

## Chapter 2

### HOW DIVERSION WORKS

#### SUMMARY

This chapter presents a detailed description of the diversion process including its origins and history, a description of the steps a juvenile case follows from incident through to disposition, and a description of how the steps a diverted case follows from referral through to completion.

The second part of the chapter includes an overview of the types of activities a juvenile can be expected to undertake while in diversion and some of the different services diversion programs offer.

#### **A Brief Historical Perspective on Juvenile Justice**

Part of the response to social activists fighting to remove children from the draconian justice system of the nineteenth century was the establishment of the first juvenile court in Illinois in 1899. Today, every state in the nation has established some form of juvenile court designed to deal with the specific needs and problems of youth in trouble. The states all operate their courts under some form of juvenile code legislation. As juvenile crime rates have fluctuated and the types of crime have changed, these juvenile codes have been the subject of attention in recent years and have undergone much revision. In many cases, the response has been to make penalties more severe and move juveniles into the adult courts, thus coming full circle from the turn of the 20<sup>th</sup> century.

National enthusiasm for diversion as a way to deal with juvenile crime was stimulated by a 1967 report of the President's Commission on Law Enforcement and Administration of Justice. This report stated bluntly that the juvenile court system ". . . has not succeeded significantly in rehabilitating delinquent youth, in reducing or even stemming the tide of juvenile criminality or in bringing justice to the child offender."<sup>1</sup> These kinds of commentaries contributed to increased emphasis on the development of alternative approaches in dealing with juvenile offenders. As a result, the Federal Law Enforcement Assistance Administration made funds available for experimental programs. The Juvenile Justice and Delinquency Prevention Act of 1974 increased the incentive by providing substantial funds for innovative programs in local communities. Since that time, a wide variety of *diversion* programs have been initiated throughout the country. The approaches, methods, and services of these programs are as varied as the needs of the communities, the juveniles and the problems that they serve. Despite the differences in interpretation, the programs are united in their common purpose of giving youth in trouble a second chance.

## An Even Briefer History of Diversion in New Hampshire

New Hampshire's juvenile law was originally enacted in 1937 and resembled the 1899 Illinois law that established the first juvenile court. The law has been revised many times since then including a major overhaul in 1979 that created the framework for the RSA's we see today:

- 169-B- Delinquent Children
- 169-C- Children Protection Act (Neglected and Abused)
- 169-D-Children in need of services

The New Hampshire Comprehensive Children and Youth Project was established in the 1980's to review state policies and programs affecting children within New Hampshire and to make recommendations as to how these services could be improved. The Project was committed to developing cost-effective, community-based prevention and intervention programs that helped troubled youth and their families and that would reduce the need for more costly state intervention or possible placement at a later date. Juvenile court diversion programs were one such service recommended by the project. More than 20 years have passed since this recommendation was made. Juvenile court diversion programs continue to be an effective way, both in terms of cost and effectiveness, to serve the youth of New Hampshire and their families. During this time, many new programs have been developed throughout the state, while existing programs have withstood the test of time, changing and growing to meet the needs of our young people and the state.

### Definitions

Different agencies have different terms for the same process. For the sake of clarity, we use the following.

**Note:** A more complete glossary of terms is found in Appendix II.




**Court Process**—A juvenile is *arraigned* to determine how he/she will plead. A juvenile who enters diversion at this or any earlier point in the process is considered to be *pre-adjudicated*. If the case is to go to trial, it enters the *adjudication* phase and the youth is considered to be *adjudicated*. Once at trial, the judge determines if the charges are true or untrue. If found true, the next phase is *disposition* where the judge pronounces the sentence.





**Diversion Board**—Panel of volunteers who meet with the juvenile and his/her family to create a Diversion Contract.



**Diversion Contract**—The list of projects, assignments, and behavioral changes the juvenile and family agree to in order to complete the diversion program.

 Juvenile Probation and Parole Officer (JPPO)—The state employee responsible for the case management of juveniles involved in the courts or detention.

 Petition—A formal police charge alleging that the youth is the perpetrator of the alleged offense.

 Community Service—Courts and diversion programs can require youth to perform uncompensated work. Doing community service provides youth with two opportunities: to repay the community for the harm caused by the offense and to become integrated back into the community. Assignments are structured so that the content of the work plays to the strength of the youth, thus setting them up for success rather than failure. Just as importantly, the community values the work. Some programs are set up to provide paying community service work to youth so they can productively earn the money to pay fines and restitution to victims.

The following explanation and flowcharts present the juvenile justice process and follow a hypothetical diversion case from referral to completion. However, realize that there are variations in almost every county and every program. These representations are only meant to give you a general understanding of the processes and decisions involved.

### **Processing a Juvenile Case in the Courts**

Typically, a youth's first contact with the formal legal process is through a police officer. After receiving a complaint or observing an offense, an officer reviews the available evidence. The officer decides whether a petition should be prepared and served on the child and his/her family. If a more informal procedure would be more appropriate and beneficial, the officer may counsel the youth and release him/her to his/her parents. And, under RSA 169-B:10, the officer may refer the youth or family to a "court approved diversion program".

If the police officer feels there is sufficient evidence and a more serious disposition is necessary, he/she may file a petition to bring the youth to court. The youth is usually released into the custody of his/her parents; or, if necessary, detained (but not for more than four hours without notifying the court). Upon notification that the child is detained, the court may approve a detention placement until arraignment. However, within 24 hours of being detained, the youth must attend an arraignment hearing where the youth and parents are advised of charges, informed of constitutional rights and are advised of the right to counsel. After arraignment, the youth may be released to parents, placed with a relative or friend, placed in a foster home, group home, crisis home or shelter care facility or sent to a certified facility. *The law specifically allows for referral to a diversion program at this point also.*

If the petition is substantiated to the court's satisfaction at the arraignment hearing, the prosecution and defense are prepared for the adjudication hearing. This must be held within 21 days of arraignment if the youth is detained and within 30 days if not. The adjudicatory hearing must be held in a place separate from the trial of regular criminal cases, and the court is closed to the public. The prosecution presents witnesses and evidence to support the petition and the minor has the right to present witnesses and evidence on his/her behalf, as well as to cross examine adverse witnesses. The prosecution has the burden to prove allegations beyond a reasonable doubt.

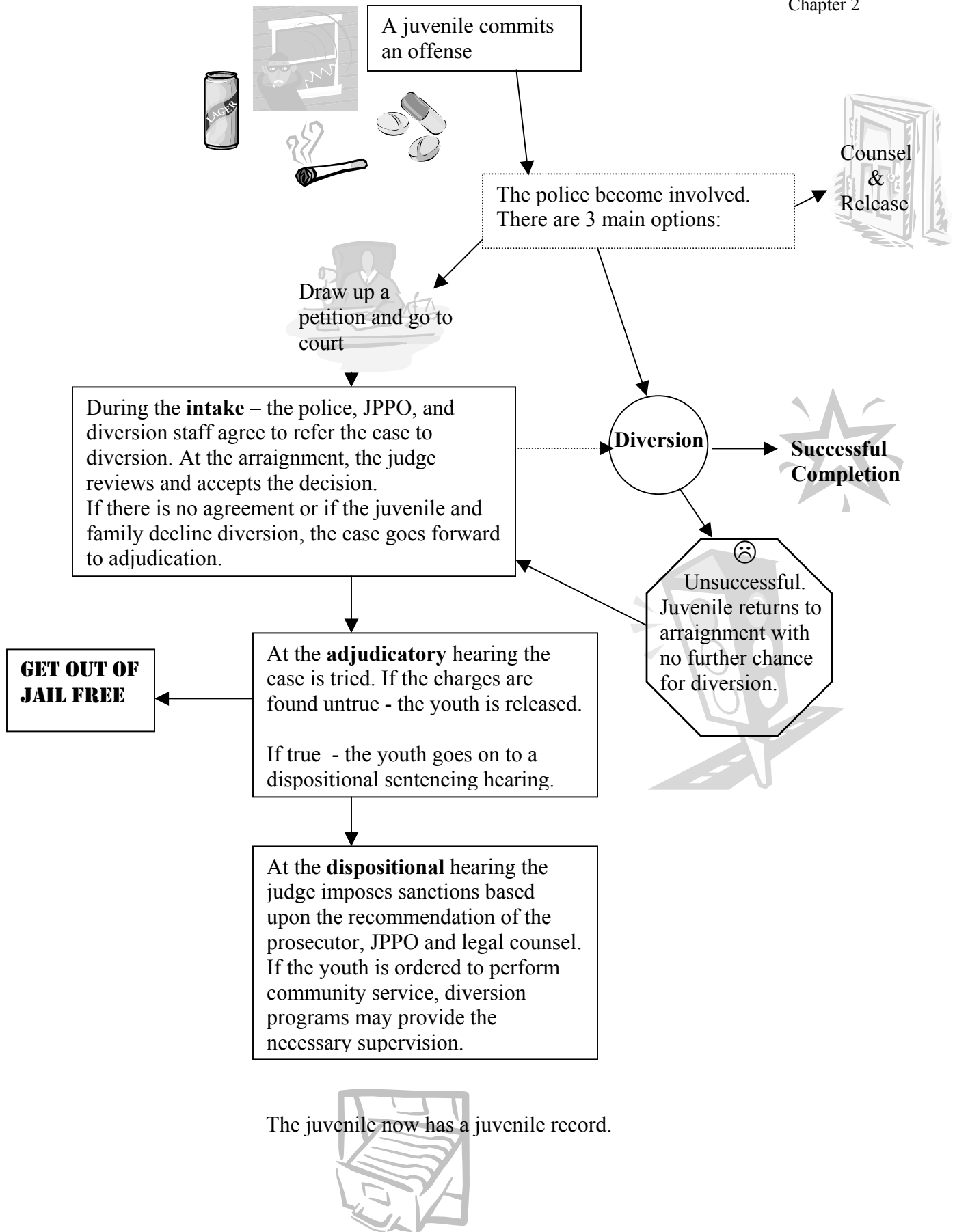
If the outcome of the adjudicatory hearing is a judgment that the truth of the petition cannot be proved beyond a reasonable doubt, the case must be dismissed and the youth released. The file is sealed and confidentiality preserved.

If the petition is judged to be true, there may be an investigation of the circumstances surrounding the youth's misbehavior. This may include a physical and mental health examination and generally includes an inquiry into the conditions that affect his/her behavior at home, at school, and in the community. These home studies are usually done by the local JPPO and are done before the judge makes a disposition decision. The reports must be made available to all parties because they form the basis for a disposition hearing, which is held within 21 days of the adjudicatory hearing when the youth is detained, and within 30 days if not.

During the disposition, the judge has wide latitude to create a combination of orders which may include nominal dispositions, such as an official warning or reprimand from the court, and conditional dispositions, such as placing the youth on conditional release and requiring that the youth and his/her family meet certain commitments as a condition of release. Conditional dispositions may require restitution, payment of a fine, performance of up to 50 hours of uncompensated community service per offense, or attendance in a school program.

All records involving a youth under these proceedings are confidential. When a youth reaches age 21, the records must be closed and made inactive. Any person who discloses information in these records unlawfully is guilty of a misdemeanor. The law also prohibits publication of the identity of juveniles involved in juvenile court proceedings, with the exception of those children committing acts of vandalism or violent serious offenses, or any child who is adjudicated to have committed a second or subsequent offense for the possession with intent to distribute any controlled drug.

The following flow chart depicts the process at a glance.



## **Processing a Juvenile Case in Diversion**

If the youth is referred to a diversion program during this process, they and at least one parent or legal guardian attend an intake meeting with the diversion staff. The staff member interviews the youth and family to better understand the incident and event surrounding it. The interviewer also gets information about school, family, sports, work and outside interests. If further information is required from another source such as school or a counselor, a release is signed. There may be other forms for the youth and parent to sign depending on the program. After the intake interview, the staff may determine that the youth is not an appropriate candidate for diversion and send the case back to the referring party. This most typically happens if it is apparent that the youth is non-cooperative or is not capable of understanding or fulfilling the requirements of the program. In most cases, the youth is accepted into the program.

The next step is the creation of a diversion contract. In most programs, the youth will meet with a diversion board of community volunteers. This board may range from 2 to 5 individuals and may be comprised of both adults and teen peers. During the meeting the board discusses the incident with the youth, and more importantly, the impact of the incident and what he/she feels they can do to repair the harm. The victim(s) of the offense may be involved at some point during this whole process. The victim is given the opportunity to relate the impact of the offense on them and present what is needed to repair the harm done to them. The board often discusses the other factors and influences in the youth's life such as school, family and sibling relations, social and work life. The goal is to determine if there are negative influences that the youth needs to address and to find areas of strength and resiliency to build off of to give the youth more tools for success. The board may determine the contract in private and present it to the youth or involve the youth and parents in the determination of contract. At the end of the process, the panel, youth, and parents sign off on the contract.

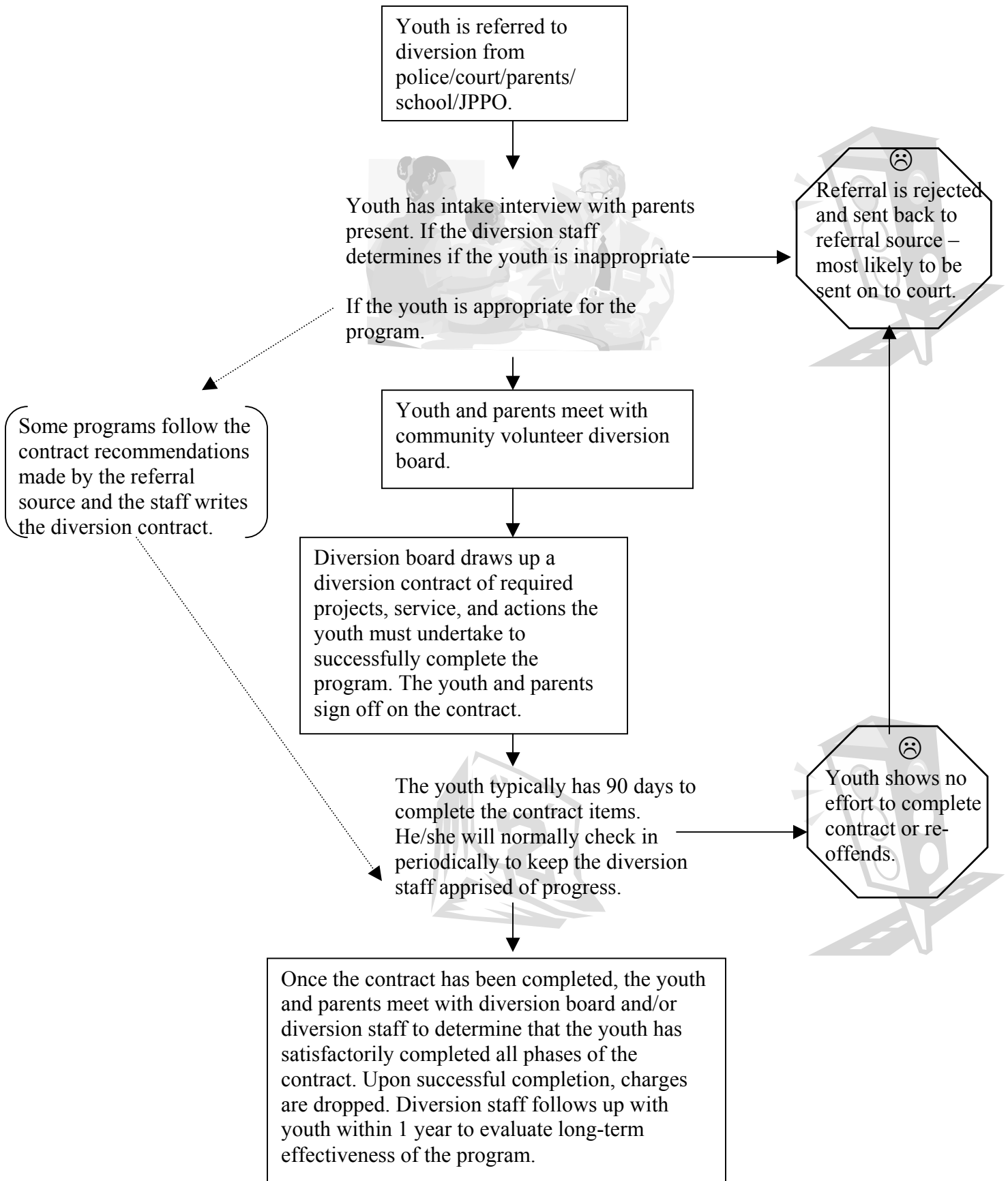
In some cases, the referral source, (police, school, court) may have already determined the contract conditions for the youth. When that occurs, usually there is no diversion board. Instead, the diversion staff may assign the contract as presented or use the conditions as guidelines to create a contract for the youth. Both processes are used and both are equally binding on the youth.

Once the contract has been agreed to, the youth typically has 90 days to complete the requirements. The amount of time may be extended as needed. The components of a diversion contract are discussed at length in the pages that follow. Some programs hold the youth responsible for setting up and completing their community service at an agreed upon site while others may provide the assignment, transportation, and supervision. Community service is usually done at a non-profit, or community based site such as a soup kitchen, a nursing home, a park, a church, or a rec center. Some programs may take on team projects like murals, clean-ups and winterization projects. If the youth is required to make restitution, it can be handled through diversion. When program fees are required, often there are scholarships, sliding scales and work service projects available. Youth usually check in with the program staff on a periodic basis to ensure that they are

progressing on their required tasks or to help them overcome roadblocks. If a youth commits another offense while in diversion or shows no effort to complete the contract, they will be removed from the program and their case returned to the referring source.

After successfully completing the program, the youth will meet again with the staff and/or the diversion board. Notice is sent to the referral source and the original charges are dropped and the files sealed.

The following flow chart depicts the process at a glance.





## Diversion Contracts

The following is a brief list of possible options to consider in the design of a diversion contract.

### Elements That Serve the Community and Victim

- A. **Apologies:** Clients can be made more aware of the impact of their offense when required to make an apology to the impacted parties: victims, parents, siblings, etc. The apology can take many different forms including written, verbal, artwork, musical, etc.
- B. **Community Service Work:** Destroying community property, disturbing the peace, drunkenness, stealing, as well as many others types of crimes, harms and offend community members while creating a climate of fear, hostility and isolation. In order to make amends and reestablish healthy community ties, non-pecuniary restitution often takes the form of some well-defined community service work. This not only helps to connect the young person to the community in a positive way, it can provide work skills, mentoring, and possible employment connections.



#### **NEWSWORTHY!**

Youth in diversion provide \$1000s of dollars and hours worth of service to non-profit and governmental organizations annually. Habitat for Humanity, churches, nursing homes, chambers of commerce, parks, forests, and recreational areas are just a few examples of where youth work and create ties to their communities.

- C. **Consequences of Continued Delinquent Behavior:** Youth who engage in delinquent behavior often have no understanding of the severity of possible consequences if the behavior continues. Educational projects may include studying the juvenile laws or adult criminal codes, interviewing people who have been incarcerated or who are going through drug and alcohol treatment programs, touring the Youth Development Center or other correctional facility, interviewing law enforcement officers, as well as many others.
- D. **Restitution:** Restitution programs, which require youths to pay back the victim with money or services, are well established and popular. Commonly, the court or the diversion program specifies the restitution to be performed, the youth performs it, and the payment is transferred to the victim.

## Elements That Serve the Juvenile Offender

- A. **Drug/Alcohol/Tobacco Programs:** Even when an offense does not include substances, many diversion clients are involved with illegal substances in varying degrees. Some programs have education programs for both the youth and their family.
- B. **Educational Intervention:** Close cooperation between diversion staff and the schools can be very important components of the community program. Similarly, vocational rehabilitation programs may offer useful diversion alternatives. Many youth in diversion have dropped out of school and need help finding alternative resources like a GED.
- C. **Employment Skills:** A major problem for some young people is lack of employment. For young people who have been in trouble with the law, the problems are even greater. Some good training and counseling programs exist that are designed to help youths learn to get and hold jobs. If these are combined with community programs that encourage individuals and businesses to make jobs available on a trial basis, the combination may be an effective diversion component. NH WORKS offers many resources, as does the Y.E.S. program in Nashua.



Interested in more information on NHWORKS? They offer employment solutions for workers and employees at:  
[www.nhworks.org](http://www.nhworks.org)

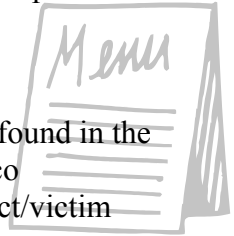
- D. **Individual Counseling or Family Counseling or Group Counseling:** This may be provided by: psychologists, guidance counselors, social workers, members of the clergy, etc. Counseling may be combined with activities on the counselors' part that may be described as ombudsmanship or advocacy—helping the youths to find a job, join clubs, or change his or her school program. Counselors may serve either for pay or as volunteers.
- E. **Journals, Essays, Letters, Artwork:** Many times youth realize the real impact of their offense on themselves and others when they have to express it in tangible form such as words or art. **Warning—be prepared for some astounding insights and creativity.**
- F. **Mentoring:** Long-term involvement in friendship organizations such as the Friends Program, Big Brother/Big Sister Programs, foster grandparents, mentoring, and other companion programs. These programs match youth with adult members of the community who can serve as appropriate role models, friends and companions over long periods of time, to share activities and interests and take part together in community activities. Other, less structured, long-term

sources of friendship and caring may be found in church groups or among concerned local business owners.

- G. **Sports or Group Activities:** These serve the same purpose essentially as friendship organizations, but lack the continuity of a mentor relationship. Therefore, it may be more difficult for a youth referred from a diversion program to catch on, become accepted, and use the activity group as a source of personal support. These programs include young people's clubs, camps, the YMCA, the YWCA, Boy Scouts, Outward Bound and different team and individual sports.

### Services Offered by Diversion Programs

Diversion programs continue to adapt in order to provide needed services not found in the community. Many now incorporate in-house programs on drug/alcohol/tobacco awareness and cessation, shoplifting cessation, family mediation, victim impact/victim mediation, after school suspension programs, and counseling. Where possible, collaboration between diversion and other youth programs in a community is essential in order to provide needed services.



**Note:** The bottom line is, just because the client and the community consider a program a diversion program, that should not limit the staff from thinking outside the box on how to provide needed services.

Many of these services go well beyond the concept of simple diversion. Some of these components may be well suited to your notion of diversion while others may not. You should determine the needs of your population and their characteristics before deciding on the services you select to meet those needs. Work closely with other community resources to create services where gaps exist. Your program should be tailored to the available resources in your community rather than solely to popular trends in programming. Allow for flexibility in your program design so that changes can be made as the project evolves. Some of the more common services include:

- A. **Anger Management**—Behavioral change programs run for individuals or groups to help youth identify triggers for hostility and learn healthy ways of dealing with and defusing anger.
- B. **CHALLENGE**—A substance (drug/alcohol/tobacco) abuse curriculum developed for young adults that stresses consequences, self-examination, and decision-making skills to help youth who are already involved with substances. The NH Division of Alcohol and Drug Prevention Resources (DADPR) developed the program, runs the facilitator training, and provides the curriculum. Contact information for DADPR can be found on the New Hampshire state website and in Appendix III.
- C. **Family Mediation**—A series of meetings run by trained volunteer or staff mediators who work with families to help them identify conflict issues and guide them to creating and implementing their own solutions.

- D. **Firesetters**—An intensive behavioral modification program for young arsonists. Often run in conjunction with a local fire department, the program works to identify the triggers that cause clients to set fires and identify those constructive changes for their behavior. They also educate youth on the dangers of fire to themselves and the public. These classes can be done on a one-to-one basis or in small, age-appropriate groups.
- E. **Restitution**—Often the courts and/or police will determine a restitution amount based on information provided by the victim(s). The offender is then required to pay the amount to the program, which, in turn compensates the victim. This creates an audit trail and facilitates full payment.



**NEWSWORTHY!**

The EARN-IT program, part of the city of Keene's Youth Services Department, has been in operation since 1988 providing youthful offenders with opportunities to earn restitution and fine payments. Over \$55,000 has been earned by more than 1000 youth putting in over 35,000 hours. Learn more in the program profiles in Chapter 5.

- F. **Smoking Cessation and Education**—Many programs are available from the American Lung Association and the American Cancer Society. Programs are also run in conjunction with local hospitals.
- G. **Victim Services**—There are many ways to include the victim in the process in order to repair the damage of the crime. Victim impact statements allow the victim the opportunity to write a statement about the impact of the offense. This statement is then reviewed during the diversion contract process and used in determining the components of the contract. Victim-Offender Mediation allows victim(s) and offender(s) to meet face to face in mediation sessions facilitated by specially trained mediators. Both parties must approach the process voluntarily with a desire to make reparation.
- H. **YES**—A shoplifting education self-study program, specifically for juvenile offenders, created by Shoplifters Alternative (SA), which stresses consequences and impulse control. They also provide information on the impact of shoplifting. More information on SA can be found at [www.shopliftersalternative.org](http://www.shopliftersalternative.org).

This is by no means a comprehensive list of all of the services offered by Network members. Please refer to Chapter 5 to see what individual member programs offer the youth and families in their communities.

<sup>1</sup> President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, Government Printing Office, Washington, D.C.