Many guilty defendants blame their behavior on society, family, friends or circumstance, and avoid recognition of the extent their own role and responsibility. While such an attitude continues it is unlikely that behavioral change can occur. These defendants generally are reactors and exert little control over their lives. An understanding and acceptance of responsibility for behavior, achieved through counseling, can and often does result in the beginnings of the defendant's ability to control his/her acts and is an indication that rehabilitation

may, in large measure, have been achieved.

Certainly there are cases in which an understanding admission of guilt is possible and productive early in a counseling or supervision relationship. In these cases, the defendant generally shares majority values, and so is shocked by being caught or merely by realizing that he/she committed the offense.

The PTI program is presented to defendants as an opportunity to earn a dismissal of charges for social reasons and reasons of present and future behavior, legal guilt or innocence notwithstanding. This stance produces a relation of trust between counselor and defendant which might never develop if an admission or acknowledgement of responsibility is required.

Within the context of therapeutic intervention, when and whether guilt should be admitted is a decision for counselors. Counselors should be free to handle each case individually according to their best judgement. If, for law enforcement or judicial policy reasons, a finding of guilt is deemed necessary, the defendant should not be diverted, but should be prosecuted in the ordinary course.

Within the counseling process the payment of restitution is in many instances of therapeutic value and such payments should, unless the Court orders otherwise, play a role in the individual programs devised for each participant.[11] While the satisfaction of the victims of crime through restitution benefits the defendant, care must be taken to avoid PTI's becoming a "collection-agency" and to use restitution for its therapeutic value.

[11] See, generally, Legal Issues, supra note 8, at 61. Only two PTI programs in the Nation report the use of restitution and there is therefore little development of procedures in this area. During the implementation of Statewide PTI, New Jersey programs will, for a testing period, require restitution in appropriate cases (i.e., except where the Court deems it inappropriate) to ascertain its viability for permanent inclusion within pretrial intervention.

Where neither admission of guilt nor acknowledgement of responsibility is required, the way is open for PTI enrollment even of defendants who are actually (as opposed to legally) innocent. To take any steps to bar the participation of such persons would be an unwarranted discrimination. Innocent defendants as well as those who are actually guilty face harm from the disruptive process of full prosecution and can, if convicted, be harmed by the affixing of a criminal label. To require innocent defendants to face the risk of trial, is to assume that innocent persons are routinely found innocent. The extent to which this is true in practice is not relevant; a defendant who intelligently weighs the risks between the relative sure-thing of PTI and the possibility of conviction at trial, and who chooses PTI, should be recognized as having a right to make either election.

7. Enrollment in a pretrial intervention program should be permitted at any time prior to the issuance of an indictment or accusation. If a criminal charge issues as a result of a Grand Jury investigation, when no complaint has previously been filed, then enrollment should be permitted at any time prior to listing on the trial calendar.

When, in the judgement of the prosecutor the needs of justice require that a matter be presented to the Grand Jury and an indictment secured without allowing the defendant sufficient time to make application and become enrolled in a PTI program, the defendant should be permitted enrollment within a reasonable time after indictment.

In order to accomplish the dual goals of relieving defendants from the anxiety of facing prosecution and applying appropriate rehabilitative measures at an early date, and to effect savings in criminal-justice resources, PTI programs should endeavor to remove qualified defendants from the ordinary course of prosecution as soon after the filing of a complaint as possible.

While defendants must be given a reasonable time to apply for enrollment thereafter, there must be a cut-off point after which enrollment should not be allowed if resources are to be conserved.

R. 3:28, as a program of pretrial intervention permits intervention at any time prior to trial or entry of a plea. In practice, however, programs seldom enroll defendants after in-

dictment. The Hudson County Prosecutor in consultation with the PTI program, set the cut-off point at the stage of indictment; the inclusion of indicted defendants is occasionally permitted when defendants can show that they were unaware of the program's existence, or had other good reason for making late application.

Cutting off enrollment at the point of indictment permits defendants sufficient time to explore with counsel the risk of conviction if they elect to proceed through the ordinary course of prosecution, so as to be able to make the most intelligent and voluntary choice to seek PTI enrollment. In making such a decision, defendants have an opportunity under New Jersey's liberal discovery rules to make an effective evaluation of risk, and an opportunity to challenge law-enforcement conduct through motions to suppress.

It is important that such opportunities for risk-evaluation and challenge be preserved; without such opportunities effective checks on improper law-enforcement activity will be in danger of being lost, and defendants will not be in a position to make effective choices.

In weighing such a defendant need against the interest in rehabilitation, effected because of the early application of treatment, and the interest in resource-conservation, the need for a reasonably early cut-off-point can be seen.

This issue was raised in two recent California Cases, Morse v. Municipal Court for San Jose Milpitas J.D., App., 112 Cal. Rptr. 409 (1974), appeal to the Supreme Court of California docketed, S.F. No. 23115, and People v. Reed, App. 112 Cal. Rptr. 493 (1974). In Morse, a defendant charged with marijuana-possession, was offered diversion under California Penal Code §1000 but elected to enter a plea of not guilty and move to suppress evidence.[12] Upon denial of the suppression motion, the defendant sought to enter the diversion program. Enrollment was denied. On appeal, the California Court of Appeal, First District, refused to require further proceedings in the municipal court that might have led to the defendant's enrollment, upholding (at 411) the trial court's determination that "the diversion program is designed to avoid utilization of the criminal justice system."

Reed involved a defendant qualified for PTI under Cal. Pen. Code §1000, but who was denied enrollment because the Probation Department knew of no program in its jurisdiction and believed that he could not be permitted to participate in a pro-

[12] Cal. Pen. Code §1000-1000.4 is similar to N.J.S.A. 24:21-27 (a)(1), providing for PTI for "first-offender" defendants charged with drug offenses.

gram in his county of residence. At trial the defendant was found guilty, but sentencing was suspended, and he was permitted diversion.

On appeal, the California Court of Appeal, Second District, affirmed, concluding (at 498),

"...that the overriding purpose [of the statute]...is to effect rehabilitation. The relieving of crowded court calendars is a collateral benefit which tends to be realized as a by-product of the process."

Both Morse and Reed stem from the failure of the California legislature to state, clearly, the purposes for which Cal. Pen. Code §1000 was enacted. In attempting to resolve the cut-off-point question, Morse focuses only upon problems of judicial administration and would prevent, thereby, challenges that are necessary to the health of the adversary criminal process and to the protection of defendants from unlawful official action. Reed sets aside any possibility of savings to be derived from pretrial intervention.

Recognizing that PTI's purposes should be stated, this guideline and guideline 1, propose that both rehabilitation and preservation of the adversary system, and conservation of criminal justice resources should have equal priority in PTI development and operation.

8. Defendants should not be required to participate in a pretrial intervention program under threat of return to ordinary

prosecution for a period longer than one year.

R. 3:28 limits postponement to periods of 12-months for CDS-abusers and 6-months for defendants not dependent upon controlled dangerous substances. But the length-of-term issue is not yet settled for many jurisdictions and programs.

Two problems are involved in the PTI Term: (1) whether rehabilitation must be fully accomplished as a pre-condition of dismissal, and if so the length of time required to accomplish rehabilitation; and (2) the difficulty faced by the prosecution in going-forward with reinstatement of a matter that has become stale because of lengthy PTI postponements. In addition, the Courts face potential administrative-backlog problems when matters are postponed for long periods.

Both the National Advisory Commission on Criminal Justice Standards and Goals and the American Bar Association recommend a maximum term of one year. [13] Such a term permits in many instances the accomplishment of sufficient change or the showing of other evidence to warrant dismissal.

The experience in Hudson County has shown that in relatively short periods (three or six months), reasonable predictions can be made for many participants--based especially on evidence of motivation--that rehabilitation-in-process is likely to continue until completion, and upon which recommendations that charges be

[13] Courts, at 39; Hearing on S. 798 (1973), supra note 4, at 379. The one year limit is also recommended by the American Law Institute. Model Code of Pre-Arrestment Procedure, Tentative Draft #5, §320. 5, at 21 (1972).

dismissed can be based. To expect that complete rehabilitation can often be accomplished in a relatively short period would be to expect an impossibility and, recognizing that PTI participants are legally innocent requires a reasonably rapid end to control over their lives.

After a period of one year it is still, generally, possible to pick up the thread of prosecution and proceed in the ordinary course. And such a period, while creative of backlogs, does not substantially hinder the clearing of judicial calendars.

9. Effective operation of pretrial intervention programs requires that a relationship of confidence and trust be initiated and maintained between participating defendants and staff. No information, therefore, obtained as a result of a defendants' application to or participation in a pretrial intervention program should be used, in any subsequent proceeding against his or her advantage.

If disclosures made by defendants in seeking enrollment or during participation may be used against them, simple fairness requires that they have notice of such a possibility. But, of course, any possibility of a relation of confidence and trust would be destroyed by the recitation of warnings at a defendant's first contact with the program.

That a relationship based on trust is necessary for the

rehabilitation/attitude change process to operate cannot seriously be doubted, and the policy reflected in the inadmissibility and defendant-protection provisions of R. 3:28 and R. 1:38 recognizes such a need. The priority of the maintenance of the counselor-participant relation over the need for disclosures resulting from this relationship is the same of course, as the priority for the maintenance of, for example, the confidentiality of lawyer-client, physician/psychologist-patient communications.

The need for confidentiality in the pretrial intervention setting has been well recognized. At the June, 1974 National Conference on Pretrial Release and Diversion, sponsored by the National Association of Pretrial Services Agencies and the National Center for State Courts, the conferees, representatives of programs around the nation, adopted a resolution calling for confidentiality[14].

[14] Pretrial Diversion and Confidentiality

WHEREAS: It is the purpose of programs of pretrial diversion to afford to participating defendants a second-chance opportunity to avoid the full impact of prosecution through defendants' self-help efforts, and;

WHEREAS: In order to facilitate such efforts, and to induce defendants to participate in programs of pretrial diversion in as voluntary a manner as possible, it is necessary to establish a relation of trust and confidence between defendants and the program, and;

WHEREAS: The results of such self-help efforts, facilitated by such relations of trust and confidence, benefit society through reduction of recidivism, therefore it is

[14] Continued.

RESOLVED: That each jurisdiction in which programs of pretrial diversion operate, should by Court Rule, statute, or written agreement with local or state judicial, prosecutorial, and defense agencies establish that no statements, records, reports, or disclosures made by defendants during participation in programs of pretrial diversion, or in application for such participation, should be used against the advantage of the defendants, during any subsequent hearing, trial, sentencing or other proceeding, for any purpose, should such defendant be refused application to said program or terminated from the program of pretrial diversion and returned to prosecution in the ordinary course; and it is further

RESOLVED: That the effective operation of a second-chance opportunity requires that, in the event of termination and return to ordinary prosecution, defendants should be treated as if no such participation had ever taken place, and should be prosecuted, tried, and if convicted, sentenced as defendants who have not participated in such programs. In no instance should information be released without the defendant's permission after consultation with counsel.

S. 798, "Community Supervision and Services Act" provides for confidentiality [15]. The Pennsylvania Rules of Criminal Procedure, Accelerated Rehabilitative Disposition [16], among others, [17] provides that disclosures may not be used against defendants.

[15] (b) In any case in which an individual charged with an offense is diverted to a program pursuant to this Act and such diversion is terminated and prosecution resumed in connection with such offense, no statements made or other information given by the defendant in connection with determination of his eligibility for such program, no statements made by the defendant while participating in such program, no information contained in any such report made with respect thereto, and no statement or other information concerning his participation in such program shall be admissible on the issue of guilt of such individual in any judicial proceeding involving such offense.

The essential PTI format, then, is to give participating defendants a true second chance to accomplish rehabilitation or to show otherwise that criminal conduct is not likely to occur in the future; and, if the defendant fails in this effort, to return him or her to that stage of ordinary prosecution at which proceedings had been stopped under R. 3:28; and, to the extent possible, enable prosecution to take place as if such defendants had not participated in the PTI program so that defendants will not be prejudiced by an unsuccessful attempt to earn a R. 3:28 dismissal.

10. The decisions made by the designated judges, prosecutors and program directors in granting or denying defendants' applications for PTI enrollment, in recommending and ordering termination from the program or dismissal of charges, should in all cases be reduced to writing. Such decisions should be

[16] RULE 179, HEARING, MANNER OF PROCEEDING

(a) When the defendant, with the advice and agreement of his attorney, indicates his understanding of these proceedings, requests that he be accepted into the program, and agrees to the terms set forth in Rule 178, the stenographer shall close the record.

(b) The judge thereupon shall hear the facts of the case as presented by the attorney for the Commonwealth, and such information as the defendant or his attorney may present, and shall hear from any victim present; but no statement presented by the defendant shall be used against him for any purpose in any criminal or civil proceeding.

[17] See also §208, Uniform Drug Dependence Treatment and Rehabilitation Act, National Conference of Commissioners on Uniform State laws, July - August 1973. (Confidentiality, inadmissibility provision); Legal Issues, supra note 18, at 63, 67 and, generally, Pretrial Criminal Justice Intervention Techniques and Action Programs, National PTI Service Center, A.B.A. Commission on Correctional Facilities and Services 56 - 104 (May 1974), (Sample rules and legislation).

made with regard for fairness and equal application of standards for decision-making. In order to ensure that decisions are made in conformity to such standards, avenues of review of such decisions should in appropriate cases, be made available to aggrieved defendants or participants, and defendants and participants should be represented at all stages of the PTI process.

When pretrial intervention becomes an option available for application to all New Jersey defendants, the danger of denial of equal protection due to the lack of a program in a particular county will no longer present a problem. Without, however, the adoption of standards for decision-making, disparities, throughout a Statewide PTI system, in enrollments, termination and dismissals under R. 3:28, will remain a problem. Indeed, there is need for the adoption of standards within single-program jurisdictions in order to ensure that defendants are treated equally.

The problem of standards for enrollment of defendants has been solved in some areas by adopting the objective criteria used by the pilot programs: only defendants meeting age, charge, prior record, employment status criteria are eligible for enrollment.

Such objective criteria, however are based upon assumptions that the defined class of defendants are most susceptible

to or in need of rehabilitative/change efforts. Other programs, in an evolutionary process, have moved away from such objective criteria and now enroll many other defendants who also appear capable of rehabilitation or change.

New Jersey's R. 3:28 contains no criteria limiting participation to any class of defendants, and although New Jersey programs use guidelines for exclusion, the guidelines show only those cases that are ordinarily excluded. Enrollment then, of the " 'offender' rather than the offense" is the rule in New Jersey and appears to be the trend of development among programs nationally. [18]

[18] Statement of Richard J. Hughes, Chairman, American Bar Association on Correctional Facilities and Services (now Chief Justice, Supreme Court of New Jersey), Hearing on S. 789 (1973), supra note 9, at 382.

"...diversion of the "offender" rather than the offense charged emphasizes individual needs as the determining factor in participant eligibility. This change has taken hold in several of the projects. It is evidence by increased intake of defendants charged with felony crimes and multiple offenses in the Baltimore, Hudson County, Minneapolis and Boston demonstrations. To accommodate the new class of eligibles, initial admission guidelines have been relaxed. Having won the confidence of local justice officials, the new flexibility has gained acceptance by courts and prosecutors. It attests to the credibility achieved by project administrators in their diversion work. It is good to see that S. 798 does not contain rigid eligibility criteria that would prevent taking advantage of this experience as programs progress."

Standards for post-enrollment decision making have not been set down by any program. The need for equality of decision making when participants are involuntarily terminated or when charges are dismissed is equally crucial to effective, fair program operation; such decisions should be guided by standards against which fairness may be measured.

The Standards recommended by the National Advisory Commission on Criminal Justice Standards and Goals' Task Forces on Corrections[19] and Courts[20] state some basic factors on which enrollment decisions should be based. Such a listing of factors is a good beginning; these guides should be adapted to New Jersey's needs and developed in greater detail.

[19] Corrections, Standard 3.1, Use of Diversion, at 95, 100.

3. The factors to be used in determining whether an offender, following arrest but prior to adjudication, should be selected for diversion to a noncriminal program, should include the following:

a. Prosecution toward conviction may cause undue harm to the defendant or exacerbate the social problems that led to his criminal acts.

b. Services to meet the offender's needs and problems are unavailable within the criminal justice system or may be provided more effectively outside the system.

c. The arrest has already served as a desired deterrent.

d. The needs and interests of the victim and society are served better by diversion than by official processing.

e. The offender does not present a substantial danger to others.

f. The offender voluntarily accepts the offered alternative to further justice system processing.

To the extent possible, study is needed to help define the totality of circumstances which lead to the conclusion that a defendant will be harmed by ordinary prosecution and conviction, or that his or her social problem will be exacerbated by the

[19] Cont'd.

g. The facts of the case sufficiently establish that the defendant committed the alleged act.

[20] Courts, Standard 2.1, General Criteria for Diversion, at 32

In appropriate cases offenders should be diverted into non-criminal programs before formal trial or conviction.

Such diversion is appropriate where there is substantial likelihood that conviction could be obtained and the benefits to society from channeling an offender into an available noncriminal diversion program outweigh any harm done to society by abandoning criminal prosecution. Among the factors that should be considered favorable to diversion are: (1) the relative youth of the offender; (2) the willingness of the victim to have no conviction sought; (3) any likelihood that the offender suffers from a mental illness or psychological abnormality which was related to his crime and for which treatment is available; and (4) any likelihood that the crime was significantly related to any other condition or situation such as unemployment or family problems that would be subject to change by participation in a diversion program.

Among the factors that should be considered unfavorable to diversion are: (1) any history of the use of physical violence toward others; (2) involvement with syndicated crime; (3) a history of antisocial conduct indicating that such conduct has become an ingrained part of the defendant's lifestyle and would be particularly resistant to change; and (4) any special need to pursue criminal prosecution as a means of discouraging others from committing similar offenses.

Another factor to be considered in evaluating the cost to society is that the limited contact a diverted offender has with the criminal justice system may have the desired deterrent effect.

ordinary criminal process, or that an arrest, in and of itself, serves as a deterrent, or that the needs and interest of society are better served by the use of PTI.

The eventual analysis of recommendations and decisions can reveal the type of decisions made in the past; and the type of defendant who can proceed successfully to dismissal without future criminal behavior can be shown through analysis of participant characteristics. Such analyses will serve as guides for decision-making. But until such analyses can be made from a substantial body of information, stated guidelines, based on available data and based on newly-developed assumptions about the ability to successfully proceed through PTI and avoid criminal behavior, should be developed.

Especially, factors entering into prosecutorial decisions to consent to or deny enrollment under R. 3:28 should be the subject of stated guidelines.[21] Based on the need for ef-

[21] The American Bar Association Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function, Approved Draft, 1971, recommends that,

"Each prosecutor's office should develop a statement of (i) general policies to guide the exercise of prosecutorial discretion and (ii) procedures of the office. The objectives of these policies as to discretion and procedures should be to achieve a fair, efficient and effective enforcement of the criminal law.

In the interest of continuity and clarity, such statement of policies and procedures should be maintained in a handbook of internal policies of the office. (Standard 2.5(d))."

Such a handbook should include a section relating to PTI consent which should be made available to defense counsel.

fective administration of the prosecutors' function, guidelines need to be developed by prosecutors with regard, for example, to post-indictment enrollments, to enrollment of co-defendants, to the down-grading of charges prior to enrollment, and to enrollment of defendants against whom cases are weak, to conditioning consent upon the willingness of a defendant to testify against a non-participating co-defendant.

Guidelines should be developed with regard to factors to be recognized in recommending termination: precise definition of "failure to cooperate", the reason most commonly cited nationally; kind and type of rearrest for which termination should be automatic; whether participation should be reinstated upon dismissal or acquittal after rearrest. More precise standards for dismissal beyond cooperation and "program completion" need development.

In addition to a system of classification of participants, guidelines need development so that programs and restrictions required of defendants are fairly and equally applied.

The promulgation of such guidelines are, at this point, matters of policy based on limited experience and guess-work. The working-out of long-term policy will have, of necessity, to be based on evaluation of case-by-case decision making.

Thus reasons for decisions at all points should be set forth in writing. [22]

The trend in New Jersey is certainly toward such openness of decision-making. The Parole Board is required to give written reasons why parole is denied. Monks v. New Jersey Parole Board 58 N.J. 238 (1971). Presentence investigation and diagnostic center reports must be made available to defendants prior to sentencing. R. 3:21-2 and 3:21-3. The recent amendment to R. 3:21-2 and 3:21-4 require judges to state reasons for sentences. No less openness is required in the PTI setting: R. 3:28(c)(3) requires that termination recommendations

[22] The National Advisory Commission, Corrections, Standard 3.1, a.c, recommends that each program should have a set of guidelines that "specify: ...A requirement that the official making the diversion decision state in writing the basis for his determination denying or approving diversion in the case of each offender." p. 95. The commentary following, at p. 96, reveals a focus on administrative review and tends to light on the initial decision to enroll. While review of any decision is implied, no specific reference to such later decisions is made:

"If diversion programs are to perform as they are intended, then the decisions of those referring to these programs must be subject to review and evaluation..."

"The first step in establishing accountability is to disclose the basis of decisions. Too often the rationale for discretionary decisions is undisclosed and unstated. Simply requiring written statements for each decision forces the process to become more open while it also per-
mits administrative or judicial review. Review can be
through the courts, the legislature or whatever source
seems most appropriate in seeing that goals have been
achieved and standards complied with." (Emphasis added.) p.96

be made available to participants before an order issues returning him or her to ordinary prosecution.

The right to be heard on issues concerning revocation of parole and probation point the way for procedures involving involuntary termination from PTI programs and return to ordinary prosecution. See Morrissey v. Brewer 408 U.S. 471 (1972), (parole); Gagnon v. Scarpelli 411 U.S. 778 (1973), (probation). While termination requires only that a defendant proceed through the ordinary course of prosecution and does not involve potential loss of liberty, careful attention to the dictates of due process inevitably results in the conclusion that since a substantial loss of opportunity to achieve dismissal without plea or trial is in jeopardy, a hearing on the issue of termination should be afforded the participant.[23]

[23] Such a loss is not less in substance than the potential loss of public-assistance benefits. See Goldberg v. Kelly, 397 U.S. 254, 262, 263, "The extent to which procedural due-process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss", Joint Anti-Fascist Committee v. McGrath, 341 U.S. 123, 168 (1951)."

See also, Legal Issues, Supra, Note 8, at p. 55, 56. "If declared unsuccessful [recommended for termination], however, (s)he is faced with the risk of conviction, an unfavorable presentence report and possible loss of liberty. The defendant therefore has a substantial interest which would be adversely affected by termination."

R. 3:28 affords defendants such a right to be heard before they are returned to the ordinary course of prosecution.

In Hudson County the percentage of defendants interviewed, who do not continue to enrollment under R. 3:28, amounts to some 50%. Of these, approximately 20% are involuntary rejections by either the program director, the prosecutor or the designated judges, and each, potentially, may seek to challenge the denial of entry. Routine hearings on rejection recommendation decisions could result in extra-ordinary delays in the ordinary criminal process which should not be encouraged. But such challenges may proceed under R. 2:56 on leave to appeal. Such a procedure permits meritorious challenges but should discourage any possibility of claims of arbitrary rejection that would result in unreasonable delays and thereby defeat the goal of saving criminal-justice resources through PTI. [23a]

[23a] In order to ensure evaluation of the uniformity of decision-making and to collect information for the process of development and refinement of standards, reduction of decisions to writing is necessary (See Note 22, supra.)

Since a great many appeals from initial decisions not to permit enrollment would tend to burden the criminal justice process, no special procedure is recommended to facilitate such appeals; and they are not encouraged.

The National Advisory Commission takes a similar position in recommending that "(t)he decision of the prosecutor not to divert should not be subject to judicial review." Courts, p.40, for prosecutor-diversion systems.

Giving reasons for rejection decisions will facilitate administrative, in-house review and evaluation of the PTI decision-making process; such written statements need not be made available to defendants. Consistent with the National Advisory Commission's position, it is considered that a combination of in-house evaluation of decisions; considered judgement of program personnel, prosecutors and judges; and the rare challenges permitted on leave to appeal will suffice adequately to protect defendants' rights to fair treatment.

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PART II

THE PRETRIAL INTERVENTION PROGRAM

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A. COURT RULES AND STATUTES GOVERNING AND APPLICABLE TO PRETRIAL INTERVENTION

1. Rules and Statutes

The following Court Rules and Statutes, the texts of which follow, infra at pp.59 to 63 , govern the operation of pretrial intervention:

- (a) New Jersey Court Rule 3:28, "Pretrial Intervention Programs".
- (b) New Jersey Court Rule 3:4-2, "Procedure After Filing of Complaint".
- (c) New Jersey Court Rule 1:38, "Confidentiality of Court Records".
- (d) N.J.S.A. 2A:85-15 to 23, "Petition to Expunge or Seal Record of Arrest after Acquittal, Discharge or Dismissal".
- (e) N.J.S.A. 24:21-27, "Conditional Discharge for Certain Offenses; Expunging of Records."
- (f) N.J.S.A. 24:21-28, "Expungement of Records of Young Offenders Placed on Probation".

3:28 [Defendant's Diversionary] Pretrial Intervention Programs

(a) In counties where a [defendant's employment or counseling program or other diversionary program including a drug or alcoholic detoxification] pretrial intervention program is approved by the Supreme Court for operation under this rule, the Assignment Judge shall designate a judge or judges to act on all matters pertaining to the program, with the exception, however, that the Assignment Judge shall him or herself act on all such matters involving treason, murder, kidnapping, manslaughter, sodomy, rape, armed robbery, or sale or dispensing of narcotic drugs by persons not drug-dependent.

(b) Where a defendant charged with a penal or criminal offense has been accepted by the program, the designated judge may, on the recommendation of the [program director] Trial Court Administrator for the county, the Chief Probation Officer for the county, or such other person approved by the Supreme Court as program director, and with the consent of the prosecuting attorney and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed 3 months.

(c) At the conclusion of such 3-month period, the designated judge shall make one of the following dispositions:

(1) On recommendation of the program director and with the consent of the prosecuting attorney and the defendant, dismiss the complaint, indictment or accusation against the defendant, such a dismissal to be designated "matter adjusted—complaint (or indictment or accusation) dismissed"; or

(2) On recommendation of the program director and with the consent of the prosecuting attorney and the defendant, further postpone all proceedings against such defendant on such charges for an additional period not to exceed 3 months; or

(3) On the written recommendation of the program director or the prosecuting attorney or on the court's own motion [O] order the prosecution of the defendant to proceed in the ordinary course. Where a recommendation for such an order is made by the program director or the prosecuting attorney, such person shall, before submitting such recommendation to the designated judge, provide the defendant or his or her attorney with a copy of such recommendation, shall advise the defendant of his or her opportunity to be heard thereon and the designated judge shall afford the defendant such a hearing.

(4) During the conduct of hearings subsequent to an order returning the defendant to prosecution in the ordinary course, no program records, investigative reports, reports made for a court or prosecuting attorney, or statements made by the defendant to program staff shall be admissible in evidence against such defendant. No such hearing with respect to such defendant shall be conducted by the designated judge who issued the order returning the defendant to prosecution in the ordinary course.

(d) Where proceedings have been postponed against a defendant for a second period of 3 months as provided in paragraph (c)(2), at the conclusion of such additional 3-month period [, provided that, in drug detoxification cases the judge may wait such further period as he deems necessary to enable him to make an informed decision,] the designated judge may not again postpone proceedings but shall make a disposition in accordance with paragraph (c)(1) or (3), provided however that in cases involving defendants who are dependent upon a controlled dangerous substance the designated judge may, upon recommendation of the program director and with the consent of the prosecuting attorney and the defendant, grant such further postponements as he or she deems necessary to make an informed decision, but the aggregate of postponement periods under this rule shall in no case exceed one year.

Note: Adopted October 7, 1970 effective immediately. Paragraphs (a) (b) (c) (d) amended June 29, 1973 to be effective September 10, 1973; caption and paragraphs (a) (b) (c) (d) amended April 1, 1974 effective immediately.

Dated: April 1, 1974

RULE 1:38. CONFIDENTIALITY OF COURT RECORDS

All records which are required by statute or rule to be made, maintained or kept on file by any court, office or official within the judicial branch of government shall be deemed a public record and shall be available for public inspection and copying, as provided by law, except:

- (a) (no change)
- (b) (no change)
- (c) (no change)
- (d) (no change)
- (e) (no change)

(f) Records of programs approved for operation under R. 3:28 and reports made for a court or prosecuting attorney pertaining to persons enrolled in or under investigation for enrollment in such programs.

Note: Source—R.R. 1:29-2 (second and third sentences), 1:35. Paragraph (f) adopted April 1, 1974 effective immediately.

3:4-2. Procedure After Filing of Complaint

At the defendant's first appearance before the court following the filing of a complaint, the judge thereof shall inform the defendant of the charge made against him and if a copy of the complaint has not previously been furnished to the defendant, shall furnish him with a copy thereof. The judge shall also inform the defendant of his right not to make a statement as to the charge against him and that any statement made by him may be used against him. In counties where a pretrial intervention program is approved by the Supreme Court for operation under R. 3:28, the judge shall also inform the defendant of the existence of such program, the name of the program director and the location at which application may be made for enrollment in such program. The judge shall also inform the defendant of his right to retain counsel or, if indigent and constitutionally or otherwise entitled by law to counsel, of his right to have counsel furnished without cost. If the defendant asserts he is indigent, unless he affirmatively and with understanding of his waiver of his right states his intention to proceed without counsel, the judge shall have him complete the appropriate form as prescribed by the Administrative Director of the Courts, if such form has not yet been completed. If the complaint charges the defendant with an indictable offense, the court shall refer him to the Office of the Public Defender. If the complaint charges the defendant with a nonindictable offense and the court is satisfied that he is indigent and that he is constitutionally or otherwise entitled by law to have counsel furnished, the court shall assign counsel to represent him in accordance with R. 3:27-2. The court shall allow the defendant a reasonable time and opportunity to consult counsel before proceeding further. If the complaint charges the defendant with an indictable offense, the court shall inform him of his right to have a hearing as to probable cause and of his right to indictment by the grand jury and trial by jury, and if the offense charged may be tried by the court upon waiver of indictment and trial by jury, the court shall so inform the defendant. All such waivers shall be in writing, signed by the defendant, and shall be filed and entered on the docket. If the complaint charges an indictable offense which cannot be tried by the court on waiver, it shall not ask for or accept a plea to the offense. The court shall admit the defendant to bail as provided in R. 3:26 and R. 7:5.

Note: Source—R.R. 3:2-3(b), 8:4-2 (second sentence). Amended July 7, 1971 effective September 13, 1971; amended April 1, 1974 effective immediately.

2A:85-15 CIVIL AND CRIMINAL JUSTICE

2A:85-15. Petition to expunge or seal record of arrest after acquittal, discharge or dismissal

Any person who has been arrested for a violation of the disorderly persons law, a misdemeanor or a high misdemeanor under the laws of New Jersey and against whom proceedings were dismissed, or who was discharged without a conviction, or who was acquitted, may at any time following the dismissal of proceedings, or the discharge without a conviction, or the acquittal, present a duly verified petition to the court in which the judgment of acquittal, discharge or dismissal was entered, or, if there were no court proceedings, to the court in whose jurisdiction the arrest occurred, setting forth all the facts in the matter and praying for the relief provided by this act.

L.1973, c. 191, § 1, eff. June 28, 1973.

Title of Act:

An Act concerning expunging and sealing of records of arrest under certain circumstances. L.1973, c. 191.

Library References

Records §§ 14, 22.
C.J.S. Records §§ 35 et seq., 73, 75, 76.

2A:85-16. Hearing; time; service of order

Upon the filing of a petition pursuant to this act the court may by order fix a time, not less than 15 nor more than 45 days thereafter, for the hearing of the matter. A copy of this order shall be served pursuant to the Rules of Court upon the Attorney General, upon the prosecutor of the county wherein the court is located, upon the chief of police or other executive head of the police department of the municipality in which the arrest occurred, and upon the chief law enforcement officer of any other law enforcement agency of this State which participated in the arrest, within 5 days from the date of the order.

L.1973, c. 191, § 2, eff. June 28, 1973.

2A:85-17. Order to expunge records; grounds; failure to object by law enforcement agencies; disposition of records

a. At the time appointed for the hearing, if there is no objection from those law enforcement agencies notified of the hearing, and no reason appears to the contrary, the court may grant an order directing the clerk of the court and the parties upon whom notice was served to expunge from their records all evidence of said arrest including evidence of detention related thereto, and specifying those records to be expunged.

b. If an order expunging the records is granted by the court, all the records specified in the order shall be removed from the files and placed in the control of a person who shall be designated to retain control over all expunged records and who shall ensure that the records or the information contained therein is not released for any reason. In response to requests for information or records on the person who was arrested, the law enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

L.1973, c. 191, § 3, eff. June 28, 1973.

2A:85-18. Objection by law enforcement agency; sealing of records; order; grounds; disposition of records and requests for information

a. If an objection is made by any law enforcement agency upon which notice was served, the court shall determine whether there are grounds for denial. If the court determines there are no grounds for denial it may grant an order directing the clerk of the court and the parties upon whom notice was served to seal their records of said arrest, including evidence of detention related thereto, and specifying those records to be sealed.

b. If an order sealing the records of arrest is granted by the court, any law enforcement officers and departments who receive requests for information or records on the person against whom the arrest was entered shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. Such sealed records and information may be maintained by any law enforcement agency originally

possessing such records and information, but such information shall be utilized only within the department and sufficient precautions shall be taken to insure that the sealed records and information are not revealed to anyone outside the law enforcement agency which continues to maintain the records or information.

Inspection of the files and records, or release of the information in the files and records, which are the subject of the sealing order, to anyone other than a person within the law enforcement agency in which the arrest records were sealed, may be permitted only by the court upon motion for good cause shown, and any such motion and any order granted pursuant to such motion shall specify the person or persons to whom the records and information are to be shown.

L.1973, c. 191, § 4, eff. June 28, 1973.

2A:85-19. Denial of order to expunge or seal records

If the court determines there are grounds for denial, the court shall not grant an order to expunge or seal the records of the arrest or evidence of detention related thereto.

L.1973, c. 191, § 5, eff. June 28, 1973.

2A:85-20. Grounds for denial

For the purpose of this act "grounds for denial" shall exist:

a. When the usefulness of the information of the arrest and the proceedings to law enforcement authorities and to anyone who might obtain such information outweighs the desirability of having a person, who has been acquitted or against whom charges have been dismissed or discharged, freed from any disabilities attached to the arrest which preceded that acquittal, dismissal or discharge.

b. When dismissal resulted from a plea bargaining agreement or when acquittal, discharge or dismissal occurred after exclusion of highly probative evidence upon invocation of an exclusionary rule not directed to the truth of the evidence excluded.

L.1973, c. 191, § 6, eff. June 28, 1973.

2A:85-21. Effect of order expunging or sealing record of arrest

If an order expunging or sealing a record of arrest is granted, the arrest and any proceedings related thereto shall be deemed not to have occurred and the petitioner may answer accordingly any question relating to their occurrence.

L.1973, c. 191, § 7, eff. June 28, 1973.

2A:85-22. Retroactive application; Inapplicability of act to reports under Controlled Dangerous Substances Registry Act

This act shall apply to arrests which occurred prior to and which occur after enactment of this act. No court order pursuant to this act shall prohibit the filing of reports required under the "Controlled Dangerous Substances Registry Act of 1970," c. 227 (C. 26:2G-17 et seq.).

L.1973, c. 191, § 8, eff. June 28, 1973.

2A:85-23. Fees

For services performed under this act the same fees shall be taxed as are usual for like services in other matters, which fees shall be payable by the petitioner.

L.1973, c. 191, § 9, eff. June 28, 1973.

24:21-27 Conditional discharge for certain first offenses; expunging of records. Whenever any person who has not previously been convicted of any offense under the provisions of this act or, subsequent to the effective date of this act, under any law of the United States, this State or of any other state, relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, is charged with or convicted of any offense under subsections 20 a. (1), (2) and (3), and b., the court, upon notice to the prosecutor and subject to subsection c., may on motion of the defendant or the court:

(1) Suspend further proceedings and with the consent of such person after reference to the Controlled Dangerous Substance Registry, as established and defined in the Controlled Dangerous Substances Registry Act of 1970, place him under supervisory treatment upon such reasonable terms and conditions as it may require; or

(2) After plea of guilt or finding of guilt, and without entering a judgment of conviction, and with the consent of such person after proper reference to the Controlled Dangerous Substances Registry, as established and defined in the Controlled Dangerous Substances Registry Act of 1970, place him on supervisory treatment upon such reasonable terms and conditions as it may require, or as otherwise provided by law.

b. In no event shall the court require as a term or condition of supervisory treatment under this section, referral to any residential treatment facility for a period exceeding the maximum period of confinement prescribed by law for the offense for which the individual has been charged or convicted, nor shall any term of supervisory treatment imposed under this subsection exceed a period of 3 years. Upon violation of a term or condition of supervisory treatment the court may enter a judgment of conviction and proceed as otherwise provided, or where there has been no plea of guilt or finding of guilt, resume proceedings. Upon fulfillment of the terms and conditions of supervisory treatment the court shall terminate the supervisory treatment and dismiss the proceedings against him. Termination of supervisory treatment and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualifications or disabilities, if any, imposed by law upon conviction of a crime or disorderly persons offense but shall be reported by the clerk of the court pursuant to the Controlled Dangerous Substances Registry Act. Termination of supervisory treatment and dismissal under this section may occur only once with respect to any person. Imposition of supervisory treatment under this section shall not be deemed a conviction for the purposes of determining whether a second or subsequent offense has occurred under section 29 of this act or any law of this State.

c. Proceedings under this section shall not be available to any defendant unless the court in its discretion concludes that:

(1) The defendant's continued presence in the community, or in a civil treatment center or program, will not pose a danger to the community; or

(2) That the terms and conditions of supervisory treatment will be adequate to protect the public and will benefit the defendant by serving to correct any dependence on or use of controlled substances which he may manifest. L. 1970, c.226, § 27; amended, L. 1971, c.3, § 11.

24:21-28 Expunging of records of young offenders placed on probation. After a period of not less than 6 months, which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this act, such person, who at the time of the offense was 21 years of age or younger, may apply to the court for an order to expunge from all official records, except from those records maintained under the Controlled Dangerous Substances Registry, as established and defined in the Controlled Dangerous Substances Registry Act of 1970, all recordations of his arrest, trial and conviction pursuant to this section. If the court determines, after a hearing and after reference to the Controlled Dangerous Substances Registry, that such person during the period of such probation and during the period of time prior to his application to the court under this section has not been guilty of any serious or repeated violation of the conditions of such probation, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied prior to such arrest and trial. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest or trial in response to any inquiry made of him for any purpose. L. 1970, c. 226, § 28.

2. Recommended Amendments to R. 3:28 and R. 3:4-2

The history of the development of R. 3:28 to its present form is given at page 9 supra, and the text, in present form, at p. 59 supra. Because of the anticipated implementation of pretrial intervention throughout the State, it is recommended that the rule be amended to take the following form:

(i) 3:28 Pretrial Intervention Programs

(a) [In counties where a pretrial intervention program is approved by the Supreme Court for operation under this rule,] In accordance with the program of pretrial intervention approved by the Supreme Court for operation under this rule, the Assignment Judge in each County or Vicinage shall designate a judge or judges to act on all matters pertaining to the program, with the exception, however, that the Assignment Judge shall him or herself act on all such matters involving treason, murder, kidnapping, manslaughter, sodomy, rape, armed robbery, or sale or dispensing of narcotic drugs by persons not drug-dependent.

(b) Where a defendant charged with a penal or criminal offense has been accepted by the program, the designated judge may, on the recommendation of the [Trial Court Administrator for the county, the Chief Probation Officer for the county, or such other person approved by the Supreme Court as program director,] Pretrial Services Coordinator for the County or Vicinage and with the consent of the prosecuting attorney and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed 3 months.

[(c) At the conclusion of such 3-month period, the designated judge shall make one of the following dispositions:

(1) On recommendation of the program director and with the consent of the prosecuting attorney and the defendant, dismiss the complaint, indictment or accusation against the defendant, such a dismissal to be designated "matter adjusted-complaint (or indictment or accusation) dismissed"; or

(2) On recommendation of the program director and with the consent of the prosecuting attorney and the defendant, further postpone all proceedings against such defendant on such charges for an additional period not to exceed 3 months; or

(3) On the written recommendation of the program director or the prosecuting attorney or on the court's own motion order the prosecution of the defendant to proceed in the ordinary course. Where a recommendation for such an order is made by the program director or the prosecuting attorney, such person shall, before submitting such recommendation to the designated judge, provide the defendant or his or her attorney with a copy of such recommendation, shall advise the defendant of his or her opportunity to be heard thereon and the designated judge shall afford the defendant such a hearing.]

(c) At the conclusion of such period of postponement, the designated judge may, on recommendation of the Pretrial Services Coordinator with the consent of the defendant and upon notice to the prosecuting attorney, further postpone all proceedings against such defendant on such charges for an additional period not to exceed three months.

(d) When proceedings have been postponed in accordance with paragraphs (b), (c), or (e), at any time during such periods, the designated judge may:

(1) On recommendation of the Pretrial Services Coordinator with the consent of the defendant and upon notice to the prosecuting attorney, dismiss the complaint, indictment or accusation against the defendant, such dismissal to be designated "matter adjusted-complaint (or indictment or accusation) dismissed" or;

(2) On recommendation of the Pretrial Services Coordinator, the prosecuting attorney, or on the court's own motion order the prosecution of the defendant to proceed in the ordinary course. Where a recommendation for such an order is made by the Pretrial Services Coordinator or the prosecuting attorney, such person shall, before submitting such recommendation to the designated judge, provide the defendant or his or her attorney with a copy of such recommendation, shall advise the defendant of her or his opportunity to be heard thereon and the designated judge shall afford the defendant such a hearing.

[(4)] (3) During the conduct of hearings or other proceedings subsequent to the denial of consent to postponement or the denial of an order of postponement, or subsequent to an order returning the defendant to prosecution in the ordinary course, no program records, investigative reports, reports made for a court or prosecuting attorney, or state-

ments made by the defendant to program staff shall, unless offered by the defendant, be admissible in evidence against such defendant. No such hearing or proceeding with respect to such defendant shall be conducted by the designated judge who issued the order returning the defendant to prosecution in the ordinary course.

[(d)] (e) Where proceedings have been postponed against a defendant for a second period [of 3 months] as provided in paragraph (c) [(2)], at the conclusion of such additional [3-month] period the designated judge may not again postpone proceedings but shall make a disposition in accordance with paragraph [(c) (1) or (3)] (d), provided however that in cases involving defendants who are physically or psychologically dependent upon a controlled dangerous or other psychoactive substance the designated judge may, upon recommendation of the [program director] Pretrial Services Coordinator [and], with the consent of the [prosecuting attorney and the] defendant, and upon notice to the prosecuting attorney grant such further postponements as he or she deems necessary to make an informed decision, but the aggregate of postponement periods under this rule shall in no case exceed one year.

Note: Adopted October 7, 1970 effective immediately.
Paragraphs (a) (b) (c) (d) amended June 29, 1973 to be effective September 10, 1973, caption and paragraphs (a) (b) (c) (d) amended April 1, 1974 effective immediately. Paragraphs (a) (b) (c) (d) amended effective

The proposed amendment to paragraph (a) recognizes the Supreme Court's approval of a program of pretrial intervention throughout the State, with pretrial intervention component programs located within each county or vicinage, and requires that each Assignment Judge, in accordance with such approved State-wide program, designate judges to act on pretrial intervention matters.

In accordance, also, with this proposal for Statewide pretrial intervention, throughout the rule, the position of Pretrial Intervention Coordinator is recognized as the person

in each county or vicinage authorized to recommend action under R. 3:28.

It is further proposed that the successive postponement periods under the rule be made more flexible, permitting the designated judge, upon recommendation, to dismiss charges at the earliest possible time when a participant has satisfactorily completed a program of rehabilitation or supervision.

The confidentiality-inadmissibility provisions are amended to make clear that even in cases in which a defendant who has sought enrollment has been denied entry or has withdrawn, no records may be introduced against him or her during subsequent ordinary proceedings.

It is recommended that the word "proceeding" be added to make clear that, at no hearing or sentencing or at any other proceedings may such information be introduced against him or her, it is further recommended however, that the defendant him or herself be permitted to offer program records as evidence. Such records may, at least in part, be favorable to the defendant and at, for example, sentencing, a defendant may wish to introduce records of program participation or ask that such records be included in the probation department's presentence investigation. Or, at sentencing, the defendant might want to argue that time spent in PTI participation should be deducted from a probationary or prison sentence.

In the last paragraph, amended language is proposed to clarify instances in which PTI postponements may be extended to

one year. The words "physically or psychologically" are added to modify "dependent" and make clear that the provision is not intended solely for addictive drugs.

The abuse of drugs other than those listed in the CDS Act may be crime-causing and may require the more lengthy postponement of one year. The language "or other psychoactive substance" is added to make clear that such drugs-of-abuse as alcohol are provided for in this paragraph.

It is proposed that the prosecutorial-consent provision be amended to require such consent only at the stage of initial postponement (paragraph (b)). Paragraphs (c) - (e) are changed so that re-postponement, termination or dismissal take place after notice to the prosecutor but without requiring consent.

This change is proposed for two reasons: (1) once initial consent is granted, a prosecutor is unlikely to change her or his mind; the amendment will save administrative case-processing work.

(2) Once a matter has been postponed under R. 3:28(b) there is no question that the matter is squarely within the Court's jurisdiction. Denial of consent to any action subsequent to initial postponement would be inappropriate under the separation-of-powers provision[24]. It can be argued, of course, that prosecutorial consent is not needed at any stage, since the filing of a complaint brings a matter within the court's jurisdiction. N.J.S.A. 24:21-27 proceeds in this manner.

[24] Two companion cases, decided recently by the California

(ii) R. 3:4-2

On April 1, 1974, R. 3:4-2 was amended by the addition of the following language (the text of the rule appears at page 60; supra.):

"In counties where a pretrial intervention program is approved by the Supreme Court for operation under R. 3:28, the judge shall also inform the defendant of the existence of such program, the name of the program director and the location at which application may be made for enrollment in such program."

To recognize the proposed approval of a single Statewide system, this sentence of the rule should be amended again as follows:

"[In counties where a pretrial intervention program is approved by the Supreme Court for operation under R. 3:28 t] The judge shall also inform the defendant of the existence of [such program] the County or Vicinage Pretrial Intervention program approved pursuant to R. 3:28, the name of the program [director]

[24] Continued

Supreme Court, dealing with that State's CDS-pretrial intervention statute (Cal. Pen. Code §1000-1000.4) are instructive on this issue. People v. Superior Court (On Tai Ho), _____ Cal. _____, 113 Cal. Rptr. 21 (1974) and Sledge v. Superior Court, _____ Cal. _____, 113 Cal. Rptr. 28 (1974).

California's statute requires the prosecutor first to make a preliminary determination of eligibility. If the defendant is found eligible the Court may divert with the concurrence of the prosecutor. In Sledge, the Court held that the preliminary determination is not an exercise of judicial power; but held in On Tai Ho that the provision requiring concurrence after a determination of eligibility is unconstitutionally violative of the separation-of-powers doctrine since to permit the prosecutor veto power over the court's decision to divert would "render meaningless the magistrate's independent determination". On Tai Ho, at 27, citing Esteybar v. Municipal Court 5 Cal. 3d 119 (1971). Similar reasoning is found in the New Jersey Supreme Court's recent decision, In Re Ringwood Fact Finding Committee, _____ N.J. _____, (decided August 8, 1974) at 5.

Pretrial Services Coordinator and the location at which application may be made for enrollment in such program."

B. ELIGIBILITY

The eligibility of defendants for pretrial intervention is determined by the application of two sets of criteria: (1) those conditions that must exist before application for enrollment may be considered, and (2) those conditions which absolutely prohibit eligibility; and one set of guidelines, (3) which set forth conditions which may tend to exclude defendants from eligibility and which should therefore be considered in decisions to enroll. Finally, because of the special legislative mandate for pretrial intervention of "first offense" Controlled Dangerous Substances (CDS) defendants, eligibility under N.J.S.A. 24:21-27 is treated separately:

1. R. 3:28 Selection Criteria

Only defendants who meet the following criteria, under the following conditions, may be enrolled in programs of pretrial intervention.

(a) Age: Pretrial Intervention is designed to deal only with adult defendants who, in accordance with New Jersey law, are those persons above the age of 18. Therefore, no juvenile, below the age of 18, may be enrolled pursuant to R. 3:28.

The services of PTI programs however may, in appropriate instances and at the request of juvenile authorities and programs, be made available to juvenile defendants when the need for inter-program cooperative work is indicated.

(b) Residence: New Jersey's PTI program is designed to deal with the problem of crime in New Jersey. As a "corridor State", criminal activity is conducted in New Jersey with some frequency by residents of neighboring States. Therefore, only those defendants are ineligible who reside such distances from New Jersey as to bar effective counseling or supervisory procedures.

Residents of other States, charged with offenses in New Jersey, in which there exist pretrial intervention programs may, with the approval of the prosecuting attorney, the designated judge, and Administrative Office of the Courts, be permitted to participate in such out-of-State program while enrolled pursuant to R. 3:28.

Regardless of the New Jersey jurisdiction in which the complaint, indictment or accusation has been filed, defendants or participants may, with the agreement of the PTI Coordinators involved, be transferred for participation among the various county or vicinage programs.

(c) Jurisdiction: Only defendants charged with criminal or penal offenses in the criminal or municipal courts of the State of New Jersey may be enrolled pursuant to R. 3:28.

Defendants charged in other States or in the Federal Courts [25], may in appropriate instances and with the permission of the Administrative Office of the Courts, be per-

[25] H.R. 9007, now pending, would permit the Federal government to place defendants charged with Federal criminal offenses for counseling or supervision in PTI programs of the States on a purchase-of-services basis. S. 798, a similar bill, passed the U.S. Senate in March, 1973.

mitted to participate in the counseling or supervision regimens of the county or vicinage PTI programs on request of Federal Authorities or a PTI program in another state.

2. R. 3:28 Exclusion Criteria

Defendants charged with any criminal or penal offense may be considered for enrollment in a program of pretrial intervention except those charged with the offenses enumerated in Title 39, New Jersey Statutes, "Motor Vehicles and Traffic Regulation".

3. Exclusionary Guidelines

The focus of pretrial intervention is the deterrence of criminal and penal behavior and the attitudinal or behavioral change necessary to such deterrence. Any defendant therefore who is eligible under the criteria above may be considered for enrollment pursuant to R. 3:28.

In the following instances however, the exercise of sound and considered discretionary judgement may lead to the exclusion of defendants from pretrial intervention. These instances, in the absence of mitigating factors or circumstances should ordinarily lead to exclusion from enrollment under R. 3:28.

This list is not exclusive; but is intended to assist, in accordance with the policy set forth in New Jersey Guideline #5, p. 32, supra, in the exercise of sound discretion.

(a) Heinous Offenses

Crimes of violence when associated with serious injury; Sale or dispensing of significant amounts of controlled dangerous substances or other dangerous drugs, by persons not themselves physically or psychologically addicted to drugs.

(b) Minor Violations

Instances of criminal or penal behavior for which the social disapprobation, employment disabilities etc., are minimal and for which the ordinary course of prosecution is normally summary. Ordinance violations, health code and other similar violations; and offenses usually resulting in fines, or suspended sentences without fines or probation.

(c) Prior Record of Convictions

The pretrial intervention program is not limited to "first-offenders". Defendants, however, whose prior records of convictions present evidence of habituation to criminal behavior present such a high likelihood of failure that they should ordinarily be excluded. Defendants charged with more than one offense may be enrolled.

(d) Active Substance Abusers

Defendants who are psychologically or physically dependant upon Controlled Dangerous Substances or other psycho-active substances, which status of dependence normally leads to repeated criminal behavior, present a high likelihood of failure. Therefore, unless such defendants are participants in substance-abuse programs, or unless it appears that such defendants are

willing to participate in such programs, they should ordinarily be excluded.

(e) Indicted Defendants

In accordance with the policy set forth in New Jersey Guideline #7, defendants whose cases have reached the stage of indictment should be excluded unless good cause to the contrary is shown.

(f) Parolees, Probationers, Former Participants

Defendants who, at the time of arrest, are probationers or parolees should be considered for enrollment under R. 3:28 only after consultation with the Chief Probation Officer or District Parole Supervisor whose departments supervise the defendants, and only after they have agreed that revocation of probation or parole need not be recommended.

Defendants who had previously been enrolled in a program of pretrial intervention under R. 3:28, or who had been afforded PTI or conditional discharge pursuant to N.J.S.A. 24:21-27 should not, ordinarily be re-enrolled. Careful evaluation, however, of such factors as the minor nature of the post-participation charge or the passage of time after participation might lead in rare instances, to re-enrollment.

4. Eligibility under N.J.S.A. 24:21-27

Although denominated "conditional discharge", the procedure permitted by N.J.S.A. 24:21-27(a)(1) is pretrial intervention.

The statute sets forth the criteria for eligibility

(§27(a)) and guidelines for exclusion (§27(c)). The provisions of R. 3:28 include all such defendants; any defendant, however, eligible for pretrial intervention or conditional discharge pursuant to §27 of the Controlled Dangerous Substances Act may not be enrolled in a pretrial intervention program except pursuant to such statute.

The court shall however, in considering petitions for suspension of proceedings pursuant to §27(a)(1) call upon the pretrial intervention program in the county or vicinage to provide, for such defendants and for the court, a regimen of evaluation and reporting, and counseling and supervision as prescribed for defendants eligible under R. 3:28, consistent with the provisions of the statute.

C. CRIMINAL JUSTICE PROCESS

The procedures set forth here relate the manner in which PTI programs should work in conjunction with the prosecution and the judiciary. It should be noted that, as with all administrative rules, certain provisions may, with experience, prove inappropriate in a particular local context, or with respect to a particular participant problem.

While it is intended that the PTI programs proceed in the manner set forth in this section, procedures may be changed for good administrative reason, with the permission of the Administrative Office of the Courts which will direct Statewide program operations.

1. Intake

(a) Referral to the Program

Defendants may learn of the existence of PTI programs through a variety of sources. As it is intended that all defendants--except those falling within the exclusion criteria--have the opportunity to seek enrollment through PTI evaluation, all defendants expressing the desire to apply should be interviewed by PTI staff and a decision made with respect to potential enrollment.

Referral of defendants for initial interviews can be expected from, among others:

- (a) Municipal Courts
- (b) Defense counsel
- (c) Prosecutors and police
- (d) Probation and parole officers
- (e) Community agencies, employers
- (f) Friends, or self-referrals

Municipal Courts

Pursuant to R. 3:4-2, judges presiding at defendants' first-appearances after the filing of a complaint must inform all defendants (except those ineligible under the exclusion criteria) of the existence of the program in the county or vicinage. Each defendant should be given a written R. 3:4-2 notice (See Form PT-1) [26].

[26] All PTI forms appear in Appendix A, supra, in numerical order.

Unless the defendant elects--in the case of municipal trial jurisdiction--to have the matter heard immediately, the case should be postponed for two weeks to permit the defendant to consult with counsel about and to apply to the PTI program for an initial interview.

Municipal court judges should, regardless of the written notice, verbally explain to defendants the opportunity afforded by pretrial intervention.

PTI Municipal Court Liaisons shall assist the Court in directing defendants to the programs and explaining the programs' requirements to defendants and defense counsel.

[Comment: It is intended that such presiding judges not make determinations of eligibility at the first appearance; information about the probable success of the defendant will not be available at that time, and it is intended that the designated judges make the PTI decision. Where the R. 3:28 designated judge presides at the first appearance, he/she should await an evaluative report before making a decision.]

Defense Counsel

Referrals of defendants by Public Defenders and private defense counsel may take place at any time after the filing of a complaint but prior to trial (or indictment in the case of an indictable charge (See New Jersey Guideline #7, p. 38 supra.) After the initial interview, if the defendant elects to continue in the evaluation process, and if a date has been set for the defendant's appearance in court, counsel should apply to the court for a 30-day postponement to permit evaluation.

[Comment: It is anticipated that late applications followed by 30-day postponements will initially cause delays. The clear notification of all defendants pursuant to R. 3:4-2, however, the informed cooperation of the defense Bar and the early assignment of counsel will remove the cause of delay.

In order to expedite the evaluation and acceptance process, counsel should at the time of referral complete Form PT-2, and supply the PTI program with the information requested therein.

(b) Initial Evaluation

At the defendants' first contact with the PTI program, an interview is conducted by a Court Liaison during which the program, the nature of participation and the defendants obligations are explained. The necessity of having counsel is explained, and if the defendant is not represented, the defendant is referred to the local office of the Public Defender or advised to seek other counsel. In appropriate instances the PTS Coordinator should assist the court in the assignment-of-counsel process.

During the initial interview, the information in Form PT- 3 is recorded, and if the defendant wishes to continue to be evaluated for participation, he/she is asked to sign a Participation Agreement and an Order of Postponement (See Forms PT-5,7,7A)and advised to take both to counsel for his/her advice and signature.

The Court Liaison and the defendant, at the initial session, agree tentatively on a regimen of supervision/treatment/ education or counseling.

(c) Withdrawal Decision

If the defendant decides not to continue, a notice is immediately sent to the referring person or agency--when appropriate--stating that the defendant has been interviewed, but that participation is not appropriate. (Form PT- 6).

[Comment: In order to avoid prejudice to defendants, the notice sent to referral sources is deliberately non-committal. The same notice is sent for defendants, for example, who withdraw to go to trial and for those rejected because of a heinous offense. No notation should be made on any Court records that might be used at trial that the defendant has been referred or not-accepted other than a copy of Form PT-4 (See R. 3:28(d) (3) and New Jersey Guideline #9).

(d) Rejection Decision

If at the initial interview (or at any time prior to the first postponement) the Court Liaison or Counselor believes that the defendant should be rejected, because it appears that the defendant cannot succeed in the program or for other reasons, a statement of reasons is prepared. After review and approval, the PTS Coordinator sends a notice, over her/his signature to the defendant and counsel and to the referral source as in (c), supra, with form PT-4.

[Comment: In order to avoid the delay problems which could come about if defendants routinely appeal rejection decisions (See discussion following New Jersey Guideline #10, supra), the rejection decision would best be made by the court on recommendation of the PTS Coordinator.

Such a procedure would itself, however, create problems: The administrative process of recommending and securing judicial approval of rejections would be very-time consuming and cumbersome (it is estimated that 50% of the applicants will be rejected), and when judges have approved rejections, claims may be made that they should not thereafter preside at trial of such matters.

It is proposed therefore to continue the practice of rejection decisions being made by PTS Coordinators. A careful check should be kept on potential problems here and judicial approval of individual rejections required if warranted.

(e) Pre-enrollment evaluation period

Defendants found acceptable at the initial interview are assigned to counselors or Court Liaisons and participate fully in the PTI program for a period of up to 4 weeks to review motivation for successful participation and to develop a plan of counseling, supervision, or other service.

In appropriate cases the PTS Coordinator should arrange for further postponement of proceedings in the municipal courts for such a period of time.

(f) Initial Enrollment

At the end of the review period, for those defendants remaining, an application for R. 3:28 postponement containing a plan of counseling/supervision, a copy of the defendant's conviction record, if any, and the defendant's consent to participation is sent to the county or municipal prosecutor for his/her consent to an initial postponement.

If the prosecutor withholds consent, a statement of the prosecutor's reasons should be sent to the PTS Coordinator. (See New Jersey Guideline #10, p.54, Note 22.)

After the prosecutor's consent is obtained, the

application is presented to the judge designated to act on R. 3:28 matters in the jurisdiction in which the case is pending.

If the judge denies the application for a R. 3:28 postponement, he/she should state the reasons for denial and transmit a written statement to the PTS Coordinator. In such an event the PTS Coordinator should notify the appropriate referral sources as in (c), supra, of the denial of the application.

Approval by the Court of the application is signified by the issuance of an Order of Postponement (Form PT-7). A copy of the Order should be filed by the Court with the Clerk of the Court and a copy sent to the prosecutor and PTS Coordinator. It shall be the responsibility of the PTS Coordinator to immediately give a copy of the Order to the participant and his/her attorney.

[Comment: All PTI procedures involve the defendants' consents to postponement of charges; waiver of the right to a speedy trial, and in appropriate instances, to dismissal. The recommendation of the PTS Coordinators and consents of prosecutors are given in writing to the R. 3:28 actions. Hearings therefore in open court are unnecessary. It should be noted that a goal of PTI is the conservation of judicial time and that holding hearings at all procedural stages may defeat such an objective. It must also be noted that objectives of equal importance to conservation of judicial resources are the "rehabilitation" of the defendant, and the openness of decision-making. Holding hearings in open-court appears to have a positive psychological effect on defendants and appears to improve attitudes towards the judicial process.

In recognition however of the various characters of the counties and vicinages, the Assignment Judges should decide, in consultation with the Administrative Office of the

Courts, taking into account the PTI goals and the extent of judicial resources in his/her vicinage, whether or not hearings or summary proceedings should be held in open court for postponement of charges or for dismissal.]

The initial postponement period permitted by R. 3:28 may not exceed 3-months but may in the discretion of the designated judge be shorter. In appropriate instances the PTS Coordinator should take into account the length of time spent during the pre-enrollment evaluation period and recommend, for example, a postponement of 3-months from the date of Initial Interview.

While short initial postponements are not unlikely in cases of stable defendants charged with minor offenses it is recommended that most defendants be required to participate for periods no shorter than 3-months from the Initial Interview date.

2. Second and Third Postponements

(a) Second Postponement

At the end of the initial adjournment period, for participants who appear to be making progress in the fulfillment of the counseling/supervision plan, but for whom a recommendation of dismissal cannot, in the judgement of the PTS Coordinator, be made, a second period of postponement, not to exceed 3-months, may be sought.

With the consent of the defendant to such further postponement an evaluation report setting forth progress and the reasons for the recommended continuation of participation and a revised plan of counseling/supervision is sent to the designated judge along with an Order for a second postponement and an application for continuation (Form PT- 7), and an up-dated record

from the State Bureau of Identification, or a statement that no new record has been received, is included.

The prosecutor is notified by sending a copy of such materials to him/her no later than 5 days prior to submission of the order to the designated judge. Prosecutorial objections to the R. 3:28 action should be sent to the PTS Coordinator, the defendant and his/her attorney at the same time as filed with the designated judge. In such cases a hearing should, at the request of the prosecutor, be scheduled so that the prosecutor may if he/she desires present oral argument; objections amount to a prosecutorial recommendation of termination (See pp. 84 - 89 supra.)

(b) Third Postponement

Postponement of proceedings beyond six-months is permitted by R. 3:28(e) in instances of drug-dependency. This provision recognizes that such dependency is often so difficult to overcome that a maximum period of 6-months may not suffice to make a reasonable prediction that criminal behavior will not occur. Therefore when such dependency appears to be causally-connected with the possibility of crime-commission, further postponements are permitted.

As the rule limits postponements to an aggregate of one-year, but sets no minimum period, such third postponement period should be set in accordance with the defendant's needs. An additional 30-day postponement, or one additional 6-month postponement, or two additional 3-month postponements are, for example, possible;

the court may also, of course, dismiss charges at any time during any extended postponement periods.

[Comment: Second or third postponements do not require the consent of the prosecutor, but require notice so that objections can be raised. It should be noted however that the longer a matter is postponed, the more difficult ordinary prosecution becomes should the defendant be terminated and returned to ordinary prosecution. This will be the case, especially, whenever postponements aggregating one-year are sought.

An atmosphere, therefore, of open communication should exist between the Prosecutor and prosecuting attorneys and the PTS Coordinators. The files of each should within reason, be open to the other, so that any possibility of conflict is minimized.

The third postponement opportunity should not routinely be used just because of a defendant's substance-abuse, but participation may be so extended when indicated by rehabilitative need. The shortest postponement period necessary to accomplish the programs goals should be the general rule. See New Jersey Guideline #2.]

3. Termination

(a) At any time after enrollment as a PTI participant, a recommendation may be made by the PTS Coordinator or the Prosecutor for termination, or termination may be initiated by the Assignment or designated judge.

[Comment: While such action should be taken whenever it appears that program participation is unlikely to lead to accomplishment of the goal of deterrence from criminal behavior, it is anticipated that participant terminations will most commonly be predicated upon rearrest and "failure to cooperate."

Rearrest of a participating defendant should always cause consideration of a termination recommendation, but should not automatically lead to the initiation of termination; the nature of the subsequent charge in relation to the quality and period of participation and the prior charge should be considered.

The likelihood of conviction for the subsequent charge should also be considered (as it should be considered initially). The possibility of taking no action (permitting prosecution on the rearrest and continuing participant on the prior charge); or of incorporating the subsequent arrest--using R. 3:28 procedure--into the participation should, in appropriate cases, be considered.

A termination recommendation may be based on rearrest without waiting for conviction on the subsequent charge. Such a procedure is necessary because of the relatively short term of PTI participation. Especially when rearrest takes place near the end of the postponement periods permitted by R. 3:28, a recommendation that charges be dismissed usually becomes impossible when rearrest has occurred.

Clearly the better course would be not to terminate unless the participant is convicted for the subsequent arrest, but the time-constraints make this generally impossible. Extreme care, therefore, should be taken in terminating for rearrest and whenever possible such a decision should await disposition on the subsequent charge.

When rearrest results in termination but where the subsequent charge is dismissed or the defendant acquitted before the prior charge reaches disposition, reinstatement as a participant (taking into account time already completed as a participant) should be permitted.

"Failure to cooperate" as a termination reason runs the range from refusal to continue in a rehabilitative program to which a participant is referred: drug-abuse or A.A. for example; to repeated failure to maintain required counseling or supervisory contacts with PTI counseling staff. Careful attention to the equal treatment of all participants should be given in such instances and no recommendation to terminate should be made without first exploring the possibility that the problem might be resolved by re-assignment to a different program or staff member.]

(b) Preliminary Hearing Prior to Termination.

Whenever it appears to the PTS Coordinator that termination is indicated, the participant should be given written notice of the reasons why termination might be sought and an opportunity to be heard before the PTS Coordinator before such a recommendation is made. (See N.J. Guideline #10, supra, and Form PT- 8A .)

At the preliminary hearing the participant should be permitted to appear with counsel, to present evidence in his/her own behalf, and (unless the PTS Coordinator finds good cause not to permit confrontation) to cross-examine adverse witnesses.

Finally the PTS Coordinator shall give to the defendant a written report of the hearing, the decision reached and the grounds on which the decision is based.

[Comment: The procedure for a preliminary hearing is derived from that set forth for probation revocation in Gagnon v. Scarpelli 411 U.S. 778 (1973). While Gagnon requires preliminary hearings to prevent unwarranted detention before the revocation hearing, in the PTI setting, the preliminary hearing is designed to prevent unnecessary recommendations of termination and unnecessary termination hearings. Often, especially in instances of "failure to cooperate" a preliminary hearing may result in continued participation with a re-negotiated participation agreement.

It should be noted that the participant should be given an opportunity for such a preliminary hearing. After adequate notice to the participant of a date and time set for such a hearing, if the participant does not appear or ask to postpone the hearing the PTS Coordinator should proceed to recommend termination. Since the participant is entitled to a termination hearing before the designated judge no prejudice comes to the participant if such a preliminary hearing is not held. The preliminary hearing may therefore be waived by the participant, or in instances where it appears to the PTS Coordinator that participation has irrevocably been violated, termination may be initiated by recommendation without a preliminary hearing.

Recommendation of termination may also be made by the prosecutor and it is recommended that in appropriate instances the participant be afforded a similar preliminary hearing before the prosecutor and that the PTS Coordinator be present.

Such hearings are recommended by the National Advisory Commission on Criminal Justice Standards and Goals (Corrections at 96) and should benefit all parties and agencies by preventing unnecessary terminations and termination hearings.

Termination may be initiated finally by the Assignment or designated judge on his/her own motion. In such instances, the PTS Coordinator, as an arm of the Court, should give the participant written notice of the reason termination is recommended and the matter should proceed directly to the stage of termination hearing.

(c) Termination Hearing

R. 3:28(d)(2) requires that when recommendation is made that a participant be terminated and returned to proceed in the ordinary course of prosecution, the participant is entitled to

a copy of the recommendation and an opportunity to be heard thereon.

Since the rule provides for an opportunity, the participant may waive the hearings (See Form PT-8B), but such waivers should be accepted only with reluctance from participants who have not been advised by counsel. In all cases where the hearing has not been waived, the termination recommendation sent to the participant should set a date for a termination hearing with a requirement that the participant give prior notice of his/her intent to appear to contest the recommendation.

In the event of non-appearance of the participant, unless the Court finds cause to postpone decision, the Court should decide termination on the recommendations.

The termination hearing should follow the requirements of Gagnon, supra, including such minimum requirements of due process, in addition to written notice of the reasons for the recommendations as:

- (a) Disclosure to the participant of evidence against him/her.
- (b) Opportunity to be heard in person and to present witnesses and documentary evidence.
- (c) The right to confront and cross-examine adverse witnesses (unless the designated judge specifically finds good cause not to allow confrontation).
- (d) A written statement by the designated judge as to the evidence relied on and reasons for terminating and returning to prosecution.

Since termination from PTI participation is a stage of prosecution, participants facing termination who are not repre-

sented should -- if entitled to assignment of counsel -- be assigned counsel in accordance with R. 3:27.

In contested termination hearing situations when the recommendation to terminate is made by the PTS Coordinator or initiated by the Assignment or designated Judge, and when the Assignment or designated Judge finds cause that the matter should be prosecuted by an attorney for the State not a party to the PTI participation, the Division of Criminal Justice should be called upon to prosecute the termination hearing.

[Comment: When termination is initiated by recommendation of the prosecutor, it will ordinarily suffice that the matter be prosecuted by him or her; in the ordinary case, prosecution by the Prosecutor will present no conflicts.

Such prosecution may, however, present conflicts--because the prosecutor has consented to the defendant's participation--when (a) the prosecutor disagrees with the recommendation of the PTS Coordinator, or with the initiation of termination by the designated judge, or (b) when the PTS Coordinator disagrees with the prosecutor's recommendation and wishes to present evidence against termination.

Since it is anticipated that such conflicts will be rare; it is left to the discretion of the Court to arrange for such prosecution as will serve the interests of justice.]

(d) Post-Termination Proceedings

If the termination hearing or recommendation results in a decision returning the participant to prosecution in the ordinary course, the designated judge should issue an order to this effect (Form PT-8D) re-setting, or continuing the pre-enrollment conditions of pretrial release and ordering that the records of the defendant's participation in the PTI program, including the records of the termination hearing be made available to no one except upon order of the court. The matter should be placed on the

trial calendar, but no copy of the termination order or notation relating to participation should be contained in any file to be used during any proceeding subsequent to termination.

It should be noted that the designated judge who issues the Order returning the participant to ordinary prosecution may not preside in any subsequent proceedings. In municipal Court matters where the designated judge is the only judge sitting in the municipality, it is recommended that the matter be assigned to the District Court for the County.

4. Dismissal

(a) At any time during participation, recommendation may be made by the PTS Coordinator that charges be dismissed.

Upon successful completion by the participant of his/her PTI program the Court Liaison or Counselor drafts a final evaluation report recommending dismissal and the participant consents to dismissal on the face of the dismissal order (Form PT-9A). In addition the participant is requested to sign a release conditional upon dismissal (Form PT- 9B).

Upon approval of the report, the PTS Coordinator transmits the report along with a recommendation for dismissal and an up-dated report on additions to the SBI files to the designated judge. Notice to the prosecutor of the recommendation is made by sending copies of the application and attached reports to him/her 5 days prior to submission to the designated judge.

(b) If the recommendation for dismissal is approved,

the designated judge issues an Order of Dismissal.

After entry of the dismissal order the PTS Coordinator should send a copy of the Order along with a letter advising the participant of the dismissal and of his/her opportunity to apply for expungement of records pursuant to N.J.S.A. 2A:85-15 et. seq., or N.J.S.A. 24:21-28. (See Form PT- 9D).

[Comment: The intent of PTI to return successful defendants to citizenship without disabilities can be accomplished by final record expungement. Complete expungement however would necessarily involve PTI program records; such unavailability of records would destroy the program's data-base and make evaluation impossible. Therefore in any proceeding for expungement the PTS Coordinator should apply for leave to maintain records for research and evaluation purposes only.]

5. Application of Procedures to cases under N.J.S.A. 24:21-27a(1).

All procedures set forth in this section apply to PTI cases under §27a(1) except where inconsistent with such statutory provision as follows:

(a) Referral from Municipal Courts

While R. 3:4-2 requires that defendants be advised of the existence of the PTI program, judges should also advise that applications for suspension of proceedings under §27a(1) are to be processed through the program; and where a defendant appears to be eligible the court should advise him or her that application for such suspension is possible.

(b) Initial Evaluation

The initial evaluation period for defendants eligible under §27a(1) should, especially in matters involving municipal-jurisdiction offenses, unless in the judgement of the judge

or the PTS Coordinator, a longer period is needed, be no longer than 2 weeks.

(c) The initial evaluative report should contain a statement of eligibility covering the statutory criteria (See Form PT-6,6A) and application should be made directly to the judge on whose calendar the matter appears, upon prior notice to the prosecutor. Prosecutorial consent is not required.

(d) Postponement periods should ordinarily conform to those recommended by the PTS Coordinator, but charges may, in accordance with §27, be suspended for single periods up to the applicable statutory maximum.

It is recommended however that the time limits contained in R. 3:28 be followed. Special forms are provided for §27a(1) Postponements (Form PT-7A).

(e) Rejection

PTS Coordinators should not notify defendants directly when evaluation leads to the conclusion that a defendant is either ineligible or otherwise should not be afforded suspension of proceedings under §27a(1). In such cases a statement of reasons should be sent to the judge having jurisdiction over the matter--as a negative recommendation. (See Form PT-4A).

(f) Termination, Dismissal

Although §27b does not require that the prosecutor be given notice prior to termination or dismissal, PTS Coordinators should give notice in §27 cases as with matters under R. 3:28.

D. PTI PROGRAM OPERATION

1. Staff Positions

Under the direction of the Administrative Office of the Courts, each county or vicinage should be staffed with court-personnel to manage the PTI system, to provide direct counseling-psychological support services to participants, and to act as liaison between the Court, the participants, and non-judicial services agencies so that participant treatment plans, as approved by the court, are effectively carried out.

The following staff position descriptions are derived from the model Hudson County Pretrial Intervention Project; the number of each position needed for each county or vicinage depends on projected participant caseload. Distribution of staff for each program and on a Statewide basis is described, infra, in Table II, at p. 119.

Proposed salary ranges are derived from the State Service, Compensation Schedule A (See Appendix C), and are consistent with Probation Department ranges. Since, however, there is little consistency in probation salaries for the various county departments, ranges here are only roughly approximate. (See Work Volume-Probation Supervision Table Appendix C.)

(a) Pretrial Services Coordinator

(i) Function

The PTS Coordinator is responsible for operation

of the program in the County or Vicinage and reports to the Administrative Office of the Courts, Pretrial Services Section.

At the local level the Coordinator implements the PTI program, and with the approval of the Assignment Judge, and the Administrative Office of the Courts, develops program variations to adapt the program to the county or vicinage's special needs and problems.

The Coordinator is directly responsible for each case handled pursuant to R. 3:28 and N.J.S.A. 24:21-27; and all official matters proceed under his/her name. Relations with the Offices of the County Prosecutor and municipal prosecuting attorneys are the Coordinator's responsibilities, as well as relations with police, the Bar, Probation and Parole Departments and private and governmental service agencies to which participants are referred.

Under direction of the Administrative Office of the Courts, the Coordinator recommends for hiring and termination all members of the local PTI program staff, and is responsible for narrative and data reporting as required by the Administrative Office of the Courts.

(ii) Salary: Range A29, \$17,303 - \$23,358

The salary range for PTS Coordinator approximates that of Principal Probation Officer I. (Probation

low and high salaries for PPOI: \$11,000 - 21,900).

Average starting salary is: \$17,303.

(iii) Qualifications

Bachelor's degree and 2 years experience in criminal justice administrative, planning or evaluation work are minimum requirements. Advanced degree in law, criminal justice or related social science field, with work experience, preferred. Must have demonstrated knowledge and understanding of criminal justice philosophy, problems and process. Special qualifications may be substituted for the work-experience requirement.

(b) Assistant PTS Coordinator

(i) Function

Responsible for operation of the program in the absence of the Coordinator. Assists in program operation under direction of the Coordinator with assignment of wide responsibility in such areas as internal systems management or municipal court liaison.

(ii) Salary: Range A24, \$13,557 - 18,303

Approximates range of Principal Probation Officer II. (Probation low and high salary for PPOII: \$9,900 - \$20,400). Average starting salary: \$13,557.

(iii) Qualifications

Same as PTS Coordinator, but with one year administrative, planning or evaluation experience.

(c) Counseling Supervisor

(i) Function

Responsible for all aspects of counseling staff-participant relationships. Supervises the counseling/supervision and referral and follow-up work of counselors and court liaisons. With assistance of Counselors conducts on-job training for Court Liaisons in counseling/supervision and "service brokerage" techniques and methods of participant-problem identification.

Reviews and approves evaluative reports and advises PTS Coordinator with respect to counseling/supervision operation and effectiveness of social service agencies.

Responsible for caseload assignments.

(ii) Salary: Range A24, \$13,557 - \$18,303

(Same as Asst. PTS Coordinator)
Average starting salary: \$13,557

(iii) Qualifications

M.S.W. or M.A. in Psychology, Counseling or related field, with at least one year experience in counseling or social work in a setting working with criminal-justice involved clientele. Knowledge of criminal justice process and basic understanding of criminal justice philosophies dealing with rehabilitation, punishment/deterrence etc. Supervisory experience in addition to other qualifications preferred.

(d) Counselor (Vocational and Substance-Abuse)

(i) Function

Maintains caseload at same level as Court Liaison, but is responsible for providing counseling/supervision or referral for participants with special rehabilitative needs. Assists Counseling Supervisor in training Court Liaison staff in specialty area and provides special assistance to other staff whose participant problems touch on the counselor's specialty: Responsible for direct liaison with agencies dealing with specialty: one counselor with substance-abuse programs; one with vocational rehabilitation and placement agencies, and employers and employer groups.

(ii) Salary: Range A20, \$11,152 - \$15,058

Approximates range of Senior Probation Officer (Probation high and low salary for Sr. P.O. \$8,200 - \$17,800).

Average starting salary: \$11,710 (Step 2)

(iii) Qualifications

M.S.W. or M.A. in Psychology, Rehabilitation Counseling or Related field. One counselor to be specially qualified and trained in techniques of prevention, control and treatment of abusers of psychoactive drugs (emphasis on narcotic CDS and alcohol). One counselor to be specially trained in vocational testing and counseling, and able

to assist Court Liaisons with problems of vocational placement, and to arrange direct employment for participants.

(e) Research Associate

(i) Function

Responsible for maintenance of data-collection system at program level and for routine compilation and analysis of data for local program management purposes. Responsible to PTS Coordinator for program data portions of required reports, and works under Assistant Chief, Pretrial Services, A.O.C. in developing program data for Statewide and individual program evaluation.

Conducts special research projects for local program according to needs of the A.O.C. or the PTS Coordinator.

(ii) Salary Range: Al8, \$10,115 - \$13,657

There are no equivalent Probation positions.

Average starting salary: \$10,115

(iii) Qualifications

B.A., knowledge of the criminal justice process, with background in data-collection and analysis, able to design and implement research studies at rudimentary level. Ability to analyse data results in terms of criminal process. Knowledge of manual data processing and some knowledge of E.D.P.

(f) Court Liaison

(i) Function

Provides individual or group counseling or supervision with referral to special treatment or service programs for PTI participants, under supervision of Counseling Supervisor. Responsible for carrying out program of individual participants; preparation of evaluative reports; recommendations of rejection, termination or dismissal. May be assigned to special duties in municipal courts, intake interviewing, or work with Vocational or Substance-Abuse Counselors.

(ii) Salary Range: A16, \$9,174 - \$12,387

Approximates range of Probation Officer and Senior Investigator (Salary high and low for P.O.: \$7,700 - \$16,700. Sr. Inv.: \$7,000 - \$12,200).

Average starting salary: \$9,633 (Step 2)

(iii) Qualifications

B. A. degree preferred. Experience in probation, parole or other supervision work or "counseling" or social work position dealing with criminal-justice involved persons preferred. Exceptional qualifications in counseling ability or experience, in ability to relate to and understand sub-cultural characteristics of participants may be substituted for the bachelor's degree.

Prior conviction record or status as former substance abuser not a bar to employment.

[Comment: The selection of staff responsible for routine or frequent contact with defendants and participants should be done in accordance with New Jersey Guideline #4, p. 29 supra.

(g) Secretarial and Clerical Personnel, Student Research Assistants

Secretarial and clerical personnel should conform to titles and qualifications presently in use in the A.O.C.

Principal Clerk Stenographer

Salary: Range A13, \$7,925 - \$10,697

Average Starting Salary \$7,925

Senior Clerk Typist

Salary: Range A08, \$6,210 - \$8,387

Average Starting Salary \$6,210

Student Research Associates are Work-Study or directly employed part-time assistants who work with the Research Associates as key-punch operators or in undertaking various data-collection related tasks. Salary: \$3.00/hour

2. Administrative Procedures

Although flexibility in management of each county or vicinage program is necessary for adaptation to the needs and problems of various areas and because the size of staff and participant population may require greater or lesser degrees of structure in management, certain systems must be implemented in order to maintain uniformity within the Statewide system.

(a) Initial Interviews

The initial interview is the defendant's first contact with the program and the point at which significant decisions

must be made both by the defendant and the program.

For some defendants, there will be no further contacts and the initial interview is the only time at which essential information may be obtained.

In order, then to maintain consistency in the conduct of the interviews, members of the counseling staff should be assigned in rotation to conduct initial interviews, or one member should be permanently assigned to this task. During periods of initial-interviewing, regular caseload duties should be suspended.

All interviews of defendants should be recorded on a weekly list (Form PT-10) and files set up so that each defendant is assigned an identification number which shows the program, the order of intake and the year of intake, e.g., 06/001/74: at the Hudson County Program (program # 6), the first defendant interviewed in 1974.

Files should be kept numerically by identification number according to order of intake and a card file set up alphabetically by defendant names (See Form PT-11).

The weekly list should be kept in date order and program activity recorded thereon. This book will maintain manual control over defendant/participant flow as a check on the record maintenance of the Research Associate.

(b) Notification to local police

In order that arresting officers and other members of police departments in the county or vicinage are kept informed

of program activity and in order that objections to enrollment-- if any--may be facilitated, a copy of the weekly list should be sent each week to the Chiefs of Police in the municipalities in which applicant defendants were arrested.

Police objections to enrollment should be in writing and should be attached to the application for R. 3:28 or §27a(1) postponement to be transmitted to the prosecutors and the court.

(c) Prior Record procedures/New Jersey State Police-
State Bureau of Identification (SBI)

All evaluative reports should contain up-to-date information about the arrest and conviction status of defendants and participants as such data is essential to decision-making and evaluation of program activity. Such information is available from SBI and should be obtained as follows:

(i) After each initial interview, a request should be made to the police department in which the arrest took place for a copy of the defenant's SBI record (Form PT-12).

(ii) For defendants for whom records or SBI numbers have been obtained, Form PT-12A 9/74 is sent to SBI; for those who can be identified by name only, Form PT-12B 9/74 is used. In all cases SBI is requested to send up-dated information and note the program's continuing need for information on the file.

(iii) Whenever any subsequent notation is made to the file, SBI will send a new record report to the program. Whenever the program applies to the court thereafter for additional postpone-

ments or dismissal, either an up-dated record is attached or a notation made that no further information has been received from SBI. Up-dating of records will continue after participants' exits from the program in order to ascertain post-exit recidivism.

(iv) Program Records - Confidentiality

In accordance with R. 1:38 and R. 3:28(d)(3), and New Jersey Guideline #9, participant records may not be used or revealed, except in the normal course of processing, and except to the defendant and his/her attorney, unless ordered by the court.

Records may be used for research purposes by persons or agencies outside of the judiciary only with the written permission of the Administrative Office of the Courts which will secure judicial permission in appropriate instances.

(v) Individual Program Data Processing, Research and Evaluation

The Research Associate assigned to work with the local program should collect and transfer all data to data-cards for use in the individual and comparative program evaluations. Information retrieval will be possible, conveniently, at the local level, however, through the use of a card sorter which will enable the PTS Coordinator to receive monthly caseload reports for each member of the counseling staff, in addition to monthly defendant and participant-flow information for use in local-level program adjustments and decision making. In addition, immediate access to data-processing will enable the local Research Associate to conduct surveys for participant follow-up or check into problems appearing

in the characteristics of local defendant populations.

3. Counseling, Supervision and Rehabilitative Procedures

(i) Counseling/Supervision Plans

Plans for each defendants' participation should, under the direct supervision of the Counseling Supervisor, be worked out, during the initial 30-day pre-enrollement period, with the active participation of the defendants and their attorneys. It is of the greatest importance that each defendant understand the need for a particular regimen of counseling, or supervision, or other rehabilitative work and agree to carry out his/her individual program.

Plans may, in appropriate cases comprise little more than telephone contact, or may require almost daily contact with the Court Liaison. The policy set out in N.J. Guidelines #2 should form the basis of all plans, but creativity in the formulation of plans is encouraged. There should be no set format for each defendant's participation; plans may include for example, supervision by a volunteer or the participant's volunteering his/her services to another social-service organization.

Re-negotiation of plans should take place whenever in the judgement of the participant or the Court Liaison, conditions have changed or participant progress warrants either more or less frequent contact.

Each plan should contain, in addition to counseling and supervision information, notation of services to be performed by other agencies, psychological assessment where warranted, and

assessment and plans by the Substance-abuse and vocational counselors in cases where indicated.

Where psychological assessment is not available without charge from county or State psychologists, such assessments should be obtained from a licensed psychologist, or psychiatrist on a purchase-of-services basis. Whenever possible, the participant should pay for such service.

(ii) Delivery of Services to Participants

While some participants will require little work and others a great deal, practically all will require a basic counseling service that can be carried out by the "non-professional" Court Liaison staff.

Each participating defendant has, as indicated by his or her arrest, a problem or set of problems which caused the involvement in the criminal process. Each is subject in addition to the anxiety produced by the threat of ordinary prosecution.

Court Liaisons assist defendants in identifying problems areas and assist in carrying out a program of probable solutions. The basis of such assistance is psychologically-supportive one-to-one "counseling". Such support can take the form of "supportive-friend", "big-brother" counseling, based on the Court Liaison's personal understanding of the participants' environment and his/her own relationship to the participant's community.

On an average contact-schedule of one visit per week, Court Liaisons will meet individually--on in groups--with

participants, and visit with participants in their homes among their families, attempting to maintain the participant's motivation to reach solutions to his/her problems and, continuously, to assist in finding new solutions. For participants, for example, capable of finding their own jobs, the Court Liaisons role may be one of maintaining necessary prodding until the participant is employed.

Of equal importance in solving participant problems is the Court Liaison's role as "service broker". After identification of problem areas, many if not most participants will not be aware of the availability of services from governmental or private service agencies or programs. The Court Liaison staff will, therefore, refer participants to service agencies, making sure through direct contact with the agencies that participants receive needed services, and following-up with both the participants and the agencies to completion of the service. Services to participants will, for example, be available from the New Jersey Division of Vocational Rehabilitation (medical and psychological disabilities associated with employment); the Legal Services Projects (legal representation in civil actions); the Family Services Bureaus (family counseling); low-cost psychiatric-psychological service agencies; sheltered workshops (for retarded participants); Community colleges and Boards of Education (college scholarship and High School Equivalency-diploma programs). The list of possible services available depends of course on local resources.

(iii) Delivery of Services - Vocational and Substance Abuse

The two major problem areas that are expected to appear among the defendant/participant population are under-or unemployment and narcotic, alcohol, or other psychoactive substance-abuse.

In recognition of such needs, each program will maintain as a regular member of the staff, a counselor, professionally trained in vocational testing, assessment and placement, and one professionally trained and skilled in working with substance abusers.

All defendants and participants who are identified as having difficulties in either problem area should be counseled by the specialist counselor who will develop a plan for counseling and agency referral to be carried out by the assigned Court Liaison, or him or herself undertake the direct handling of the participant.

The Vocational Counselor will conduct vocational testing and assessment and advise both participants and Court Liaisons on possible solutions to unemployment or underemployment problems. He/she will work closely with governmental or private agencies that conduct testing and placement (New Jersey State Training and Employment Service; New Jersey Manpower-Corrections Program; National Alliance of Businessmen; Chambers of Commerce) and assure that participants become employed. In addition, the Vocational Counselor should--in a manner coordinated with other vocational

agencies--maintain direct contact with potential employers to develop jobs for and place participants in employment.

The Substance-Abuse Counsellor will function in a similar manner for participants identified as substance abusers. All "brokerage of services" to such groups as Alcoholics Anonymous; methadone-maintenance programs or drug-free therapeutic programs should be done by or through this counselor. Because of the anticipated extent of substance-abuse problems, it should be the on-going responsibility of the Substance Abuse Counselor to maintain up-to-date assessments of each program's effectiveness and to work closely, in this function, with specialists from the local Probation and Parole offices.

Such assessments are essential, especially because in the cases of substance-abusing participants, placement in a custodial program may become indicated. Such placements should only be done as a last resort with constant evaluation of progress as safeguard. In such instances hearings, prior to enrollment for custodial placement, may often be indicated.

(iv) Caseload Size

In order that counseling staff may deliver effective counseling and service-brokerage to participants, caseloads must be low enough for individualized attention to be given.

A caseload of 40 is considered optimum (caseload basis is shown at p. 114 infra.) Such a caseload will distribute, to each member of the counseling staff, approximately 16

cases needing little more than minimal supervision or once-a-week psychologically supportive contact, and approximately 25 participants in need of at least weekly contact and services from one or more specialized service agencies and vocational or substance-abuse work.

The record-keeping and reporting necessary for such a caseload of 40 will require that each staff member prepare, on an average, one participant report each working day.

4. Staff Training

It is the responsibility of each PTS Coordinator to train staff in internal management and criminal process procedures under the direction of the Administrative Office of the Courts. Training sessions on certain criminal justice and counseling technique subjects for program personnel should be conducted by the Chief, Probation Training, A.O.C. in conjunction with the training of Probation Officers.

On-going training in counseling/supervision/problem-identification techniques will be conducted by the Counseling Supervisors with the Assistance of the Counselors in each program.

A. POTENTIAL PTI-DEFENDANT POPULATION *

During 1972 the New Jersey State Police reported 180,500 adult-arrests for all criminal and disorderly persons offenses (a 3% increase over the previous year), and the filing of approximately 259,000 adult "criminal" complaints in the municipal courts was reported.

Of adults charged, whose cases reached disposition, 71% (95,850) pleaded or were found guilty. The manner of disposition by sentence is not reported, but it is known that during 1972-73, (9/1/72-8/31/73) some 18,000 offenders were placed under the supervision of the County Probation Departments from the criminal and municipal courts. (This amount represents 19% of those found guilty.)

The sentencing decision to place a convicted offender under probation supervision rather than to impose a fine or imprisonment, takes into account factors similar to those involved in the decision to permit PTI participation under R. 3:28: (1) the defendant's continued presence in the community will not constitute a danger to society; (2) treatment resources available in the community.

* Statistics presented here are from the following sources representing the latest available information:

Crime in New Jersey, 1972 Uniform Crime Reports, Office of the Attorney General, State Police.

Annual Report of the Administrative Director of the Courts, 1973.

It should be noted that the difference between the arrests reported by the State Police and the complaints reported by the Courts is due in part to the inclusion in the court data of complaints initiated by summonses.

PART III
THE STATEWIDE PRETRIAL
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munity are adequate to assist the defendant to re-adjust to non-criminal behavior; or such rehabilitative resources are not needed; and (3) the offense charged was not one that merits punishment through incarceration. Since, however, probationary terms are permitted to a maximum of 5 years, it should further be assumed that not all probationers are potential PTI participants. It must also be assumed that certain offenders sentenced to prison terms might be permitted PTI participation.

No information is available with respect to socio-criminal characteristics of probationers or State or County prisoners. It will be estimated therefore that 75% of probationers are potential PTI participants, and the target population, therefore, for the first year of the Statewide PTI program will be a number of defendants equal to 75% of the probationers added during 1972-73: or 13,200. Admittedly, this prediction is at best unsophisticated. But without data description of normal sentencing, no better basis for prediction can be found. The best available information is that compiled in the Uniform Crime Reports, which, understandably, do not deal with post-conviction activity.

Prior PTI experience in New Jersey shows that program population by sex and age are similar to that of the arrest population: 85% male with the greatest proportion of arrests and participants in the 18-30 age group. No refinement in the potential population can therefore be made for these factors. Although both the State Police and PTI programs report experience by race, the variety in

racial and ethnic populations around the State would make any adjustment for this factor misleading in predicting populations.

The experiences of both of New Jersey's programs over 2 years old: Newark Defendant's Employment Project (since 10/70) and Hudson County PTI Project (since 3/73), show that 50% of the defendant/applicant population do not become enrolled. (See Appendix B, supra for summary program reports.)

It is projected, then, that throughout the State PTI programs will interview for participation approximately 13,200 defendants, and that 50% or 6,600 will be found eligible and acceptable for enrollment.

In addition, the PTI programs will process all cases eligible for suspension of proceedings (PTI) pursuant to N.J.S.A. 24:21-27a (1). Although this statutory provision for pretrial intervention has been in existence since 1971, no program has been instituted to handle such matters and as a result practically nothing is known about the §27 process.

The only known item of data is that during 1972-73, 3,622 cases were disposed of under §27a(1) and (2) in the municipal Courts. It is assumed that all such matters can be processed under §27a(1)-(without a plea or finding of guilt) and that therefore all can be PTI matters. Few cases are processed under this statute in the County and Superior Court, no indictments were disposed of under §27a(1), during the 1972-73 period, and only 173 indictments were suspended under §27a(2). Total use of the statute in all courts was therefore 3795.

The total projected PTI population then is:

	<u>Potentially Eligible</u>	<u>Potential Accept- able Participants</u>
R. 3:28 Cases	13,200	6,600
§ 27 Cases	3,600	3,600
	<u>16,800</u>	<u>10,200</u>

Table V (supra, at p.122) projects a total Statewide program cost of \$4,060,000. Using the simple device of dividing participant numbers into cost, the cost per participant can, at least in very simple terms, be calculated:

$$\frac{\text{Program Cost } \$4,060,000}{\text{Potential Acceptable Participants } 10,200} = \$398/\text{Participant}$$

Assuming that a dismissal (success) rate of 70% of participants remains constant:

$$\frac{\text{Program Cost } \$4,060,000}{\text{Dismissed Participants } 7,140} = \$570/\text{Dismissed Participant}$$

B. PROGRAM SITES

New Jersey's Statewide judicial system is divided administratively into 12 vicinages. In each, an Assignment Judge of the State Superior Court administers the business of the judiciary with the assistance of a Trial Court Administrator.

The State's 21 counties vary widely in character and population, from rural counties under 100,000 in population, to highly dense, urban counties with populations close to 1,000,000. By dividing the State into vicinages, the population disparities are reduced: the least populated vicinage (Atlantic, Cape May, Cumberland and Salem Counties) has 446,000 residents, the most populated (Essex) has 940,000.

As a Statewide program, the Pretrial Intervention system should,

for administrative convenience not only to the program but to the Courts, be located one program to each vicinage. The administrative cost of such location will be less than location of one program in each county.

Vicinage locations; principal program office locations; general and projected PTI populations are shown, infra, in Table I, p. 118, and on the map at p. 117.

C. Staff Size and Program Costs

1. Staff

Staff composition for each county or vicinage program is based on the number of counseling-contact staff (Court Liaisons, and Vocational and Substance Abuse Counselors) needed to handle caseloads that average 40 at any given time, plus administrative, research and clerical staff to support the counseling staff.

It is estimated that program population can be divided approximately as follows:

<u>Case Type</u>	<u>Months in Program</u>
(a) Defendants, evaluated but not enrolled (Rejections)	1
(b) N.J.S.A. 24:21-27 cases	3
(c) <u>R.</u> 3:28 cases	3
(d) <u>R.</u> 3:28 cases	6
(e) <u>R.</u> 3:28 cases (Substance Abuse)	12

Each caseload, at any one time, for optimum effect should best comprise:

<u>Case Type</u>	<u>Caseload Size</u>
(a) Defendants evaluated, but not enrolled (1 mo.)	4
(b) §27 cases (3 mo.)	8
(c) <u>R.</u> 3:28 cases (3 mo.)	4
(d) <u>R.</u> 3:28 cases (6 mo.)	8
(e) <u>R.</u> 3:28 (cases, Substance-Abuse) (12 mo.)	<u>16</u>
	40

Such a caseload will involve work with 24 (d and e) cases involving more extensive work and 16 probably requiring only supervision.

Staff needs for each program are calculated on the basis of 480 participant months per counselor per year.

For each member of the counseling staff:

<u>Case Type</u>	<u>Months In Program</u>	<u>Caseload Size</u>	<u>One Year Caseload</u>	<u>Participant Months</u>
(a) Eval. but not enrolled	1	4	48	48
(b) §27 cases	3	8	32	96
(c) <u>R.</u> 3:28	3	4	16	48
(d) <u>R.</u> 3:28	6	8	16	96
(e) <u>R.</u> 3:28	12	<u>16</u>	<u>16</u>	<u>192</u>
		40	128	480

Hudson County, for example, is therefore calculated to need 11 counseling-contact staff.

<u>Case Type</u>	<u>Months In Program</u>	<u>1-Yr. Case-load Size</u>	<u>%</u>	<u>Participant Months</u>
(a) Eval. but not enrolled	1	518	38	518
(b) §27	3	354	26	1062
(c) <u>R.</u> 3:28	3	173	12	519
(d) <u>R.</u> 3:28	6	173	12	1038
(e) <u>R.</u> 3:28	12	<u>173</u>	<u>12</u>	<u>2076</u>
		1391*	100	5213

Total Participant months
 Participant Mos. per Counselor per Yr. $\frac{5213}{480} = 10.9$ counselors and court liaisons

* Column (3) + (5) Table I, p.118.

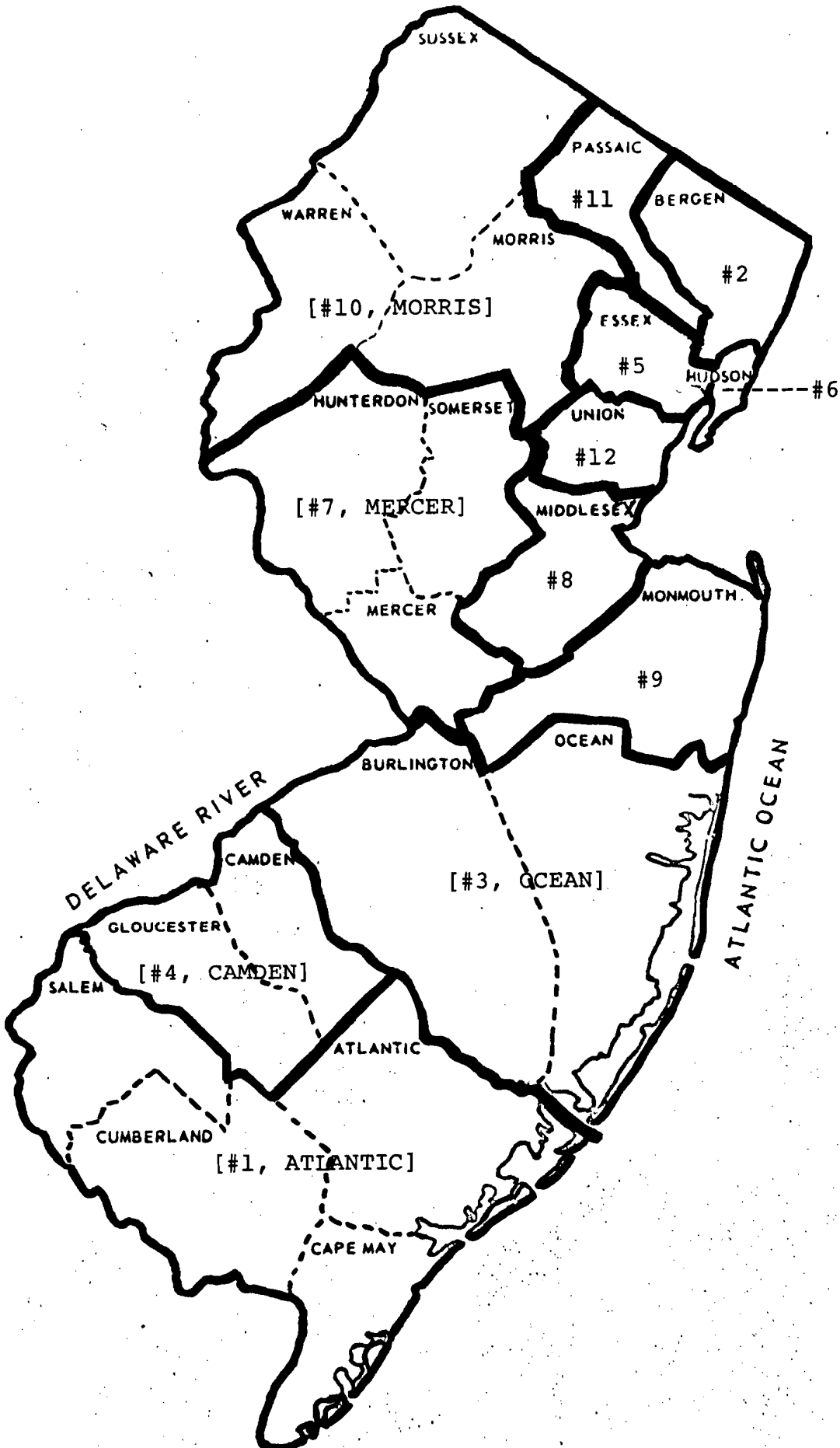
It should be noted that program counseling supervision operations will depend on the needs of defendants and participants. While Court Liaisons may handle some participants in groups, or may be assigned to work directly with the Vocational and Substance Abuse Counselors, or assigned to intake-interviewing, the 40-caseload formula is considered an accurate method of assessing staff needs in such a way that caseload-management methods can be handled flexibly.

Applying the participant-month calculations to each proposed program, staff sizes are ascertained as shown in Table II.

2. Cost

Based on the experiences of the Newark and Hudson County PTI programs, it is estimated that, during the first year of a statewide program, personnel costs will represent 70% of total program costs with the remaining 30% allocated for administrative costs, rent, travel, purchase of services, equipment and other costs.

Tables III - V, infra, show projected individual and statewide program costs.



PRETRIAL INTERVENTION PROGRAM SITES

Table I

(1)	(2)	(3)	(4)	(5)	(6)	
PROGRAM AREA	OFFICE LOCATION	PROJECTED POTENTIAL POPULATION *	1972 EST'D GENERAL POPULATION	PROJECTED ACCEPTABLE POPULATION **	§27 ACCEPTABLE POPULATION ***	TOTAL CASELOAD (4 & 5)
1. <u>Atlantic</u> , Cape May <u>Cumberland</u> , Salem	Atlantic City	712	446,400	356	258	614
2. <u>Bergen</u>	Hackensack	1391	911,400	696	335	1031
3. <u>Burlington</u> and <u>Ocean</u>	Toms River	715	571,700	356	353	710
4. <u>Camden</u> & Gloucester	Camden	1157	654,500	579	219	798
5. <u>Essex</u>	Newark	3356	940,400	1678	404	2084
6. <u>Hudson</u>	Jersey City	1036	613,300	518	354	872
7. <u>Hunterdon</u> , <u>Mercer</u> & Somerset	Trenton	1040	592,300	520	306	826
8. <u>Middlesex</u>	New Brunswick	804	601,200	402	318	720
9. <u>Monmouth</u>	Freehold	509	478,300	254	365	619
10. <u>Morris</u> , Sussex & Warren	Morristown	591	560,800	295	204	499
11. <u>Passaic</u>	Paterson	771	469,400	385	112	497
12. <u>Union</u>	Elizabeth	1147	551,300	573	399	972
TOTAL	1	13229	7,391,000	6615	3622	10237

* Based on 1972-73 Probation data for each county X 75%

** 50% of Column (3)

*** Proceedings in the Municipal Courts 9/1/72-8/31/73, Administrative Office of the Courts

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Table II

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Staff Composition (Full Time) County & Vicinage Programs Position	1 Atlantic	2 Bergen	3 Ocean	4 Camden	5 Essex	6 Hudson	7 Mercer	8 Middlesex	9 Monmouth	10 Morris	11 Passaic	12 Union	TOTAL
Coordinator	1	1	1	1	1	1	1	1	1	1	1	1	12
Asst. Coordinator		1		1	2	1	1	1				1	8
Counseling Supvr.	1	1	1	1	2	1	1	1	1	1	1	1	13
Couns. - Vocational	1	1	1	1	2	1	1	1	1	1	1	1	13
Couns. - Subst. Abuse	1	1	1	1	1	1	1	1	1	1	1	1	12
Court Liaison	6	12	6	9	26	9	9	7	5	4	5	10	108
Research Assoc.	1	1	1	1	1	1	1	1	1	1	1	1	12
Secretary	1	1	1	1	2	1	1	1	1	1	1	1	13
Clerk Typist	2	3	2	3	5	3	3	3	2	2	2	3	33
	14	22	14	19	42	19	19	17	13	12	13	20	224

TABLE III

Estimated Cost of County and Vicinage Programs

<u>PERSONNEL (Full Time)</u>		<u>RANGE</u>	
PTS Coordinator	12 @ \$17,303	A29	\$ 207,600
Assist. Coordinator	8 @ 13,600	A24	108,800
Counseling Supervisor	13 @ 13,600	A24	176,800
Counselor-Vocational	13 @ 11,700	A17	152,100
Counselor-Substance Abuse	12 @ 11,700	A17	140,400
Court Liaison	108 @ 9,600	A14	1,036,800
Research Associate	12 @ 10,100	A17	121,200
Principal Clerk			
Stenographer	13 @ 7,900	A13	102,700
Clerk Stenographer	33 @ 6,200	A08	204,600
			<hr/>
			\$2,251,000
	Fringe @ 16.72%		<hr/>
			376,367
			<hr/>
	Total, Full-Time Personnel		2,627,367
<u>PERSONNEL (Part Time)</u>			
Student Research Assistants			
(13 x 15 hrs./wk. @ 3.00)			
			<hr/>
			30,420
			<hr/>
	Total Personnel Cost (70%)		\$2,657,787
Other Cost	(30%)		<hr/>
			1,139,080
			<hr/>
Total Cost			\$3,796,867

Table IV

Estimated Cost of Central Administrative
Component, Administrative Office of the Courts

A. DIVISION OF CRIMINAL PRACTICE

- Pretrial Services Section

Personnel

Chief, Pretrial Services (A32)	\$ 25,000
Asst. Chief - Management (A29)	17,300
Asst. Chief - Evaluation & Research (A29)	17,300
Research & Management Associate (A24) (2 @ 13,557)	27,100
Pr. Cl. Steno (A13)	7,900
Cl. Steno (2 @ 6,210) (A08)	12,400
	<u>\$107,000</u>

Fringe @ 16.72%	17,890
	<u>\$124,890</u>

Other Cost (30% of personnel cost)	53,524
	<u>\$178,414</u>

B. MANAGEMENT SERVICES

- Fiscal, Personnel & Purchase Sections

Personnel	\$ 63,375
Fringe @ 16.72%	10,596
	<u>\$ 73,971</u>

Other Cost	10,000
	<u>\$ 83,971</u>

Total Cost	<u><u>\$262,385</u></u>
------------	-------------------------

Table V

Estimated Program Cost per Component
and Total Program Cost

PTI PROGRAM	Personnel (70%)	Other Cost (30%)	Total Program Cost
1. Atlantic Vicinage	\$166,093	\$ 71,183	\$237,276
2. Bergen	256,434	109,900	366,334
3. Ocean Vicinage	166,093	71,183	237,276
4. Camden Vicinage	222,818	95,493	318,311
5. Essex	482,404	206,745	689,149
6. Hudson	222,818	95,493	318,311
7. Mercer Vicinage	222,818	95,493	318,311
8. Middlesex	200,408	85,889	286,297
9. Monmouth	154,887	66,380	221,267
10. Morris Vicinage	143,682	61,578	205,260
11. Passaic	154,887	66,380	221,267
12. Union	234,024	100,296	334,320
Part Time Staff	30,420	13,035	43,455
Administrative Office of the Courts	198,861	63,524	262,385
Total Program Cost	\$2,856,647	\$1,202,572	\$4,059,219

D. STATEWIDE PROGRAM ADMINISTRATION

The Division of Criminal Practice in the Administrative Office of the Courts administers all aspects of criminal practice from appellate procedure to judicial-based corrections. Within the Division are Probation Services and, since early 1974, the Pretrial Services section.

The PTI Program in New Jersey should be centrally administered by the Pretrial Services Section in the Division of Criminal Practice.

Such an administrative scheme will permit and facilitate:

1. Operation of programs covering multi-county vicinages.
2. Uniformity of criminal justice and participant processing procedures through centralized management.
3. Uniformity and consistency of data-collection, and individual and overall comparative program monitoring and evaluations.
4. Controlled procedural experimentation.
5. Uniformity of personnel practices and salaries.
6. Creation of career-ladders for staff through ability to move personnel within a Statewide system.

[Comment: The Probation Service, which began in 1900 in Hudson County, evolved through a process of county-by-county development to provide probation services to all 21 counties.

Although by rule of the Supreme Court (R.1:34-4), lines of authority over probation operations are established within the judiciary, New Jersey's probation statues, N.J.S.A. 2A:168-1 et. seq., (as last amended in 1952-53) focus on individual county funding and administration.

It has long been the policy of the New Jersey Supreme Court to create a uniform centrally-administered court-services system; and planning for probation administrative and programmatic reform is proceeding within the Division of Criminal Practice. Although it is anticipated that a centralized Probation Service will be created in New Jersey, because of the necessity of legislative change and of replacing County with State financing (1973-74 probation expenditures exceeded \$18,000,000), such large-scale reform is not likely to take place for several years.

The administration of all defendant and offender-related services will take place within the Division of Criminal Practice, and the eventual development of an integrated service-capacity: from pretrial-release to pretrial-intervention, to post-conviction probation services is envisioned and planned for implementation as soon as possible.

With pretrial intervention it is possible to put into effect in the immediate future, the policy of central administration and direction.

The only alternative to such central administration is placement of PTI programs within the various county probation departments in New Jersey's 21 counties.

To require the present 21 probation departments to put pretrial intervention into practice would only exacerbate the problem of fragmentation and would tend to make probation programmatic reform aimed at caseload reduction and efficient caseload management considerably more difficult (The 21 departments are presently responsible for the supervision of over 28,000 persons on probation in addition to investigative and other duties and responsibilities).

In particular, placement within the various county probation departments would result in:

- (a) 21 programs. Each county has its own autonomous department; but many are so small (e.g. Sussex, Warren, Hunterdon) that programmatic uniformity would be impossible. Sufficient resources could not be developed in such departments to operate effectively. Vicinage-wide programs would permit effective operation.
- (b) Probation salaries vary from county-to-county according to individual county-budget variations and the strength or weakness of probation unions. (Salaries for example for Senior Probation Officers vary from a low of \$8,200 to a high of \$17,800.) Probation hiring generally requires residence in the county; an inability to move staff up or around within a system would result.
- (c) Efforts to reform the Probation Service are now under way: Attempts to establish uniformity of procedures and data-collection are being made; there is yet very little data available about probationers beyond raw numbers and no information is available with respect to probationer socio-criminal characteristics, charges, or recidivism rates.

To place PTI programs within the departments would cripple probation-reform efforts by diverting attention, energy and resources away from the basic reforms needed. Such placement--more importantly--would hinder development of PTI, through administrative, personnel and systemic problems endemic in the Probation Service.

In addition, it is submitted that a basic orientation problem would result from probation placement. Probation departments are traditionally oriented to deal with convicted offenders. PTI participants, not having been tried or convicted, require effective maintenance of the presumption of innocence. Retraining of present probation personnel would become necessary and strict procedures for separation of PTI and Probation records would be needed.

The development of a Statewide, centrally-administered PTI program can serve as a model for development in Court

Services. When conversion of 21 autonomous departments into a State Probation system becomes possible, the two systems will at that time be administratively combined while retaining the benefits of lessons learned from a uniform PTI program experience.]

E. EFFECT ON EXISTING PROGRAMS

At present there are five operational PTI programs, approved under R. 3:28,

1. Newark Defendants Employment Project.
2. Hudson County PTI Project.
3. Bergen County PTI Project.
4. Union County Alcohol Rehabilitation Program.
5. Jersey City Alcohol Rehabilitation Program.

In addition, the Newark Treatment Alternatives to Street Crime (TASC) PTI program has been approved under R. 3:28, but has only recently begun operation and the Camden County TASC/PTI program was in December 1974 approved for R. 3:28 operation.

Capsule descriptions of these programs appear, supra at pp. 12-18; and summary reports on the Newark and Hudson PTI programs appear in Appendix B, infra.

(a) Program Conversions

In accordance with the policy set forth in New Jersey Guideline #3, and to achieve uniformity, each county or vicinage will contain a single multi-problem oriented PTI program. Existing programs will therefore be integrated into the Statewide system. Special problems involving the manner of such absorption follow:

1. Newark Defendants' Employment Project (N.D.E.P.)

New Jersey's first PTI program, part of a private, non-profit corporation, has been scheduled for absorption into

the County system, in combination with the Newark TASC/PTI program, on January 1, 1975 when N.D.E.P.'s grant from S.L.E.P.A. expires.

The program will be taken over as part of the State-wide PTI system with as little disruption of operation as possible. The plan to combine N.D.E.P. with the TASC/PTI program will be carried out and the single program will become the Essex County Pretrial Intervention Program.

2. Hudson County PTI Project

The Hudson project, as a program of the local judiciary, will require only transfer of staff from the County to the State to complete integration into the Statewide system.

3. Bergen County PTI Project

In Bergen County, the PTI program is a component of the probation Department. The program, as it exists will be transferred from the County to the State, and its staff expanded in accordance with the projected staff needs.

4. Union County Alcohol Rehabilitation Program

The criminal justice component of this program consists of a single probation Investigator. A Union County PTI program will be created and the investigator and present operations absorbed therein.

5. Jersey City Alcohol Rehabilitation Program

This program involves three staff employed by the City of Jersey City as alcohol rehabilitation counselors

working in conjunction with the Detoxification Unit at the Jersey City Medical Center. Since this program's inception, criminal justice procedures under R. 3:28 have, for the most part been conducted either by or through the Hudson County PTI program.

The three staff members should either remain separate as part of the Detoxification program, at the option of the City, or be brought into the Hudson County PTI program as State employees.

Since criminal justice procedures and all evaluation is now done by Hudson PTI staff, little disruption of operations, if any, will result from absorption into the Statewide system.

6. Newark TASC/PTI Program

This program is currently planned to operate at two levels: the Superior Court with a PTS Coordinator and assistants under the Assignment Judge for Essex County and at the municipal level with a, "Court Liaison" staff operating under the Newark Municipal Court Administrator.

The Superior Court component can be combined with the N.D.E.P. program within the Statewide system and the Newark Municipal component left under the planned local administration. But the better course would be to bring all criminal justice staff, Superior Court, Municipal and

N.D.E.P. staff into combination as a single State program for Essex County.

7. Camden TASC/PTI Program

Camden's Probation Department on June 30, 1974, received an L.E.A.A. discretionary grant of \$230,000 for a TASC/PTI program. The program, which was approved in December 1974, for operation under R. 3:28 will operate in accordance with the regimen prescribed by this proposal except to the extent that personnel qualifications are altered by Civil Service and probation department regulations and practices. The TASC grant-award contract will require primarily a single-problem concentration on problems involving drug-use.

8. Mercer County Pretrial Services Program

The Mercer County Bail/ROR program, formerly operated under the Mercer County Probation Department, has planned, with A.O.C./Pretrial Services assistance, staged expansion. The program, beginning in September 1974, added PTI-type counseling and supervision services to its operation under a new S.L.E.P.A. grant, changed its title to Mercer County Pretrial Services program, and its auspices from the probation department to the office of the Mercer-Hunterdon-Somerset Vicinage Trial Court Administrator. In January 1975, the program is planned to expand to become both a PTI and pretrial-release program. Although even the presently expanded staff will not permit operation on the scale proposed, supra, at p. 118, the program will seek R. 3:28 approval to operate in accordance with this proposal. Little difficulty is anticipated in later expanding this planned growth to convert the program to a Mercer-Hunterdon-Somerset Vincinage PTI program.

(b) Grant Problems in conversion

The S.L.E.P.A. grants for the existing Hudson PTI and N.D.E.P. programs expire at the end of 1975. No problems will thereby be encountered in converting these programs to State administration.

As previously noted the Newark TASC program is funded by an LEAA/TASC discretionary grant and the program has not yet begun operation. Permission from LEAA will have to be secured to convert the program to State administration and to transfer the grant from the City of Newark to the State. The same procedure will be required with respect to the Camden TASC/PTI program. The Bergen PTI program's SLEPA grant will continue to May 1975. SLEPA permission to convert the program to Statewide administration and to transfer the grant will be needed.

No other grant transfers or grantor permissions are anticipated to be required.

APPENDIX A

PRETRIAL INTERVENTION OPERATIONS FORMS:

PT-1	Notice of PTI Program Existence (R.3:4-2)	A-1
PT-2	Referral Form	A-3
PT-3	Initial Interview Forms (1) - (11)	A-4
PT-3A	Charge Code Sheet	A-15
PT-4	Rejection Notice	A-19
PT-4A	(Reserved)	A-20
PT-4B	Ineligibility Report, N.J.S.A. 24:21-27a(1)	A-21
PT-5	Application for Enrollment and Participation Agreement	A-22
PT-6	Evaluative Report & Plan of Counseling/Supervision	A-24
PT-6A	Evaluative Report & Plan of Counseling/Supervision - Instructions to C.L./Counselor	A-25
PT-7	Order of Postponement, R.3:28	A-26
PT-7A	Order of Postponement, N.J.S.A.24:21-27a(1)	A-27
PT-8	Rejection/Termination Memorandum	A-28
PT-8A	Notice of Impending Termination & Opportunity for Preliminary Hearing	A-30
PT-8B	Waiver of Preliminary & Termination Hearings	A-31
PT-8C	Termination Hearing Notice	A-32
PT-8D	Order of Termination	A-33
PT-8E	Order Denying Application for Termination	A-34
PT-9	Dismissal Memorandum	A-35
PT-9A	Order of Dismissal Under R. 3:28	A-37
PT-9B	Release (Dismissal)	A-38
PT-9C	Order of Dismissal Under N.J.S.A.29:21-27a(1)	A-39
PT-9D	Post Dismissal Letter	A-40
PT-10	Weekly Intake List	A-41
PT-11	Participant File Card	A-42
PT-12	Local Police, SBI Card	A-43
PT-12A	SBI Record Request #1	A-44
PT-12B	SBI Record Request #2	A-45
PT-13	Monthly Activity Summary (1) - (6); Instructions	A-46
PT-14	Rej/Term/Dism. Memo Code Sheet	A-55
PT-14A	Post-Exit Follow-Up: Rearrests	A-57
PT-14B	Post-Dismissal Follow-Up Survey	A-59
PT-14C	Code Sheet for 14C	A-60

The following forms are to be translated into Spanish: 1; 4, 5; 6; 7, A; 8A, B, C, D, E; 9A, B, C, D; 14B.

English
Size 5" x 7"

Front

Court Seal	MUNICIPAL COURT OF
<p>The _____ Pretrial Intervention Project is a court-approved program. If you qualify for the program, and the Prosecutor and Court approve your enrollment, the charges against you may be dismissed without a trial or guilty plea upon your successful completion of the program. To find out if you qualify for this program, call the number on the back of this card or ask your lawyer to call.</p>	
<p>Administrative Office of the Courts PT-1 6/74</p>	

or, _____
County Court

Back

<p>Pursuant to New Jersey Court Rule 3:4-2, you are hereby notified of the existence of the _____ Pretrial Intervention Project, a program approved by the Supreme Court under R.3:28. Application for enrollment in the program may be made by contacting:</p>
<p>_____, Director</p>
<p>Telephone No. _____</p>
<p>_____ Judge, Municipal Court of _____</p>

Sello de
Corte

CORTE MUNICIPAL DE

El _____ Proyecto Interven-
ción Antes del Juicio es un programa aprobado por
la corte. Si usted califica para este programa,
y el Fiscal y la Corte le aprueban su matrícula,
los cargos en contra de usted seran anulados sin
tener juicio o sin declararse culpable cuando ter-
mine el programa con éxito. Para averiguar si
usted claifica para este programa, llame al número
que aparece en la parte de atrás de esta tarjeta o
pidale a su abogado que llame.

Oficina Administrtriva de las Cortes.
PT-1 6/74

o, Corte del Condado de

De acuerdo a la regla número R.3:4-2 de la Corte
de New Jersey queda usted notificado de la exist-
encia de _____ proyecto de interven-
ción antes del juicio, un programa aprobado por
la Corte Suprema por R.3:28. Solicitud para ma-
tricularse en el programa se puede hacer ponien-
dose en contacto con:

_____, Director

Número de teléfono _____

Juez, Corte Municipal de

REFERRAL

Defendant's Name _____

Address _____ City _____

1. Date: _____ 2. Source: (a) Jud. _____

(b) Pros. _____

3. Tel: (a)Yes ___ (b)No ___ Tel# _____ (c) Law Enf. _____

(d) Correct. _____

4. (a)Race _____ (b)Sex _____ (c)DOB _____ (e) Atty. _____

(f) P.D. _____

5. Charge(s) _____ Statute _____ Date _____

6. Ind. No. _____ or, 7. Complaint No. _____ 8. Court _____

9. Pretrial Release Status: (a) Bail (amt) _____ (b) Cash (amt) _____

(c) ROR _____ (d) Other (specify) _____ (e) Custody _____

(f) Released _____

10. Number prior arrests: 0 1 2 3 4 5 +

Number prior convictions: 0 1 2 3 4 5 + 11. Prior Incar. Yes _____

No _____

Date ___/___/___ Charge _____ Disposition _____

___/___/___ _____

___/___/___ _____

Referral Recommendation & Comments: _____

12. Attorney (a)Yes ___ (b)No ___ 13. P.D. _____

If 12(a), Attorney's Name _____

Address _____ Tele. No. _____

14. Prelim. Acceptance: (a)Yes ___ (b)No ___

if 14(b), Reason(s) _____

REFERRAL SOURCE: Name _____

Address _____

Telephone Number _____

5. Length of New Jersey Residence: _____

- (1) less than 1 month
- (2) 1-3 months
- (3) 4-8 months
- (4) 9 mo. - 1 year
- (5) 1-3 years
- (6) 4-6 years
- (7) 7-10 years
- (8) 10 + years
- (9) N/A

10

6. Number of residence changes in last 12 months: 0,1,2,3,4,5,6,7,8,9+

11

7. Age: _____ (Date of Birth: ____/____/____)

12 13

8. Sex: _____ (1) Male (2) Female

14

9. Marital Status: _____ (1) Married (2) Single (3) Divorced
(4) Separated (5) Widow(er) (6) Common Law/live with (9) N/A

15

10. Number of dependent children: _____ code 0,if no children
code 9,if 9 or more

16

11. Number of other dependents: _____ code 0,if none
code 9,if 9 or more

17

12. Does applicant live as a family unit? (1) yes (2) no (9) N/A

18

13. Years of schooling completed: _____

- (1) 1-4
- (2) 5-7
- (3) 8-9
- (4) 10-11
- (5) 12 - H.S. Dip.
- (6) 13-14
- (7) 15-16
- (8) Post Graduate
- (9) N/A

19

14. Is applicant currently in school? (1) yes, full time (2) no
(3) yes, part time

Where _____

20

15. Is applicant: (1) Employed part-time (3) Not employed
(2) Employed full-time (4) Student only
(5) Student part-time & work part-time
(6) Student & full-time work

21

Name of Employer: _____

Address: _____

16. Current Gross weekly wages: _____

(1) under \$50	(4) \$101 - \$130	(7) \$201 - \$300
(2) \$50 - \$75	(5) \$131 - \$150	(8) \$301 plus
(3) \$76 - \$100	(6) \$151 - \$200	(9) No Work or N/A

22

17. How long at current job: _____

(1) less than 1 month	(4) 6.1 - 10 months	(7) 2-4 years
(2) 1-3 months	(5) 10.1 mo. - 1 year	(8) 4 or more years
(3) 3.1 - 6 months	(6) 12.1 mo. - 2 years	(9) Unemployed or N/A

23

18. Previous weekly wages: _____

(1) under \$50	(4) \$101 - \$130	(7) \$201 - \$300
(2) \$50-\$75	(5) \$131 - \$150	(8) \$301 plus
(3) \$76 - \$100	(6) \$151 - \$200	(9) Never worked or N/A

24

19. How long on former job? _____

(1) less than 1 month	(4) 6.1 - 10 months	(7) 2-4 years
(2) 1 - 3 months	(5) 10.1 mo. - 1 year	(8) 4 or more years
(3) 3.1 - 6 months	(6) 12.1 mo. - 2 years	(9) Never worked or N/A

25

20. Does applicant's spouse work? (1) yes (2) no (9) N/A

26

21. Veteran: (1) yes (2) no If ever in Combat, where _____

27

22. Vietnam: (1) yes (2) no

28

23. If applicant is unemployed, how supported? _____

(1) Welfare	(3) Social Security	(5) Other _____
(2) Unemp. Ins.	(4) Family	(6) Savings
		(9) N/A

29

24. How long has applicant been unemployed? _____

(1) less than 1 month	(4) 6.1 - 10 months	(7) 2-4 years
(2) 1 - 3 months	(5) 10.1 mo. - 1 year	(8) 4 or more years
(3) 3.1 - 6 months	(6) 12.1 mo. - 2 years	(9) N/A

30

25. Is applicant on: (1) Parole (2) Probation (3) Both (9) N/A

Name of Officer: _____

Which office: _____

31

(County, or Parole District Office #)

26. Referred by: _____
 (1) Municipal Court (4) Prosecutor (7) Pub. Def. or Friends
 (2) Probation (5) Pvt. Atty. (8) Police
 (3) Parole (6) Comm. Agen. (9) N/A
 32

27. Charge I: _____ (see charge code sheet) 33 34

28. Is Charge I: (1) Indictable or (2) D.P. (2A: 170 or Ord.) 35

29. Charge II: _____ (see code sheet) 36 37

30. Is Charge II: (1) Indictable or (2) D.P. (2A: 170 or Ord.) 38

31. Total number of charges for PTI application: _____ 39

32. Type of PTI: (1) Ind.-R. 3:28 (2) Ind. - §27 (3) D.P.-R.3:28
 (4) D.P. - §27 (If comb., code most serious (1) → (4)) 40

33. Pretrial Release Conditions at Initial Interview:
 (1) Bond \$ _____ (2) Cash Bail \$ _____ (3) Cash/10%\$ _____
 (4) Custody of Probation(5)Custody of _____ (6) ROR
 (7) Other:explain _____ 41
 (If combination, code most burdensome condition (1) → (5).)

34. Any prior arrests? _____
 Charge _____ Where _____ Disposition _____

Prior convictions?
 35. If yes, are convictions for:
 (1) Mostly Indictable (3) Ind. & D.P.'s
 (2) Mostly D.P.'s (9) No Prior Convictions or N/A 42

36. If ever incarcerated, for how long? _____
 (1) less than 1 month (4) 9 mo. - 1 year (7) 7 - 10 years
 (2) 1-3 months (5) 1-3 years (8) 10 + years
 (3) 4-8 months (6) 4-6 years (9) Never incarcerated
 or N/A
 Where incarcerated _____ 43

37. Any arrests between intake and exit? (leave blank)(If yes,see charge code sheet)
 for what _____
 44 45

38. What State, if other than N.J., did applicant spend the major portion of his/her life? _____ if N.J. use 0 0 (see code sheet)

46 47

39. Attorney at Initial Interview:

(1) Public Def. (2) Private attorney (3) Not represented

48

40. Town of Residence [town data by local program - code available] [to 96 towns]

- (01) _____ (07) _____ (13) _____
- (02) _____ (08) _____ (14) _____
- (03) _____ (09) _____ (15) _____
- (04) _____ (10) _____ (16) _____
- (05) _____ (11) _____ (17) _____
- (06) _____ (12) _____ (18) _____

(97) other county (98) other state (99) N/A

49 50

41. Geographic area for major portion of education:

- (1) North (4) Southwest (7) West
- (2) East (5) Midsouth (8) Foreign Country
- (3) Midwest (6) South (9) N/A

51

42. Type of grammar school education:

- (1) public (2) parochial (3) private (4) one room schoolhouse

52

43. Classification: 1 2 3 4

53

44. Current PTI status: (1) Dismissed (2) Terminated (3) Rejected

Enrolled: (4) 1st Adj (5) 2d Adj (6) 3d Adj (7) Pending enrollment

54

45. Date of Dismissal / or Termination / or Rejection

	day		month		yr.
_____	_____	/	_____	/	_____
55	56	/	57	/	58
					59
					60

46. Date that Formal Enrollment ends

_____	_____	/	_____	/	_____
61	62	/	63	/	64
					65
					66

47. If Rejected or Terminated; reason:

- | | |
|------------------------------|-----------------------------|
| (01) Not interested in PTI | (11) Psych. problems |
| (02) Withdrew/wants trial | (12) Fail. to keep appts. |
| (03) Rejected by Pros. | (13) Fail. to cooperate |
| (04) Rejected by Judge | (14) Heinous charge |
| (05) Case dismissed | (15) Minor charge |
| (06) Denied, Probation | (16) §27 - prior conviction |
| (07) Denied, Parole | (17) §27 - inelig. charge |
| (08) Rearrested | (18) §27 - inad. treat |
| (09) Prior Record | (19) Problems beyond scope |
| (10) Sust.-abuse, no program | (20) Other (explain) _____ |

67 68

48. If Dismissed or Terminated, number of adjournments: 1 2 3

69

49. Initial Interview Date: (lead with 0)

	day	month	year
	____/____	____/____	____/____
	70 71	72 73	74 75

50. Race: (1) Black (2) White (3) Puerto Rican (4) Other Spanish
 (5) Oriental (6) Other

76

51. C.L. assigned (see code sheet)

77 78

52. Municipal Court in which 1st appearance was made(See Town Code Sheet) (00)Out of County (XX)Cnty Dist.Ct.(YY)County Ct.

79 80

53. Any other contact with community agencies?

Which? _____	When? _____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PRETRIAL INTERVENTION PROGRAM

INITIAL INTERVIEW PART II

HEALTH AND SUBSTANCE ABUSE SURVEY

CARD #2

I.D.# _____ 1 2 / 3 4 5 6

Have you ever had any serious illness or disease? [] Yes [] No If Yes;

a. What _____

b. When _____

Have you ever had any serious accidents, head injuries or loss of consciousness? [] Yes [] No If Yes;

a. Name _____

b. When _____

Have you ever been advised to have any operations? [] Yes [] No If Yes;

a. What Kind _____

b. When _____

Have you ever been hospitalized for an emotional disorder? (1) [] Yes (2) [] No If Yes; 7

a. Where _____

b. When _____

Has anyone in your family ever been hospitalized for an emotional disorder? [] Yes [] No If Yes;

a. Whom _____

b. When _____

c. Where _____

Do you presently or have you ever had difficulty sleeping or frequent nightmares?

[] Yes [] No

Do you presently or have you ever had difficulty with your appetite in loss of appetite, frequent change in appetite weight gain or loss? [] Yes [] No

Have you ever had any nervous trouble? [] Yes [] No

Are you now or have you ever been involved in treatment with a psychiatrist, psychotherapist? (1) [] Yes (2) [] No If Yes; 8

a. With Whom _____

b. When _____

c. Agency _____

10.. Are you presently under the care of a doctor? [] Yes [] No If Yes;

a. For What _____

b. Doctor's Name & Address _____

11. Are you presently taking any prescribed medications?(1)[]Yes (2)[]No If Yes;

9

a. What Kind _____

b. How Often _____

12. Has your health ever prevented you from holding a job at any time?(1)[] Yes (2)[] No If Yes;

10

a. When _____

13. Have you ever, or do you now have any of the following?

- ____ 1. Tuberculosis
- ____ 2. Heart Disease
- ____ 3. Diabetes
- ____ 4. Epilepsy
- ____ 5. Difficulty in Hearing
- ____ 6. Difficulty in Seeing
- ____ 7. Ulcer of Stomach, Intestine
- ____ 8. Paralysis
- ____ 9. Bone Deformity
- ____ 10. Loss of Arm, Leg
- ____ 11. Severe Headaches
- ____ 12. Asthma
- ____ 13. Tumors or cysts
- ____ 14. Alcoholism
- ____ 15. Hepatitis
- ____ 16. Frequent Stomach aches
- ____ 17. Colitis
- ____ 18. Arthritis
- ____ 19. Fainting Spells or Dizziness

INITIAL INTERVIEW PART II (Cont'd.)

CONTROLLED DANGEROUS SUBSTANCES

14. What drugs do you use?

A. Heroin

- (a) (1) Primary (2) Secondary (3) Other use (4) Used in past only _____
(9) Never Used 11
- (b) Weekly Cost: (\$ only, lead with 0) _____
12 13 14
- (c) How many times do you use weekly? (lead with 0) _____
15 16
- (d) Number of months continuous use (if using now)(lead with 0) _____
17 18

B. Methodone

- (a) (1) Primary (2) Secondary (3) Other use (4) Used in past only _____
(9) Never Used 19
- (b) Weekly Cost: (\$ only, lead with 0) _____
20 21 22
- (c) How many times do you use weekly? (lead with 0) _____
23 24
- (d) Number of months continuous use (if using now)(lead with 0) _____
25 26

C. Marijuana - Hashish

- (a) (1) Primary (2) Secondary (3) Other use (4) Used in past only _____
(9) Never Used 27
- (b) Weekly Cost: (\$ only, lead with 0) _____
28 29 30
- (c) How many times do you use weekly? (lead with 0) _____
31 32
- (d) Number of months continuous use (if using now)(lead with 0) _____
33 34

A.O.C.PT-3(9)-1/75

D. Cocaine

- (a) (1) Primary (2) Secondary (3) Other use (4) Used in past only (9) Never Used _____
35
- (b) Weekly Cost: (\$ only, lead with 0) _____
36 37 38
- (c) How many times do you use weekly? (lead with 0) _____
39 40
- (d) Number of months continuous use (if using now lead with 0) _____
41 42

E. Barbiturates

- (a) (1) Primary (2) Secondary (3) Other use (4) Used in past only (9) Never Used _____
43
- (b) Weekly Cost: (\$ only, lead with 0) _____
44 45 46
- (c) How many times do you use weekly? (lead with 0) _____
47 48
- (d) Number of months continuous use (if using now lead with 0) _____
49 50

F. Other CDS

- (Which) _____
- (a) (1) Primary (2) Secondary (3) Other use (4) Used in past only (9) Never Used _____
51
- (b) Weekly Cost: (\$ only, lead with 0) _____
52 53 54
- (c) How many times do you use weekly? (lead with 0) _____
55 56
- (d) Number of months continuous use (if using now)(lead with 0) _____
57 58

G. Whether or not defendant admits to use of drugs, is he/she physically or psychologically dependent on drugs as confirmed by a medical or drug-abuse program opinion? (1) Yes (2) No _____
59

H. Whether or not 14G is yes, in opinion of C.L., is charge connected to drug-use (1) directly (2) indirectly (3) not connected _____
60

15. Have you ever been in treatment for CDS or other non-alcohol drug abuse? _____

a. (1) Yes (2) No _____ 61

b. How many times (if 9 or more code 9) _____ 62

c. Number of months between last treatment and now (lead with 0) _____ 63 64

Where? (Program) _____

(Address) _____

16. Do other family members use CDS? _____

a. (1) Yes (2) No _____ 65

b. Relationship: (1) Father (2) Mother (3) Sibling (4) Other _____ 66

ALCOHOL

17. Do you think you have a drinking problem? _____

(1) Yes (2) No (3) Do not drink alcohol _____ 67

18. How long have you been problem drinking? _____

(1) less than 1 year (2) 1 - 2 years (3) 2 - 3 years _____ 68

(4) 3+ - 4 years (5) 4+ - 5 years (6) more than 5 years

19. How much alcohol do you drink daily? (in pints) (lead with 0, if 9 or more, code 9) _____ 69

Weekly? _____ 70

20. What alcoholic beverage do you drink most frequently? _____

(1) liquor (2) beer (3) wine (4) comb. of 1,2,3 (5) other(explain) _____ 71

21. Have you ever been an A.A. member? _____

(1) Yes (2) No (3) No, but another alcohol-abuse program _____ 72

If (1) or (3) where? _____

How many years? _____ 73

(if less than 1, code 1; if more than 9, code 9)

22. Have you ever stopped drinking for a considerable amount of time? _____

(1) Yes (2) No _____ 74

If yes, how many years ago (lead with 0 if 9 or more, code 9) _____ 75

If yes, how long did it last? _____

(1) less than 1 year (2) 1-2 years (3) 2-3 years (4) more than 3 yrs. _____ 76

23. Is this person alcoholic (physically or psych. dependent on alcohol) as confirmed by medical or alcohol-abuse program opinion? _____

(1) Yes (2) No _____ 77

24. Whether or not #23 is yes, in opinion of C.L., is charge connected to alcohol abuse? (1) directly (2) indirectly (3) not connected _____ 78

A.O.C.PT-3(11)-1/75

*00	Poss. M J
*XY	Disp.or Sale MJ
*XX	Poss.MJ w/int.to Disp.
*01	Poss. C.D.S. (Non MJ)
02	Use or Inf. C.D.S. (All)
*03	Disp. or Sale C.D.S. (Non MJ)
04	Sale/ Drugs to Minor
05	Main. Place f/ use
*06	Poss. C.D.S. (Non MJ) w/Int.to Disp.
07	Cultivation
08	Other Drug Charges
09	Glue Sniffing
10	Attempted B & E
11	B & E
12	B & E & L
13	Poss. Stln. Prop.
14	Poss. Stln. M. V.
15	Rec. Stln. Prop.
16	Rec. Stln. M.V.
17	Larceny
18	Larceny from M.V.
19	Attempted Larceny
20	Arson & Mal. Dam.
21	Trespassing
22	Shoplifting
23	Poss/ Burg. Tools
24	M.V. Warrant
25	Drunk Driving
26	Altered License

* If charge includes both MJ and other CDS, Use Non-MJ Code.

27	Ill. Use M.V.	You're viewing an archived copy from the New Jersey State Library.
28	Joy Riding	
29	Unlicensed Driver	
30	Assault	
31	A A & B	
32	Ass. w/ Dang. Weap.	
33	Ass. w/ Int. Kill	
34	A & B	
35	A & B on P.O.	
36	Poss. Dang. Weap. (gun)	
37	Poss. Dang. Weap.	
38	Sale Dang. Weap.	
39	Att. Robbery	
40	Robbery	
41	Armed Robbery	
42	Manslaughter	
43	Attempted Rape	
44	Rape	
45	Mansl. by Auto	
46	Ass. w/ Int. Rob	
47	Att. Homicide	
48	Murder I	
49	Murder II	
50	Child Abuse	
51	Embezzlement	
52	Fraud	
53	Forgery	
54	Conspiracy	
55	Endeavor to Bribe	
56	Gambling	
57	False Swearing	

58	False Pretense
59	Working Lottery
60	Poss. Lot. Slips
61	Work. Ill. Lot.
62	Numbers
63	Bookmaking
64	Threatening Life
65	Loitering
66	Creat. Dist.
67	Public Drunk, (2A:170-30)
68	Fighting
69	Tamp. Auto
70	Lewdness
71	Main. Place. Lewd.
72	Indecent Exposure
73	Statutory Rape
74	Carnal Abuse
75	Carnal Knowledge
76	Indecent Act
77	Con. Del. Minor
78	Other Sex Offenses
79	Impair Morals Min.
80	Neglect
81	Kidnapping
82	Bastardy
83	Family Off.
84	Obst. Pol. Off.
85	Fail to Appear
86	Fail to Comply
87	Fail to Remit

88	Fail to Pay Fine	
89		
90	Fail Give Good Acct.	
91	Contempt of Court	
92	Aid & Abett	
93	Fugitive & Escape	
94	Viol. Prob/ Parole	
95	Material Witness	
96	Concealing Crime'	
97	Resist Arrest/ Elude	
98	Other D.P.'s	
99	Other Indictables	

PRETRIAL INTERVENTION PROGRAM
(Address & Telephone)

Date _____

TO: _____

RE: _____

The person named above has visited the program to discuss the possibility of his/her participation. Participation has been found, however, to be inappropriate in this case.

Since the Pretrial Intervention Program involves voluntary participation, and since a defendant may elect to proceed to trial, no judgement of guilt or of this person's eligibility or fitness for participation should be inferred from this notice.

Thank you for your interest in making this referral.

Sincerely,

Pretrial Services Coordinator

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PRETRIAL INTERVENTION PROGRAM
(Address and Telephone)

Date _____

TO: Honorable _____

INELIGIBILITY REPORT
N.J.S.A. 24:21-27a(1)

RE: State vs. _____
Charge(s): _____

Complaint/Indictment No(s). _____

Arrest/First App./Arr. Date _____

The defendant named above has been interviewed for participation in the _____ Pretrial Intervention Program pursuant to the provisions of N.J.S.A. 24:21-27a(1).

It is the opinion of the program that in accordance with the standards set forth in N.J.S.A. 24:21-27a and c the defendant is ineligible for participation for the following reasons:

(continue on reverse)

Respectfully,

Pretrial Services Coordinator

cc: _____ Defendant,

Esq.
Attorney for Defendant

PRETRIAL INTERVENTION PROGRAM

APPLICATION FOR ENROLLMENT AND PARTICIPATION AGREEMENT

The _____ Pretrial Intervention Program is a program of the New Jersey Courts made available to you on a voluntary basis. Your successful participation may result in a recommendation that the charge(s) now pending against you be dismissed without trial or guilty plea. In order to become enrolled as a participant, you must agree to the following conditions:

1. I understand that if my application is accepted by the program an application for postponement of my case for a period of up to 3-months will be made to the court and the Prosecutor. I have voluntarily consented to this application and have waived my right to a speedy trial. I understand that the court or the Prosecutor may deny the application for postponement and if denied, I agree to return to court on the date set for my next appearance. I understand that if I fail to return to court, the court may issue a warrant for my arrest. I also understand that participation in this program may be required for 6-months, or for 1-year if my case is considered to involve drug or alcohol abuse.

2. I understand that the program will, before accepting my application, investigate my eligibility for participation, and that this investigation may include contact with my family, employer, school, social agencies or other persons or agencies considered necessary by the program to complete such an investigation. I agree to permit these persons and agencies to cooperate with this investigation and release them from any and all claims that might arise as a result of such cooperation, with the following exceptions: _____

3. I understand that I may withdraw this application, or if enrolled, drop out of participation for any reason, and that I may be terminated from participation if I fail to live up to this agreement. If I drop out or am terminated, I agree to return to court on the date set for my next appearance. I understand that if I fail to return to court, the court may issue a warrant for my arrest. I also understand that if I withdraw, drop out, or am terminated, no information given by me to the Program, or resulting from the program's investigation or my participation may be used against me in any subsequent court proceedings.

4. I agree to assist the program in developing a plan of counseling/supervision for the term of my participation, and I understand that when I have accepted this plan, it will become part of this application and agreement. I understand that the plan may include a schedule of reporting and/or counseling sessions with program staff, test taking, referral to and cooperation with social service agencies, or other requirements.

5. I understand that no recommendation for the dismissal of the charges against me will be made unless I show convincing evidence that I will not now or in the future engage in criminal or disorderly conduct, and unless I live up to this agreement. If I am rearrested for a criminal or disorderly persons offense before the charges for which I am enrolled in the program have been dismissed, and these subsequent charges are pending at the expiration of my last

adjournment, a recommendation that I be terminated and returned for prosecution of the charge(s) for which I am enrolled may be made.

I understand further that if the charge(s) for which I am rearrested reaches disposition with a finding of guilt, prior to the expiration of my last adjournment, the Program may recommend termination and return to prosecution for the charge(s) for which I am enrolled.

I UNDERSTAND ALSO THAT IF I DO CONVINCED THE PROGRAM THAT I CAN AND WILL BEHAVE IN A LAW-ABIDING MANNER AND IF I LIVE UP TO THIS AGREEMENT, A DISMISSAL RECOMMENDATION WILL BE MADE AND, IF ACCEPTED BY THE COURT, MY CASE WILL BE DISMISSED WITHOUT TRIAL AND THAT I WILL NOT, THEN, HAVE A CONVICTION RECORD BECAUSE OF THE PRESENT CHARGE(S) AGAINST ME.

6. Do not sign this application and agreement until you have read it and asked the Court Liaison to explain anything you do not understand. You may and should talk with your lawyer before signing this application and agreement. If you do not have a lawyer, ask the Court Liaison to help you arrange for one.

Witness: _____
Court Liaison

Participant

Date: _____

_____, Esq.
Attorney for Participant

PRETRIAL INTERVENTION PROGRAM

EVALUATIVE REPORT AND PLAN OF COUNSELING/SUPERVISION
(attach Initial Interview (PT-3(1) & (2) as cover sheet)

NAME _____ ID# _____

Classification (PT-3 (5)#44) _____

Prior Convictions: []No []Yes (If "yes", attach SBI report)

(Attach additional sheets as necessary)

I have participated in developing this plan of counseling/supervision, understand what it means, and agree to carry out this plan to the best of my ability. I understand, also, that this plan is part of my Participation Agreement and that if conditions change, this plan may be re-written.

Date: _____

Participant

Court Liaison

Approved:

Attorney for Participant

Counseling Supervisor

EVALUATIVE REPORT AND PLAN OF COUNSELING/SUPERVISION

INSTRUCTIONS FOR C.L./COUNSELOR

You should not repeat the information contained in PT-3 (1) & (2) which will accompany this report. If you feel, however, that any item needs expansion, or specifically relates to the plan, you should include discussion of the item.

This plan becomes part of the Participation Agreement; you should be sure to involve the participant in its formulation as he/she must agree to carry it out. You must include at least a schedule of contact: reporting or counseling, with explanation for the frequency of such contact. If the participant is to be referred to other programs for treatment or education, list the programs and explain what you expect to be accomplished and what is expected of the participant in this program. Attach letters of acceptance from treatment or educational programs if necessary. If the participant is unemployed, you should in most cases, require that he/she find a job and see the Vocational Counselor.

There is little limit to what may constitute an acceptable plan. But you must clearly set out what the participant is expected to do, why he/she should do it and how this will benefit him/her (or why such benefit is not needed). If you feel that this participant has problems that will make completion of the plan difficult, you should give detailed explanation so that the prosecutor and judge can make informed decisions.

In § 27 cases you must discuss the elements in § 27c: danger to the community, and benefit to the participant.

Indictment, Accusation, Complaint No(s)

vs.

Prior Record: Yes _____ No _____

Defendant

Address: _____
DOB : _____

Order of Postponement under R.3:28

FIRST POSTPONEMENT

Upon application and recommendation of the Coordinator of the _____
Pretrial Intervention Program, in accordance with R. 3:28 (b); the consents
of the prosecutor and the defendant appearing below, it is ORDERED that all
further proceedings be and are hereby postponed until _____, 197____,
and the defendant be and is hereby released into the custody of the Pretrial
Intervention Program.

Date: _____ Judge _____

SECOND POSTPONEMENT

Upon application and recommendation of the Coordinator of the _____
Pretrial Intervention Program, in accordance with R. 3:28 (c), the consent of
the defendant appearing below, and the prosecutor having been notified of such
application and recommendation, it is ORDERED that all further proceedings be
and are hereby further postponed until _____, 197____, and the cus-
tody of the defendant be and is hereby continued in the Pretrial Intervention
Program.

Date: _____ Judge _____

THIRD POSTPONEMENT

Upon application and recommendation of the Coordinator of the _____
Pretrial Intervention Program, in accordance with R. 3:28 (e), the consent of
the defendant appearing below, and the prosecutor having been notified of such
application and recommendation, it is ORDERED that all further proceedings be
and are hereby further postponed until _____, 197____, and the cus-
tody of the defendant be and is hereby continued in the Pretrial Intervention
Program.

Date: _____ Judge _____

FIRST POSTPONEMENT

I hereby consent to an initial
_____-month postponement of
proceedings in my case. If so
postponed, I waive my right to
a speedy trial.

Defendant / Attorney

I hereby consent to the recom-
mended postponement of this
matter.

Prosecutor

1st Postponement Recommended

PTS Coordinator

SECOND POSTPONEMENT

Consent

Defendant / Attorney

Recommended

PTS Coordinator

THIRD POSTPONEMENT

Consent

Defendant / Attorney

Recommended

PTS Coordinator

Court _____
Indictment, Accusation, Complaint
No (s) _____

STATE OF NEW JERSEY

vs.

ORDER OF POSTPONEMENT
UNDER N.J.S.A. 24:21-27(a)(1)

Defendant

Address: _____

D.O.B. _____

Upon application of the defendant for an Order to Suspend Proceedings pursuant to N.J.S.A. 24:21-27a(1), the consent of the defendant appearing below, the prosecutor having been notified of such application, and such suspension having been recommended by the Coordinator of the _____ Pretrial Intervention Program;

the defendant being charged with the offense, under N.J.S.A. 24:21-20a(1), (2), (3) or b, of _____ and not previously having been convicted of any drug-related offense as forth in N.J.S.A. 24:21-27a; and

it further appearing that the defendant's presence in the community will not endanger the community, and that the terms and conditions of supervisory treatment recommended by the Coordinator of the PTI program will benefit the defendant and protect the public, it is

ORDERED that all further proceedings be and are hereby suspended until _____, 197____, and the defendant be and is hereby released into the custody of the _____ Pretrial Intervention Program.

Date: _____ Judge _____

I hereby consent to the suspension of proceedings in my case and the entry of this Order.

Defendant

Attorney

(1-19 to be completed by C.L. before submission to Counseling Supvr.)

C.L. _____ Date Submitted: _____

PRETRIAL INTERVENTION PROGRAM
REJECTION/TERMINATION MEMORANDUM

1. Rejection at Initial Interview [] Date: _____
1.a. Not Interested []

2. Subsequent Rejection [] Date: _____
2.a. Withdrawal before enrollment []

3. Termination [] Date: _____
3.a. Withdrawal after enrollment []

If Termination (3), Court: [] County [] _____ Municipal
1st Adj. Date: _____ 2d Adj. Date: _____ 3d Adj. Date: _____

4. Date of Initial Interview: _____

5. Name: _____ ID# _____ Town of Residence _____

6. Sex: M _____ F _____ 7. Age _____ 8. Race: B _____ W _____ PR _____ O _____

9. Charge(s) _____ [] R.3:28 [] §27

10. Arrest Date: _____ 11. Court: _____ 12. Prior Convictions Yes _____ No _____

13. Employment Status at Initial Interview: E _____ (\$ wk) U _____ (\$ wk)
If E, where _____ S _____ P/T-E&S _____

14. Employment Status at Exit: E _____ (\$ wk) U _____ (\$ wk)
If E, where _____ S _____ P/T-E&S _____

15. Substance/Abuse Status at Initial Interview:
[] Not dependent [] CDS-dependent [] Alcohol dependent
[] Enrolled in Treat/Ed. Program (where) _____

16. Substance/Abuse Status at Exit:
[] Active in Treat/Ed. Program (where) _____
[] Completed Program (where) _____
[] Dropped out of Program (where) _____

17. Referral Source (specify) _____

(print on reverse of Rej/Term Memo)

18. Reason for Rejection/Termination: _____

- a. Not interested in program
- b. Withdrew &/or wants trial
- c. Rej. by Pros. County Mun.
- d. Rej. by Judge County Mun.
- e. Case dismissed
- f. Denied by Probation
- g. Denied by Parole
- h. Re-arrested. Conviction on arrest: yes no
- i. Prior Record
- j. Subst. Abuser - no program
- k. Psych. Problems
- l. Fail to keep appointments
- m. Fail to cooperate
- n. Heinous charge
- o. Minor charge
- p. §27a: prior drug convictions
- q. §27a: ineligible charge(s)
- r. §27c(1) danger to community
- s. §27c(2) inadequate treat.facilities
- t. Problems beyond scope
- u. Other _____

Explanation (use reverse side and attachments) _____

19. Approved, Counseling Supervisor

Date: _____

20. Approved, PTS Coordinator

Date: _____

21. Preliminary Termination Hearing Date: _____

22. Classification at Intake 1 2 3 4

23. Classification at Exit 1 2 3 4

24. If unrepresented at initial interview (PT-3(5)#39), did participant obtain an attorney before or at exit? yes no

25. Principal program-participant activity:

A. PTI Staff contact (check one):

- Mostly telephone Mostly personal contact
- Both, in approx equal distribution. Average #contacts per month _____.

- B. Activity (check all applicable where services or activity actually received or took place):
- 1. Vocational Counseling (by PTI Staff or other program)
 - 2. Job placement (by PTI or other program)
 - 3. Obtained job on own initiative
 - 4. Psychological/Psychiatric Services
 - 5. Medical Services
 - 6. Counseling by PTI Staff (Individual)
 - 7. Counseling by PTI Staff (Group)
 - 8. Drug-abuse program services
 - 9. Alcohol-abuse program services
 - 10. Family Counseling (by PTI Staff or other program)
 - 11. Civil legal services
 - 12. Emergency Welfare or housing
 - 13. Public financial assistance (Welfare, S.S., Unemployment etc.)
 - 14. Other (explain) _____

PRETRIAL INTERVENTION PROGRAM

(Address & Telephone)

TO: _____, Participant

NOTICE OF IMPENDING TERM-
INATION; OPPORTUNITY FOR
PRELIMINARY HEARING

Date: _____

On _____, 197__ by Order of the _____
_____ Court, criminal/penal proceedings against you for the
charge(s) of _____

_____ were postponed until _____, 197__, to allow your par-
ticipation in the Pretrial Intervention Program.

The Counselor/Court Liaison to whom you are assigned has recommended
that your participation be terminated and that you be returned to the ordin-
ary course of prosecution for the following reasons:

[attach additional pages if necessary]

Before a recommendation of termination is made to the Court, however,
you may have the opportunity of appearing at a preliminary hearing before
the Pretrial Services Coordinator to contest your Counselor's/Court Liaison's
recommendation. A date and time for this hearing has been set:

Date: _____

Time: _____

Place: _____ Pretrial Intervention Program

At the preliminary hearing you may present evidence in your own behalf and you may be represented by your lawyer. If, after the hearing, your participation is not continued, you will be given, in writing, the Pretrial Services Coordinator's decision to recommend termination and the reasons for the decision. You have the right, thereafter, to a hearing before the judge who enrolled you in the program to contest your termination and return to the ordinary course of prosecution.

If you do not want to have a preliminary hearing, or a hearing before the judge, you should sign and return the attached waiver. YOU SHOULD TALK WITH YOUR LAWYER BEFORE SIGNING THE WAIVER.

If you do not appear at the time and date set for the preliminary hearing; or if you cannot come and you do not call and ask to set another date, a recommendation will be made to the Court that you be terminated from the program.

Pretrial Services Coordinator

cc: _____ Esq.

Attorney for Participant

A.O.C. PT-8A-1/75.

PRETRIAL INTERVENTION PROGRAM
(Address & Telephone)

WAIVER OF PRELIMINARY AND TERMINATION HEARINGS

I have received notice that my Counselor/Court Liaison has recommended that I be terminated from the program and returned to prosecution. I have also been advised of the reasons for his/her recommendation, and that I may have a preliminary hearing and a termination hearing before the Judge who enrolled me in the program to contest this recommendation.

I do not want to have a preliminary hearing or a termination hearing before the Judge and I waive these hearings.

Date: _____

Participant

Attorney for Participant

PRETRIAL INTERVENTION PROGRAM
(Address & Telephone)

TO: _____, Participant

TERMINATION HEARING
NOTICE

Date: _____

A hearing has been scheduled before the Honorable _____
at _____ o'clock _____, 197____, at _____

to consider the recommendation of the Pretrial Services Coordinator that your
participation in the pretrial intervention program be terminated. If you do
not appear the Judge may order that you be returned to prosecution.

Pretrial Services Coordinator

cc: _____ Esq.

_____ Clerk

_____ Court

_____ Court
Indictment, Accusation, Complaint No(s).

ORDER OF TERMINATION

STATE OF NEW JERSEY :
 V :

 Defendant :

Upon application of the Pretrial Services Coordinator of the Pretrial Intervention program for an Order terminating the defendant from participation in said program;

The defendant, being charged with _____

the defendant having waived his/her opportunity to a termination hearing/
the defendant having been notified to appear before this Court for a termination hearing and not having appeared/the defendant having appeared to contest such recommendation,

It is on this _____ day of _____, 197____ ORDERED that the defendant be and is hereby terminated from participation in the Pretrial Intervention Program and is returned to the ordinary course of prosecution and;

It is further ORDERED that the custody of said defendant in the Pretrial Intervention Program be and is hereby terminated, and that the pretrial release condition(s) previously set be and is/are hereby continued; and that the defendant be placed on a trial calendar; and

It is further ORDERED that all records relating to the defendant's application to and participation in said program, including the records of this hearing/proceeding be kept by the Pretrial Services Coordinator who shall not permit access to such records by any person not employed by such program until further order of this Court.

Judge

_____ Court
Indictment, Accusation, Complaint No(s)

ORDER DENYING APPLICATION FOR ORDER OF
TERMINATION

STATE OF NEW JERSEY :

V :

_____ :
Defendant

Upon application of the Pretrial Services Coordinator of the Pretrial Intervention Program for an Order terminating the defendant from participation in said program;

The defendant, being charged with _____

_____,
the defendant having waived his/her opportunity to a termination hearing/
the defendant having been notified to appear before this Court for a termination hearing and not having appeared/the defendant having appeared to contest such recommendation, the application for an Order of Termination is denied and;

It is on this _____ day of _____, 197__ ORDERED
that the defendant's participation in the _____
Pretrial Intervention Program be and is hereby continued, in accordance with
the Order of Postponement entered on _____ 197__,
until _____ 197__.

Judge

(1 - 7 to be completed by C.L. before submission to Counseling Supvr.)

C.L. _____ Date Submitted: _____

PRETRIAL INTERVENTION PROGRAM

DISMISSAL MEMORANDUM

1. Name: _____ ID# _____

2. Address (current): _____

3. Dismissal during 1st.Adj.(date) _____ 2d Adj. (date) _____
3rd.Adj.(date) _____

4. Date of Initial Interview: _____

5. Dismissal Court: [] County [] _____ Municipal Court

6. Charge(s): _____ [] R.3:28, [] §27

7. Employment Status at Initial Interview: If Employed, where: _____
Address: _____

[] Employment (\$ _____ wk) [] Unemployed [] Student [] Part Time Emp./Stud.

8. Employment Status at Dismissal: If Employed, where: _____
Address: _____

[] Employment (\$ _____ wk) [] Unemployed [] Student [] Part Time Emp./Stud.

9. Substance Abuse Status at Initial Interview:
[] Not dependent [] CDS dependent [] Alcohol Dependent
[] Enrolled in Treat/Ed. Program (where) _____

10. Substance Abuse Status at Dismissal:
[] Active in Treat/Ed. Program (where) _____
[] Completed Program (where) _____
[] Dropped out of Program (where) _____

11.

Approved by Counseling Supervisor
Date: _____

12.

Approved by PTS Coordinator
Date: _____

13. Classification Intake 1 2 3 4

14. Classification at Dism. 1 2 3 4

(Print on reverse of Dismissal Memorandum)

15. If unrepresented at initial interview (PT-3(5)#39), did participant obtain an attorney before or at exit? yes no

16. Principal program-participant activity:

A. PTI Staff contact (check one):

Mostly telephone Mostly personal contact

Both, in approx equal distribution

Average # contacts per month _____.

B. Activity (check all applicable where services or activity actually received or took place)

- 1. Vocational Counseling (by PTI Staff or other program)
 - 2. Job placement (by PTI or other program)
 - 3. Obtained job on own initiative
 - 4. Psychological/Psychiatric Services
 - 5. Medical Services
 - 6. Counseling by PTI Staff (Individual)
 - 7. Counseling by PTI Staff (Group)
 - 8. Drug-abuse program services
 - 9. Alcohol-abuse program services
 - 10. Family Counseling (by PTI Staff or other program)
 - 11. Civil legal services
 - 12. Emergency Welfare or housing
 - 13. Public financial assistance (Welfare, S. S., Unemployment etc.)
 - 14. Other (explain) _____
-

Court
Indictment, Accusation, Complaint No s)

STATE OF NEW JERSEY

:

V

:

ORDER OF DISMISSAL UNDER RULE 3:28

:

Defendant

Upon application of the Pretrial Intervention Program for an Order to dismiss the above captioned Complaint(s)/Indictment(s)/Accusation(s) for

pursuant to Rule 3:28 and upon the recommendation of the Coordinator of the Program that such dismissal be granted, the consent of the defendant to such dismissal appearing below, and the prosecutor having been notified of such application;

The Court having considered the report of the Pretrial Intervention Program concerning the defendant's participation, and noting that the defendant has released the complainant from any claims which might arise from failure to prosecute this matter in the ordinary course;

It is on this _____ day of _____, 197____, ORDERED that the Complaint(s)/Indictment(s)/Accusation(s) be and is hereby dismissed without cost to the defendant;

And it is further ORDERED that the clerk of _____ Court be and is hereby directed to mark the court record: "Complaint dismissed--matter adjusted."

I hereby consent to the entry of the above Order

Defendant

Judge

Attorney for Defendant

(print on reverse of Order of Dismissal Under R. 3:28)

R E L E A S E

I understand that as a result of my participation in the _____
Program, a recommendation will be
made that the charge(s) listed in the form of Order of Dismissal under R. 3:28
be dismissed.

If such dismissal(s) is/are granted, I agree, as a condition thereof,
that upon the entry of such Order(s) of Dismissal the complainant shall be
released from any and all claims which might arise from the complainant's
failure to prosecute these charges in the ordinary course.

Witness: _____

Participant's Signature

Date: _____

_____, Esq.
Attorney for Participant

PRETRIAL INTERVENTION PROGRAM

(Address & Telephone)

Date _____

TO: _____

Dear _____ :

As a result of your successful participation in the _____
_____ Pretrial Intervention Program the charges
for which you became enrolled have been dismissed.

A copy of the Order of Dismissal and the release you signed is enclosed. Keep it in a safe place. This order means that your records are marked "Dismissed." You may be eligible to have these records expunged or sealed under N.J.S.A. 2A:85-15 et seq., or N.J.S.A. 24:21-28. Ask your lawyer about this. You should also ask your lawyer how you should answer employment and other application questions if you are asked whether you have a criminal record.

We will continue to contact you from time to time for the next year to get information to see if this program is effective. If you have problems that we might help you with, you may contact your Counselor or Court Liaison who will be glad to help.

Sincerely,

Pretrial Services Coordinator

Enclosure.

cc: _____ Esq.
Attorney for Participant

CODES:
 Emp=E
 Une-U
 Stu=S
REF SOURCE:
 Sc en=SC
 Pub. Def.=PD
 Pri. Atty.=A
 Comm. Agen.=CA
 Other=O
 (Specify)

PRETRIAL INTERVENTION PROGRAM

WEEKLY INTAKE REPORT

WEEK OF _____

O.K. _____
 COUNSELING SUPERVISOR

DATE	APPLICANT'S NAME & ADDRESS & ID #	CHARGE(S)	COURT OF ORIGIN	REFERRAL SOURCE	INIT. A/R (R-1)	EMPLOYED	CL at I/I	SUB. REJ. DATE (R-2)	ASSIGNED CL	1st ADJ. DATE (E)	2nd ADJ. DATE (2E)	3rd ADJ. DATE (3E)	TERM. DATE (T)	DIS. DATE

PTI PROGRAM
CASE FILE CARD

ID NUMBER

DEFENDANT'S NAME

INITIAL INTERVIEW DATE

ADDRESS

COUNSELOR/C.L. ASSIGNED

CHARGE

COMPLAINT NUMBER

ARREST DATE

[] R. 3:28

[] §27

COURT

DISPOSITION

Rejected ^{Date} / /

Terminated / /

Dismissed / /

PT-11 1/75 A.O.C.

PRETRIAL INTERVENTION PROGRAM	
To: _____	Police Dept.
Date: _____	
Re: Record Request	
NAME _____	PTI-ID# _____
ADDRESS _____	
SOCIAL SECURITY# _____	DOB ____/____/____
ARREST DATE ____/____/____	TOWN DEPT. _____
RACE _____	CHARGE _____
BCI# _____	SBI# _____
PRIOR RECORD: YES _____	NO _____
NOT PRINTED _____	
PT- 12 1/75 A.O.C.	

PRETRIAL INTERVENTION PROGRAM

To: STATE BUREAU OF IDENTIFICATION
Records & Identification Section
Box 68
West Trenton, New Jersey

By: _____

Date: _____

Re: REQUEST FOR RECORD INFORMATION ON THE FOLLOWING

NAME _____ S.S.# _____ RACE _____ M. ___ F. ___
D.O.B. ___/___/___ ARREST DATE ___/___/___ DEPT. _____ PTI-ID# _____
RECORD REQ. _____ UP-DATE _____ NO PRIOR RECORD _____ RECORD ATTACHED _____

NAME _____ S.S.# _____ RACE _____ M. ___ F. ___
D.O.B. ___/___/___ ARREST DATE ___/___/___ DEPT. _____ PTI-ID# _____
RECORD REQ. _____ UP-DATE _____ NO PRIOR RECORD _____ RECORD ATTACHED _____

NAME _____ S.S.# _____ RACE _____ M. ___ F. ___
D.O.B. ___/___/___ ARREST DATE ___/___/___ DEPT. _____ PTI-ID# _____
RECORD REQ. _____ UP-DATE _____ NO PRIOR RECORD _____ RECORD ATTACHED _____

NAME _____ S.S.# _____ RACE _____ M. ___ F. ___
D.O.B. ___/___/___ ARREST DATE ___/___/___ DEPT. _____ PTI-ID# _____
RECORD REQ. _____ UP-DATE _____ NO PRIOR RECORD _____ RECORD ATTACHED _____

NAME _____ S.S.# _____ RACE _____ M. ___ F. ___
D.O.B. ___/___/___ ARREST DATE ___/___/___ DEPT. _____ PTI-ID# _____
RECORD REQ. _____ UP-DATE _____ NO PRIOR RECORD _____ RECORD ATTACHED _____

[] All Cases [] §27 only

B. INTAKE (current month)	IND #	%	DP #	%	TOTAL #	%
(1) ACCEPTANCE PENDING						
(2) REJECTED						
(3) TOTAL INTAKE						

(___/___/___ to ___/___/___)

C. COURT PROCESSING (Cumulative)*		IND #	%	DP #	%	TOTAL #	%
EXISTS	(1) DISMISSALS						
	(2) TERMINATIONS						
	(3) TOTAL EXITS						
ENROLLMENTS	(4) 1st Postponement						
	(5) 2nd Postponement						
	(6) 3rd Postponement						
	(7) TOTAL ENROLLMENTS						
	(8) TOTAL EXITS & CURRENT ENROLLMENTS						

* From date of program operational inception to end of current report period.

[] All Cases [] § 27 only

D. INTAKE (Cumulative)		IND #	%	DP#	%	TOTAL #	%
[1]	ACCEPTANCE PENDING						
[2]	REJECTED						
[3]	TOTAL INTAKE						

E. CURRENT CASELOAD	#	%		#	%		
ENROLLMENTS C (7)			+ ACCEPT. PENDING D(1)			CURRENT = CASELOAD	

[] All Cases [] §27 only

F. INTAKE/ ACCEPTED:REJECTED (Cumulative)

Accepted C(8)+D(1)

Rejected D(2)

Total Intake

#	%

G. EXITS/ DISMISSED:TERMINATED (Cumulative)

Dismissed C(1)

Terminated C(2)

Total Exits

IND #	%	DP#	%	TOTAL EXITS #	%

[] All Cases [] §27 only

DISMISSED PARTICIPANTS REARRESTED - (Include arrests subsequent to dismissal that have not yet reached disposition, or that have ended in a finding or plea of guilty. Do not include arrests ending in dismissal or acquittal (Cumulative).

IND #	%	DP #	%	Total Rearrests #	% of Cumulative Dismissals

PRIOR CONVICTION RECORD

1. Cumulative Exits

	Prior Record #	%	No Prior Record #	%	Total #
Dismissal					C(1)
Termination					C(2)

2. Current Enrollments

					C(7)
--	--	--	--	--	------

[] All Cases [] §27 only

J. EMPLOYMENT STATUS/INTAKE: EXIT(Cumulative)

1. All Exits (Termination & Dismissal)

	INTAKE	%	EXIT	%	+ - %	+ - N
Employed						
Employed Student						
Student						
Unemployed						
TOTAL	C(3)	100	C(3)	100		

2. Terminations

	INTAKE	%	TERMS.	%	+ - %	+ - %
Employed						
Employed Student						
Student						
Unemployed						
TOTAL	C(2)	100	C(2)	100		

3. Dismissals

	INTAKE	%	DISMS.	%	+ - %	+ - N
Employed						
Employed Student						
Student						
Unemployed						
TOTAL	C(1)	100	C(1)	100		

ADMINISTRATIVE OFFICE OF THE COURTS
DIVISION OF CRIMINAL PRACTICE

PRETRIAL SERVICES

INSTRUCTIONS FOR MONTHLY ACTIVITY SUMMARIES

Forms PT-13(1)-(6) are used to report PTI Activity. Two sets should be submitted each month: one reporting on all cases (R. 3:28 and §27 combined) and a second reporting only on §27 cases.

A. Court Processing (current month)

Report only cases which were dismissed, terminated, enrolled or re-enrolled by Order during the month. If a recommendation has been submitted but an Order not signed by the end of the month, do not report it.

B. Intake (current month)

Report only cases for which initial interviews took place during the month. Carry-overs are reported in D.

C. Court Processing (cumulative)

C(1), (2) & (3) are cumulative figures taken from monthly totals (A).

Enrollments (see worksheet)

Start with previous month's totals. To calculate number of participants currently in first enrollments:

#1st's at end of last month-C(4)
minus 1sts dismissed during current/month
minus 1sts terminated during current/month
minus 1sts that became 2d's during current/month
plus acceptance pending cases that became 1sts during current month

To calculate number of participants currently in second enrollment:

#2d's at end of last month
minus #2d's dismissed in current month C(5)
minus #2d's terminated in current month
minus 2d's that became 3d's during current month
plus #1st's that became 2nds in current month

To calculate number of participants in 3d postponements:

#3d's at end of last month
minus 3d's dismissed during current month
minus 3d's terminated during current month
plus 2d's that became 3d's during current month

Total exits plus total current enrollments (C(8)) equals total number of participants ever enrolled. The difference between the total exits and current enrollments at end of report month and the total at end of the prior report month equals the number of first enrollments during the current report month (A(4))

D. Intake (Cumulative)

To calculate the number of applicants pending enrollment (Accept.Pending) start with prior month's total:

Total Accept. Pending at end of last month (D(1))
Plus total Accept. Pend. during current month (B(1))
Minus total rejected during current month
(includes those taken in and rejected during
current month (B(2)) and those rejected from prior
month's intake)
Minus number first enrollments during current mo. (A(4))

To find Rejected take prior total (D(2)) and add number rejected during current month (B(2))

Worksheet for PT-13(2) C. Court Processing (Cumulative)

During current report month _____, 197__

Dismissed

IND-1st's _____	DP-1st's _____	
IND-2d's _____	DP-2d's _____	
IND-3d's _____	DP-3d's _____	
Total _____		_____ A(1)

Terminated

IND-1st's _____	DP-1st's _____	
IND-2d's _____	DP-2d's _____	
IND-3d's _____	DP-3d's _____	
Total _____		_____ A(2)

2d to 3d Postponements:

IND-2d's to 3d _____	
DP-2d's to 3d _____	
Total _____	A(6)

1st to 2d Postponements:

IND-1st's to 2d _____	
DP-1st's to 2d _____	
Total _____	A(5)

Pre-Enrollment (accept.pend.) to 1st Postponements

IND-Pre-E to 1st _____	
DP-Pre-E to 1st _____	
Total _____	A(4)

Rejections

Rejected IND from current report month's intake _____	
Rejected DP from current report month's intake _____	(B(2))
Rejected IND from prior month's intake _____	
Rejected DP from prior month's intake _____	
Total _____	(D(2))

Acceptance Pending

IND _____	
DP _____	
TOTAL _____	(D(1))

PRETRIAL INTERVENTION PROGRAM

CODE SHEET FOR:

Rejection/Termination Memo (PT-8)

Dismissal Memo (PT-9)

CARD #3

- | | | | | | | |
|--|-------|---|---|---|---|---|
| 1. I.D.# | 1 | 2 | 3 | 4 | 5 | 6 |
| | / | | | | | |
| 2. Number of months between Initial Interview and exit. | | | | | | |
| | 7 8 | | | | | |
| 3. Emp. status at exit (Rej., Term., or D) | | | | | | |
| (1) Employed (2) Unemployed (3) PT-E/Student (4) Student | | | | | | |
| | 9 | | | | | |
| 4. If employed, Salary at exit. | | | | | | |
| (1) \$50-100 (2) \$100-150 (3) \$150-200 (4) \$200-300 | | | | | | |
| (5) over \$300 (6) N/A | | | | | | |
| | 10 | | | | | |
| 5. Substance-Abuse status at exit (Rej., Term., or D) | | | | | | |
| (1) Active in Treat/Ed program (2) Completed Program | | | | | | |
| (3) Dropped out of program | | | | | | |
| | 11 | | | | | |
| 6. Classification at Intake (1-4) | | | | | | |
| Classification at Exit (1-4) (If no change Code 9) | | | | | | |
| | 12 | | | | | |
| 7. If unrepresented at Intake, represented at exit | | | | | | |
| (1) yes (2) no | | | | | | |
| | 13 | | | | | |
| 8. PTI Staff contact: | | | | | | |
| (1) Mostly telephone (2) Mostly personal contact | | | | | | |
| (3) Both, equally | | | | | | |
| | 14 | | | | | |
| 9. Average # contacts per month (lead with 0) | | | | | | |
| | 15 16 | | | | | |
| 10. Activities: (1) yes (2) no (for each) | | | | | | |
| (1) Vocation counsel | | | | | | |
| | 17 | | | | | |
| (2) Job Placement (program) | | | | | | |
| | 18 | | | | | |
| (3) Own job | | | | | | |
| | 19 | | | | | |
| (4) Psych. Service | | | | | | |
| | 20 | | | | | |
| (5) Medical Service | | | | | | |
| | 21 | | | | | |
| (6) Individual Counsel | | | | | | |
| | 22 | | | | | |
| (7) Group Counsel | | | | | | |
| | 23 | | | | | |
| (8) Drug-abuse program | | | | | | |
| | 24 | | | | | |
| (9) Alcohol-abuse program | | | | | | |
| | 25 | | | | | |

(10) Family counsel	<u>26</u>
(11) Civil legal service	<u>27</u>
(12) <u>Emergency</u> Welfare or housing	<u>28</u>
(13) Public financial assistance	<u>29</u>
(14) Other (explain) _____	<u>30</u>

PRETRIAL INTERVENTION PROGRAM

POST-EXIT FOLLOW-UP: REARRESTS

(To be completed upon receipt of rearrest information and at 6-month and 1-year post-exit points)

NAME: _____ ID# _____

Type of exit: []Reject []Term. []Dismissal

Date of exit: _____/_____/_____.

CARD# 3

A. If participant was rearrested during participation (PT-3(4)#37) what was trial or plea outcome?
 (1)Dism.R.3:28 (2)Other Dismissal (3)Not Guilty (4)Guilty
 (5)Pending trial or plea

_____ 31

If Guilty, what was disposition?
 (1)Fine (2)Probation (3)Prison (4)Split Sentence (5)Pending Sentence

_____ 32

If Probation, # months

_____ 33 _____ 34

If Prison, # months (min.) (if indeterminate Code 00)
 (Note: if split sentence, show both prison and probation time)

_____ 35 _____ 36

B. Has participant been rearrested post-exit? (1)yes (2)no

_____ 37

If yes, # months between exit and 1st rearrest (lead with 0)

_____ 38 _____ 39

If yes, how many times? (if more than 9, Code 9)

_____ 40

C. FIRST REARREST:

Charge * (see charge Code sheet)

_____ 41 _____ 42

(1)Indictable (2)D.P.

_____ 43

Trial or plea outcome:
 (1)Dism. (2)Not Guilty (3)Guilty (4)Pending trial or plea

_____ 44

If Guilty, what was disposition?
 (1)Fine (2)Probation (3)Prison (4)Split Sentence (5)Pending sentence

_____ 45

If Probation, # months

_____ 46 _____ 47

If Prison, # months(min.)(if indeterminate Code 00)

_____ 48 _____ 49

D. SECOND REARREST:

Charge (see Charge Code Sheet)

50	51
----	----

(1)Indictable (2)D.P.

Trial or plea outcome:

(1)Dism. (2)Not Guilty (3)Guilty (4)Pending trial or plea

	52
--	----

If Guilty, what was disposition?

(1)Fine (2)Probation (3)Prison (4)Split sentence

(5)Pending sentence

	53
--	----

If Probation, # months

54	55
----	----

If Prison, # months(min.)(if indeterminate Code 00)

56	57
----	----

* Note: Code only one charge for each rearrest. In cases of multiple charges, code most serious:(a) Indictable offenses before D.P.,(b) charge that is controlling force in the crime (e.g. B.E.&L. before poss. stln. prop.), (c) violent crimes first,(d)drug crimes before property crimes, (e) if a-d do not apply, make judgement re seriousness.

PTI PROGRAM

POST-DISMISSAL FOLLOW-UP SURVEY

Date of Mailing ___/___/___
Date of Dismissal ___/___/___
ID# _____

Name _____

Most Current Address _____

City _____ State _____

When your charges were dismissed, were you working? _____

Full-time or part-time? _____ Salary then? _____

Position? _____ Are you working now? _____

Same job or different? _____ Position now? _____

Salary now? _____ How many months at current job _____

If you are now unemployed, how many months have you been unemployed _____

If unemployed, how are you supported? _____

If unemployed, what is your work history since your charges were dismissed? _____

Since your charges were dismissed, have you been rearrested? _____

How many times? _____ For what? _____

Any convictions? _____

How many? _____

Can you tell us in a few sentences what is new and different in your life? (It can be positive or negative)

What kind of effect do you think Pretrial has had on your life? (This also can be positive or negative - continue on reverse).

PRETRIAL INTERVENTION PROGRAM

POST DISMISSAL FOLLOW-UP SURVEY

1. I.D.# _____ CARD #3
2. Working at time of dismissal? _____
 1 YES 2 NO 9 N/A 58
3. 1-PART TIME 2 FULL TIME 3 UNEMPLOYED 9 N/A _____
59
4. SALARY AT THE TIME OF DISMISSAL
- 1 \$ 50-100
 2 \$ 100-150
 3 \$ 150-200
 4 \$ 200-300
 5 OVER \$3-0
 9 N/A _____
60
5. Are you working now?
 1 YES 2 NO 9 N/A _____
61
6. Are you working at
 1 SAME JOB 2 DIFFERENT 9 N/A _____
62
7. SALARY NOW (SEE ABOVE - #4) _____
63
8. HOW MANY MONTHS AT CURRENT JOB?
- 1 1-3
 2 4-8
 3 8-11
 4 1-3 yrs
 5 4-8
 6 8-10
 7 OVER 10 YRS. _____
64
9. IF UNEMPLOYED, HOW MANY MONTHS (SEE ABOVE) _____
65
10. IF UNEMPLOYED, HOW ARE YOU SUPPORTED? _____
66
- 1 FAMILY 4 PARENTS 7 SOCIAL SECURITY
 2 SPOUSE 5 WELFARE 8
 3 FRIEND 6 UNEMPLOYMENT 9 N/A

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APPENDIX B

Summary Report, Hudson County Pretrial
Intervention Project

B-1

Summary Report, Newark Defendants'
Employment Project

B-17

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1. Summary Report, Hudson County Pretrial Intervention Project

A pretrial intervention program for Hudson County was developed and initiated late in 1971, based on the prior year's experience of the Newark Defendants' Employment Project (N.D.E.P.). Because of initial operational difficulties experienced with N.D.E.P.'s relationship to criminal justice agencies, it was felt that relations with the judiciary, prosecution and police would be substantially improved and greater trust created if the program were placed under judicial control. The program was therefore placed in the Administrative Office of the Courts, as an experimental effort within the judiciary. After the first grant year the program was transferred to the administration of the local judiciary. Grants from S.L.E.P.A. and the U.S. Department of Labor (for vocational services) financed the program.

(a) Eligibility

From the initial experience in Newark, it was anticipated that most participants would be relatively young, charged with minor indictable offenses, and have no prior conviction records. But it was also anticipated that defendants who had previously been convicted or who were charged with serious offenses would also be capable of deterrence from further criminal activity. In order, then, to permit

pretrial intervention for the broadest possible range of defendants, the program developed flexible guidelines for eligibility.

(i) Selection Criteria^[1]

- A. AGE: Applicants must be above the age of 18.
- B. RESIDENCE: Applicants must ordinarily be residents of Hudson County and the State of New Jersey. In occasional instances where residence outside the county or State will not bar effective counseling/supervision procedures, defendants from other areas may be accepted.
- C. JURISDICTION: Only defendants charged with offenses in the criminal or municipal courts of Hudson County may be enrolled. However, the program will undertake to counsel/supervise defendants who are Hudson County residents charged in other jurisdictions so long as such defendants are enrolled in a similar program and such counseling/supervision plan has been approved by a R. 3:28 designated judge in the jurisdiction in which the defendant is charged.

Guidelines for Exclusion

The focus of the Pretrial Intervention Project is upon the need for and possibilities of attitudinal and/or behavioral change in each defendant. Consequently the program may accept the applications of defendants charged with practically any offense. In some instances however defendants charged with certain offenses must ordinarily be excluded for reasons of

[1] Hudson County Pretrial Intervention Project, Program/Procedures, pp. 6, 7 (Revised May 1973).

judicial, law-enforcement or correctional policy. Other defendants may be excluded when the services they require are beyond the capacities of the program.

(1) Heinous Offenses:

Crimes of extreme violence when associated with serious injury; sale or dispensing of significant amounts of controlled dangerous substances or other dangerous drugs, especially when not associated with the applicant's addiction.

(2) Minor Violations:

Motor Vehicle, health code or other similar offenses which usually result in a fine.

(3) Gambling Offenses:

Defendants charged with gambling offenses whether indictable or non-indictable may not be enrolled.

(4) Indictments:

No applicant against whom an indictment has been issued may be considered for enrollment with respect to the charge for which he/she has been indicted.

(5) Prior Convictions:

The Pretrial Intervention Project is designed to help defendants who have not entered upon a life of crime. Habitual offenders are therefore excluded. Enrollment is not limited to "first offenders"; each case is considered individually with respect to the relationship between the applicant's prior conviction and present charge.

(6) Addiction:

Defendants who are physically or psychologically dependent upon the use of alcohol or the illegal use of a controlled dangerous substance will be excluded unless the defendant is enrolled as an active participant in an appropriate drug abuse program, and unless the defendants' addiction is under control to the extent that employment can be undertaken.

(b) Staff

The PTI staff comprises a director and assistant director responsible for all operations from funding to detailed internal procedures; a research director (who also evaluates other programs and systems for the Trial Court Administrator) who processes and evaluates program data and conducts studies on operations; and counseling staff.

Under the supervision of a Counseling Coordinator (M.A., Counseling), a staff of twelve, handling caseloads of 30 - 40, participants, evaluate the applications of defendants for participation, plan individual programs according to need, and provide counseling or supervision, and assistance in securing services from other governmental or community service agencies.

One of the twelve, because of training (M.A. Counseling) and prior counseling experience, serves as program Counselor, handling, in addition to routine matters, cases in which traditional counseling techniques are indicated.

The remaining eleven staff function as Court Liaisons--a title selected because the counseling they conduct is of a "non-professional" type. Since the inception of the program the Court Liaison staff has included men and women with or without college degrees; with experience as inmates or as heroin-addicts; probation officers assigned who volunteered--to serve as Court Liaisons; and graduate interns in counseling from the New Jersey Education Consortium.

Because of the variety of characteristics among participants, the PTI program has attempted to maintain a balanced racial and ethnic composition among the staff. (Because of the significant number of Spanish-speakers in Hudson County the program has maintained Hispanic, bilingual Court Liaisons as members of the staff.)

Despite the variety among Court Liaisons, most have had in common two factors considered vital to the program-participant relationship, and for which the staff were selected: roots in the local communities, with native knowledge and understanding of the cultural variations among the defendant population; and most important, warmth, empathy and genuine interest in assisting participants.

For evaluation of the probability of participant success, the counseling staff receive the assistance of Hudson County's psychologist who makes assessments of the risks involved in more serious cases.

The Vocational Service Coordinating Unit--now operating independently under the Trial Court Administrator but formerly a PTI program component--consists of four staff who provide vocational testing and counseling, and referral for job placement to opportunities made available through the State Employment Service or to industries who have agreed directly to accept PTI participants. These services are extended as well to parolees, inmates of the county penitentiary and probationers.

(c) Participant Programs

Participants generally fall into two broad classes: those for whom the arrest and threat of prosecution represent the primary problem, and who exhibit little if any need for employment, psychological or community adjustment assistance. For such defendants a general regimen of supervised reporting is established for the duration of the R. 3:28 postponement periods.

Participants in need of services receive "counseling" ranging from simple one-to-one psychological support to referral for psychoterapeutic services; job placement; referral to narcotic or alcohol abuse programs, or for legal or medical service; or assistance with educational programs. The Court Liaisons are responsible for assuring that services are secured and the participants follow through with responsibilities to the PTI program and to programs to which they are referred.

An illustrative case--actually a composite of several participants--shows typical PTI participation.

SERGIO Q. [2]

In August 1972, 48 year old Sergio Q. was arrested for attacking a neighbor with a knife. The formal charge: atrocious assault and battery.

Mr. Q. lived in a shabby apartment in Hoboken with his wife and four children. His 18 year old son was a heroin addict. Q. had come to Hudson County from Puerto Rico in 1962. He had little education and his English was still

[2] This case appeared in an article on the Hudson PTI program in Forum, Jersey City Chamber of Commerce, pp. 26, 28 (May - June 1973).

halting. The case was assigned to Jose Herrans, a bi-lingual counselor.

Between 1962 and 1965 Q. has been convicted twice for disorderly persons offenses and had spent 30 days in the Hudson County Penitentiary. But Q. had also worked fairly steadily in various food-service jobs. When he was arrested however, Q. had been unemployed nearly a year after having been laid off from his last place of employment.

Because of the nature of the offense Q. was charged with, the Pretrial Intervention Project's psychologist arranged for Q. to be interviewed by a Spanish-speaking psychiatrist. The psychiatrist reported his opinion that the incident was probably an isolated one and that with counseling and a job Q. seemed a fairly good risk. Q.'s case was postponed by Order of the Hudson County Court until the end of November.

During counseling sessions, Q. revealed his bitterness at no longer "being a man" since he could not support his family or control his son. He spoke frequently of returning to Puerto Rico. Unemployment compensation had run out and Q.'s wife was borrowing from her relatives. Q. was adamant in his refusal to consider applying for welfare.

Jose and the Vocational Service Center staff immediately set out to help Q. find work. It was felt that his lack of employment was the major cause for the behavior that led to his arrest.

Jose spent time with Q. and his wife, getting to know the family, and got Q. to talk during group sessions with other Spanish-speaking participants about his feeling of "not being a man". The group sessions seemed to help Q. get his pride back. Q. decided that his desire to go back to Puerto Rico was really motivated by his fear of not being able to find a lasting job and was really a desire to escape. He began to express his pride at being a Puerto Rican.

Fortunately, it took only three weeks to find a job for Q., and an application for public assistance became unnecessary. The new job was in the factory of a manufacturing company that employed Spanish-speaking foremen, and it paid more than Q. had ever earned before.

The company agreed to hire Q. only after assurances that he was meeting frequently with his counselor after work and was being supervised closely.

Things began to smooth out a bit for Q. as he stuck to his job, and Jose began talking to him about improving his English and possibly studying for a high-school equivalency diploma. Q.'s son who was still using heroin, took up a good

deal of Jose's time after Q. managed to get him to talk to Jose. Eventually Jose talked the son into making contact with the drug-abuse program that Jose had "graduated" from, but the son was convinced that he wasn't "strung out" and drifted away from the program.

Q. remained as a participant until the end of February 1973. A check with the Bureau of Criminal Identification of the New Jersey State Police showed no arrests other than the one he had previously been charged with. Due primarily to Q.'s job record, the Pretrial Intervention Project's recommendation that the charge be dismissed was accepted.

(d) Procedures

(i) Intake

Prior to the beginning of the court day, staff of the Bail Unit of the Jersey City Municipal Court^[3] interview the defendants held in the city lock-up and complete a bail questionnaire to be used by the judge in setting pre-trial release conditions.

At the first appearance, the defendant is notified of the existence of the program in accordance with R. 3:4-2, and, if released, with the assistance of the court's Diversion Expeditor is asked to go to the PTI project offices for an interview.

Defendants making first appearances in other municipalities come to the program as a result of the R. 3:4-2 notification or are referred to the program by defense counsel or judicial or law-enforcement agencies.

[3] The Bail Unit, originally a component of the PTI Project, was transferred to the municipal court upon receipt by Jersey City of a SLEPA court-management grant and the hiring of a Court Administrator in the Fall of 1973.

(ii) PTI Acceptance, R. 3:28 Application

Step 1: Upon reporting to the PTI offices, the defendant is interviewed by a Court Liaison. If found acceptable, the defendant is asked to consent to a 3-month adjournment under Rule 3:28, waiving his right to a speedy trial, and enters into a Participation Agreement with the PTI program.

For defendants for whom ROR was denied and bail set, and who have not posted bail, an interview may be conducted in the Hudson County Jail or other place of detention. If found acceptable the defendant is asked to consent to a 3-month postponement and enter into a Participation Agreement.

Step 2: Defendants found acceptable at Step 1 are assigned to Court Liaisons and participate informally in the program for a period of 3-4 weeks to review attitude and motivation for successful participation; a "rap-sheet" is obtained from local law enforcement agencies or from the State Bureau of Identification, New Jersey State Police, to check the defendant's conviction record.

Where an acceptable defendant is in custody, the application for Rule 3:28 postponement contains, in addition, an application for an order discharging the defendant from custody of the Pretrial Intervention Project. In such cases application is made without a 3 to 4 week review.

Step 3: At the end of the review period, for those defendants remaining, a report--including a copy of the defendant's prior record-- setting forth the reasons for selection and a plan of counseling is sent to the county or municipal prosecutor along with an application for the prosecutor's consent to a 3-month postponement under Rule 3:28 and the release of the defendant into the custody of the Pretrial Intervention Project.

Step 4: After the prosecutor's consent is obtained, the report and consents are submitted to the Rule 3:28 designated judge for his review and for the entry of the Rule 3:28 postponement order. If the application is denied (or consent refused at Step 3) notice of rejection is sent to the court having jurisdiction over the case, and the defendant is instructed to return to court on his next appearance date if such date has been set. If the postponement order is granted, a copy of the order is sent to the Clerk of the Court having jurisdiction over the case, to the Prosecutor and to the defendant's attorney; and the defendant is considered an enrolled participant.

Defendants on Parole/Probation:

Applicants who are parolees may not be accepted unless the defendant's Parole Officer consents to participation and agrees not to charge the defendant with a violation of parole. Applicants who are active probationers may be enrolled only with the approval of the judge who imposed the sentence of probation and of the Chief Probation Officer.

Addicted Defendants:

The special problems of defendants addicted to the use of illegal hard drugs require special handling.

Application for Rule 3:28 postponement is not made unless the defendant is enrolled in a reputable drug-abuse program.

The fact of such drug-abuse enrollment is stated in the application along with a counseling plan which details the counseling and therapeutic methods to be used by the drug rehabilitation program, and the means of coordinating these efforts with the counseling of the Pretrial Intervention Project. In most instances urine monitoring will be conducted for such defendants.

(iii) Termination. R. 3:28(c)(3)

Recommendation of termination and return to the ordinary course of prosecution is made whenever, in the judgment of the program director, a participant has failed to abide by the Participation Agreement.

Before submitting a termination recommendation to the designated judge, however, written notice of the reasons upon which the recommendation is based is sent to the participant and he/she is asked to meet with the Court Liaison and the program director--with counsel if the participant desires. If this meeting does not result in continued participation, a termination recommendation is transmitted to the designated judge with a copy to the participant and his/her attorney and a date is set for a termination hearing at which the recommendation may be challenged.

(iv) Readjournalment. R. 3:28(c)(2)

Subsequent 3-month postponements may be sought for participants who appear to be making significant progress but who are not yet ready for dismissal.

On or prior to the adjourned date, a report evaluating the participant's progress and a recommendation for a second postponement is sent to the Prosecutor and designated judge in the same process as at the initial stage.

(v) Dismissal. R. 3:28 (c)(1)

On or prior to the adjourned date, a final evaluative report concerning the defendant's participation in the Pretrial Intervention Project is delivered to the Prosecutor along with the recommendation of the Project Director that the complaint be dismissed.

In addition to such report and recommendation, the defendant's consent to a dismissal and his release of the complainant from any claims that might result from failure to prosecute are delivered to the Prosecutor.

If the Prosecutor consents to the dismissal, he indicates his consent on the proposed Order of Dismissal, and transmits the report, recommendation and consents to the designated judge.

If the designated judge decides to grant the dismissal, a date is set for appearance of the defendant before him/her for entry of the dismissal order.

(e) Evaluation of Program Activities [4]

Since the program's operational inception in March 1972, the Hudson County Pretrial Intervention Project, by the end of its second program year (November, 1973), had interviewed for acceptance over 1000 defendants charged with offenses in Hudson municipalities. Of these, half did not, ultimately, become enrolled in the program. Of enrolled participants who exited the program, 70% succeeded; for these participants charges were dismissed. The program has established, as base-experience, the following relationships:

Dismissal	35%
Rejection	50%
Termination	15%

Only one-third, then of all defendants who apply for enrollment succeed in the program.

The PTI program has employed, as a device to bring applicants to the program, the screening and referral program described above. Although no data exists which characterize all arrested participants, certainly a screening mechanism has been at work prior to the point of initial application that selects out those defendants who, because of inadequacies

[4] Data reported here are drawn from the following studies contained in the Hudson County Pretrial Intervention Project's Progress Report, November 1973: Analysis of Participant Characteristics, Maureen E. McCully, PTI Research Director, November 1973; Case Dismissal/Fear of Prosecution as Motivation for Defendant Participation in a Program of Pretrial Diversion, J. Gordon Zaloom, paper presented in a symposium on PTI, American Psychological Association, Montreal, August 1973; later program data.

in the municipal-court and referral identification process, do not know of the program, and those who are aware of the program's existence, but choose not to apply.

The amendment to R. 3:4-2, requiring all defendants to be notified of the existence of the program at their first municipal-court appearance was promulgated in order to attempt to solve first screening problem (applications doubled during the two-month period following amendment of R. 3:4-2); resolution of the latter is more complicated.

The high proportion of rejections appears to be attributable to a process largely in the control of defendants. While the guidelines for exclusion result in the involuntary rejection of some defendants (such charge-based rejections along with rejections by prosecutors and judges amount to some 20%), for the most part, defendants who are motivated to take advantage of the opportunity offered by the program are likely to become enrolled. 80% of the rejected defendants, then, select themselves out by failing to respond to the program, through lack of cooperation or failing to report to the program, or through rearrest.

While the PTI program offers services: vocational placement assistance, counseling, the major motivating force in the eyes of defendants is undoubtedly the opportunity to avoid the anxieties of ordinary prosecution and the possibility of a conviction record. This, in essence, is what distinguishes the program from other social-services agencies to which persons apply voluntarily.

An examination of characteristics of the population who appeared to have exercised the selection-out option reveals that only three factors operate significantly: race, prior conviction record, and employment status at the first program contact. Such factors as marital status, age, sex, educational level, residence, severity of charge (indictable: non-indictable offense) appear to have little effect on motivation to continue the program. Defendants who are Black, and unemployed, and who have previously been convicted are the least likely to select themselves in; employed Whites without records the most likely.

Analysis of characteristics of the participant population (those who became enrolled) shows the same factors at work in the process of differentiating between those who have charges dismissed and those who are returned to the ordinary course of prosecution: race, prior conviction records, and employment status at the point of initial contact appear to determine success or failure. In addition, those participants who had completed High School appear to have a somewhat better chance of success.

It is clear, from analyses to date, that PTI in Hudson County amounts to a process for "creaming" from the defendant universe those most likely to succeed and most likely to avoid criminal behavior.

The criteria used by the pilot programs limited enrollment to youthful, "first-offenders" charged with minor offenses--presumably because these elements were thought to influence

success. It is interesting to note that the experience in Hudson County shows that only "first-offender"-status operates as a predictor. Although most defendants seeking enrollment, and most participants are young (18-23), age appears to make no difference. Nor does severity of charge, measured by comparing indictable to non-indictable charges, appear to affect outcome. (70% of all participants, both successes and failures are charged with indictable offenses; charges, over all, range from minor disorderly person offenses to armed robbery.)

The PTI "creaming" process, then, appears to show that those factors that determine economic success in the general population, determine, among the defendant population, program success.

For the possibility of dismissal of charges and the fear of prosecution to operate as motivating forces the defendants and participants must perceive criminal sanctions as negative. It can be speculated that for most employed, educated, work-oriented persons of any race or ethnic group, criminal conviction means acquiring a social stigma, shame before a probation officer, loss of a job, of friends and opportunities.

Since prior conviction records appear to be more common among Blacks, it is probable that among the Black, unemployed, general population, many have had some adverse contact with the criminal law or know others who have had such contact. It may also be probable that such a group has had limited job opportunities and frequent social worker contact.

Among such a population, dismissal of charges might be less likely to be perceived as beneficial. Having a record is less stigmatizing when many others have a record, and loss of available jobs may be unlikely, because of a conviction record, because jobs are not--or are not perceived to be--available. Imprisonment cannot be perceived as pleasant, but it is the rare defendant who expects to actually be sent to prison.

The Pretrial Intervention Project clearly requires more contact than is demanded by most probation officers, and staff insist upon going beyond surface intervention in a defendant's life. To many defendants, PTI may be perceived as more punishing and intrusive than other anticipated sanctions.

It can be concluded that the PTI program does work to select those defendants who are capable, with assistance or otherwise, of showing that they are not likely to commit criminal or disorderly acts in the future. Although future PTI efforts might be able to discover methods of working effectively with persons who do not appear to have this capability, ultimately, PTI cannot work for all or even most defendants. Reform in the traditional correctional process will have to provide the solution.

2. Summary Report, Newark Defendants' Employment Project

(a) Funding, Organization and Establishment

The Newark Defendants' Employment Project, New Jersey's first pretrial intervention program, became operational in October, 1970. R. 3:28 was promulgated in 1970 to permit operation

of the program.

N.D.E.P. is a project within Community Informational Referral Services, Inc., a New Jersey non-profit corporation. Funds for operation of N.D.E.P. have come principally from L.E.AA. and S.L.E.P.A.

Supplementary funding has been received from the New Jersey Manpower-Corrections Program (U.S. Department of Labor funds) and from private foundations. Grantee governments, under which N.D.E.P. has operated by contract for the use of L.E.A.A./S.L.E.P.A. funds, have been the Board of Chosen Freeholders, Essex County and the City of Newark.

In addition to direct S.L.E.P.A. funding for N.D.E.P., the Office of the Essex County Prosecutor receives grants for investigative services related to N.D.E.P. cases.

As a R. 3:28-approved program, N.D.E.P. provides services to the Courts. There is, however, no direct administrative control by the courts over the program, no court personnel are assigned to work within the program, and no persons representing the courts serve on the C.I.R.S. board of trustees. Control is effected only through case-by-case acceptance or rejection of applications for R. 3:28 enrollment and dismissal.

Since 1970, N.D.E.P. operated a bail program component in the Newark Municipal Court in order to facilitate bringing defendants into the N.D.E.P. program.

A component of the S.L.E.P.A.-funded Municipal Court Management and Improvement Program, the Pretrial Management

Division, was created in order to provide bail screening services by staff directly responsible to the Newark Municipal Court. In January, 1974, this Division took over the N.D.E.P. bail operation. Division staff continue to screen defendants for the N.D.E.P. program.

A related program, also operated by C.I.R.S., is the Manpower Service Center. This program which accomplishes placement of N.D.E.P. participants into employment has been funded by the New Jersey Manpower Corrections Program; such funding has not continued, however, due to the phasing-out of the grant program. C.I.R.S. will receive T.A.S.C. funds to continue this program. The T.A.S.C./PTI proposal provides for eight job counselors to be employed by C.I.R.S.

(b) Program Operations

(i) Court Procedures

N.D.E.P. is an adult pretrial intervention program which operates to remove selected defendants from the ordinary course of prosecution and, after a period of counseling and provision of other services designed to alter anti-social behavior, to recommend dismissal of charges without regard to guilt or innocence. N.D.E.P.'s procedures for processing cases through the courts are largely consistent with those in use by the Hudson County PTI Project. N.D.E.P., like the Hudson program, is modelled after the Department of Labor-funded pilot programs in New York City and Washington, D.C.

Eligibility for acceptance into the N.D.E.P.

program is limited to defendants who are not "narcotic addicts"; there are no other eligibility proscriptions, and defendants charged with both indictable or non-indictable offenses; with or without prior records; or employed or unemployed, may be accepted.

The Essex County Prosecutor, whose consent is required for enrollment into N.D.E.P., prohibits enrollment of defendants charged with indictable offenses involving such heinous crimes as homicide, armed robbery, rape or sodomy.

Applicants for enrollment are received principally from the Newark Municipal Court's Pretrial Management Division, but referrals from other sources may be accepted. After a preliminary assessment by a N.D.E.P. staff member, intake reports on acceptable defendants are sent to the Office of the Essex County Prosecutor with a request that consent be given to R. 3:38 postponement.

Cases receiving prosecutorial consent are sent with a request for an Order of postponement under R. 3:28 to the designated judge in the jurisdiction in which the matter could be tried (Caruso, J.C.C. and Hazelwood, P.J.M.C.).

Applicants who do receive the prosecutor's consent or whose applications are rejected by the designated judges continue in prosecution.

After defendants become enrolled, N.D.E.P. follows the requirements of R. 3:28 and submits 3-month reports and recom-

mendations for dismissal of charges, or termination and return to the ordinary course of prosecution.

(ii) Supervision of Defendants, and Program Services

N.D.E.P.'s counseling staff carry caseloads of 30-35 participants. Counseling takes place both individually and in group sessions and varies in frequency in accordance with participant needs. During 1974-75 the program plans to formalize the frequency and counseling-type variations by classifying participants into three groups: Intensive (group sessions); Moderate (one-to-one counseling); Contact (supervision only, infrequent counseling).

The counseling staff refer participants to other community and governmental agencies to meet needs beyond the scope of N.D.E.P. and C.I.R.S. service capacities: New Jersey Division of Vocational Rehabilitation; County and City Welfare Departments; educational and medical programs, etc. Vocational placement services are provided by the C.I.R.S. Manpower Service Center.

The N.D.E.P. full-time staff consists of five persons in administration, two in research and evaluation, seven assigned to clerical functions and ten counselors. Within the counseling staff there are two Senior (supervising) Counselors and eight counselors performing direct supervision of participants. While most of the counseling staff has attended college, none has obtained a bachelor's degree. The two Senior Counselors have completed training in group work at the New Jersey Neuropsychiatric Institute in Princeton.

(c) Program Activity

N.D.E.P. statistical reports and program evaluations are prepared by a Research Associate and two assistants employed by N.D.E.P.

The evaluation attached to the 1974 funding proposal covers the 8-1/2 month period 12/5/72 to 8/31/73 with some data reported cumulatively from the project's inception in October, 1970 to August 31, 1973.

During the report period, N.D.E.P. accomplished the following intake activity:

	<u>12/15/72 to</u> <u>8/31/73</u>	<u>10/70 to</u> <u>8/31/73</u>
Initial Interviews	536 - 100%	1544 - 100%
Rejected	203 - 33%	723 - 49%
Enrolled	347 - 67%	759 - 51%
Acceptance Pending	62 - ----	62 - ----

Of the 203 cases rejected during the 8-1/2-month report period, the most frequently cited rejection reason was "lack of cooperation", 107 (53%) and "prosecutorial rejection", 38 (19%).

The defendants reported as "enrolled" reached the following dispositions:

	<u>12/15/72 to</u> <u>8/31/73</u>	<u>10/70 to</u> <u>8/31/73</u>
Dismissed	187 - 54%	378 - 50%
Terminated	72 - 21%	190 - 25%
Active	<u>88 - 25%</u>	<u>191 - 25%</u>
	347 - 100%	759 - 100%

The cumulative data for program exits shows a dismissal (success) to termination (failure) ration of 2:1.

Of the 72 cases terminated during the 8-1/2-month period, the most frequent reason given was, again, "lack of cooperation", 51 (71%).

As of August 31, 1973, 20 participants, who had successfully completed the program and for whom charges had been dismissed had been re-arrested: (5.3% of 378 dismissals). Since the program obtains re-arrest information from Newark Police Department daily arrest sheets, this data is open to some question.

N.D.E.P.'s evaluation does not compare "first-offender" enrollments with enrollment of defendants with prior conviction records; nor are cases differentiated by municipal and county jurisdiction. The Essex County Prosecutor, however, reports that of 279 N.D.E.P. cases dismissed during calendar 1973, 131 (47%) were indictable and 148 (53%) non-indictable.

Consistent with the Essex Prosecutor's policy of denying consent for heinous crimes, charges reported for cumulative N.D.E.P. dismissals (378) ranged on a seriousness scale from Robbery (2-1/2%) and Atrocious Assault and Battery (10 - 4%) to Possession of Marijuana (68 - 17%).

The nine offenses occurring most frequently among this group--representing 71% of the total--are:

1. Possession of Marijuana 17%
2. Possession of Dangerous Weapon 9%

3. Possession of Stolen Property	8%
4. Larceny	7%
5. Breaking and Entering	6%
6. Possession of a Stolen Auto	6%
7. Assault and Battery	6%
8. Shoplifting	6%
9. Possession of a C.D.S.	5%

N.D.E.P. reports a good degree of success in securing employment--through the C.I.R.S. Manpower Service Center--for program participants. Of the 347 cases enrolled during the first 8-1/2 months of 1973, 51% were unemployed at the point of first contact with N.D.E.P. As of August 31, 1973, 41% of these had been placed in jobs. 187 cases were reported as dismissed during the same period, 92% of which were employed at the point of dismissal. There is no indication however, whether or not any, all, or none of these defendants were employed at intake.

APPENDIX C

Compensation Schedule A,
New Jersey State Service

C-1

Work Volume, Probation
Supervision

C-3

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C O M P E N S A T I O N S C H E D U L E A

FOR THE NEW JERSEY STATE SERVICE

EFFECTIVE JUNE 22, 1974

A N N U A L S A L A R I E S

<u>Rng.No.</u> <u>Inter-</u> <u>val 5%</u>	<u>Incre-</u> <u>ment 5%</u>	<u>Min.</u> <u>Start</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>	<u>5th</u>	<u>6th</u>	<u>7th</u>	<u>Max.</u>
A01	221	4413	4634	4855	5076	5297	5518	5739	5960
A02	232	4634	4866	5098	5330	5562	5794	6026	6258
A03	243	4866	5109	5352	5595	5838	6081	6324	6567
A04	255	5109	5364	5619	5874	6129	6384	6639	6894
A05	268	5364	5632	5900	6168	6436	6704	6972	7240
A06	282	5632	5914	6196	6478	6760	7042	7324	7606
A07	296	5914	6210	6506	6802	7098	7394	7690	7986
A08	311	6210	6521	6832	7143	7454	7765	8076	8387
A09	326	6521	6847	7173	7499	7825	8151	8477	8803
A10	342	6847	7189	7531	7873	8215	8557	8899	9241
A11	359	7189	7548	7907	8266	8625	8984	9343	9702
A12	377	7548	7925	8302	8679	9056	9433	9810	10187
A13	396	7925	8321	8717	9113	9509	9905	10301	10697
A14	416	8321	8737	9153	9569	9985	10401	10817	11233
A15	437	8737	9174	9611	10048	10485	10922	11359	11796
A16	459	9174	9633	10092	10551	11010	11469	11928	12387
A17	482	9633	10115	10597	11079	11561	12043	12525	13007
A18	506	10115	10621	11127	11633	12139	12645	13151	13657
A19	531	10621	11152	11683	12214	12745	13276	13807	14338
A20	558	11152	11710	12268	12826	13384	13942	14500	15058
A21	586	11710	12296	12882	13468	14054	14640	15226	15812
A22	615	12296	12911	13526	14141	14756	15371	15986	16601
A23	646	12911	13557	14203	14849	15495	16141	16787	17433

COMPENSATION SCHEDULE A

<u>Rng. No.</u> <u>Inter-</u> <u>val 5%</u>	<u>Incre-</u> <u>ment 5%</u>	<u>Min.</u> <u>Start</u>	<u>2nd</u>	<u>3rd</u>	<u>4th</u>	<u>5th</u>	<u>6th</u>	<u>7th</u>	<u>Max.</u>
A24	678	13557	14235	14913	15591	16269	16947	17625	18303
A25	712	14235	14947	15659	16371	17083	17795	18507	19219
A26	747	14947	15694	16441	17188	17935	18682	19429	20176
A27	785	15694	16479	17264	18049	18834	19619	20404	21189
A28	824	16479	17303	18127	18951	19775	20599	21423	22247
A29	865	17303	18168	19033	19898	20763	21628	22493	23358
A30	908	18168	19076	19984	20892	21800	22708	23616	24524
A31	954	19076	20030	20984	21938	22892	23846	24800	25754
A32	1002	20030	21032	22034	23036	24038	25040	26042	27044
A33	1052	21032	22084	23136	24188	25240	26292	27344	28396
A34	1104	22084	23188	24292	25396	26500	27604	28708	29812
A35	1159	23188	24347	25506	26665	27824	28983	30142	31301
A36	1217	24347	25564	26781	27998	29215	30432	31649	32866
A37	1278	25564	26842	28120	29398	30676	31954	33232	34510
A38	1342	26842	28184	29526	30868	32210	33552	34894	36236
A39	1409	28184	29593	31002	32411	33820	35229	36638	38047
A40	1480	29593	31073	32553	34033	35513	36993	38473	39953
A41	1554	31073	32627	34181	35735	37289	38843	40397	41951
A42	1631	32627	34258	35889	37520	39151	40782	42413	44044
A43	1713	34258	35971	37684	39397	41110	42823	44536	46249
A44	1799	35971	37770	39569	41368	43167	44966	46765	48564
A45	1889	37770	39659	41548	43437	45326	47215	49104	50993

PROBATION TABLE B-2
 WORK VOLUME - PROBATION SUPERVISION *
 September 1, 1972 to August 31, 1973

County	Beginning September 1, 1972				Added 1972-73				Terminated 1972-73				Remaining August 31, 1973			
	County & Superior Court (Criminal)	Municipal Court (Criminal)	Juvenile & Domestic Relations Court (Adult)	Juvenile & Domestic Relations Court (Juvenile)	County & Superior Court (Criminal)	Municipal Court (Criminal)	Juvenile & Domestic Relations Court (Adult)	Juvenile & Domestic Relations Court (Juvenile)	County & Superior Court (Criminal)	Municipal Court (Criminal)	Juvenile & Domestic Relations Court (Adult)	Juvenile & Domestic Relations Court (Juvenile)	County & Superior Court (Criminal)	Municipal Court (Criminal)	Juvenile & Domestic Relations Court (Adult)	Juvenile & Domestic Relations Court (Juvenile)
Atlantic	609	25	7	147	322	45	0	193	334	40	6	163	597	30	1	177
Bergen	1,786	702	76	709	1,209	646	9	710	986	572	27	831	2,009	776	58	588
Burlington	835	126	118	609	318	79	108	377	270	102	126	587	883	103	100	399
Camden	1,069	695	58	573	724	673	124	440	275	352	54	470	1,518	1,017	128	543
Cape May	433	179	0	632	204	50	0	186	76	55	0	90	561	174	0	728
Cumberland	122	93	0	419	97	96	0	408	71	117	0	400	148	72	0	427
Essex	2,746	2,380	2,120	1,331	1,975	2,500	686	1,142	1,450	2,268	611	1,119	3,271	2,612	2,195	1,354
Gloucester	252	85	30	195	100	46	4	369	65	64	8	369	287	67	26	196
Hudson	1,545	945 **	0	1,004	820	552	0	564	633	553	0	581	1,732	954	0	957
Hunterdon	97	11	77	56	63	12	8	66	44	10	1	37	116	13	84	85
Mercer	644 **	66	30	960	661	146	0	913	428	129	0	913	877	63	30	950
Middlesex	988 **	241 **	7 **	637	720	352	12	484	580	283	7	422	1,128	310	12	679
Monmouth	1,607	711	0	2,484	502	159	0	513	452	205	0	607	1,657	665	0	2,320
Morris	551	140	201 **	409	365	200	32	294	484	164	8	316	432	176	225	387
Ocean	443	306	0	1,024	420	136	0	488	357	96	0	448	506	346	0	1,064
Pascaic	1,358	886	2,125	2,360	678	350	141	1,368	280	253	11	801	1,756	983	2,255	2,947
Salen	212	35	97 **	116	124	12	37	202	163	29	25	178	173	18	109	140
Somerset	300	185	6	326	285	220	0	197	171	168	6	222	414	237	0	301
Sussex	105	12	2	111	65	15	0	47	67	8	2	22	103	19	0	136
Union	1,555	722	572	694	829	700	319	341	782	650	221	357	1,602	772	670	678
Warren	97	71	1	141	54	89	0	253	68	101	1	189	83	59	0	205
TOTAL	17,354	8,617	5,527	14,942	10,535	7,028	1,432	9,975	8,035	6,219	1,114	9,122	19,553	9,485	5,893	15,391
TOTAL 1 YEAR ATO	13,277	7,970	6,621	13,782	11,012	6,952	2,093	9,691	6,086	5,974	1,724	8,465	13,213	8,945	6,990	14,935
PERCENT CHANGE FROM LAST YEAR	+ 30.6	+ 8.1	- 16.5	+ 8.1	- 4.3	+ 2.0	- 24.8	- 1.5	+ 32.0	+ 1.1	- 35.4	+ 2.8	9.0	+ 6.0	- 15.7	+ 3.0

* For Supervised Collectors see Table B-3.
 ** Represents change from last year's "Beginning August 31, 1972" column.
 Source: Reports of County Probation Departments to Administrative Office of the Courts.

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