XV Depenalisation and Diversion

Depenalisation is a close relation of decriminalisation in that the criminal behaviour is no longer handled by the criminal justice system, instead another agency steps in to take over the responsibility. We have seen, for example, that in the Canadian province of Ontario, minor offences are now mainly an administrative concern; they are being weaned away from the criminal courts. Another prime example of depenalisation is the replacement of the criminal justice model with the medical model in dealing with alcohol and drug-related offences.

The English Criminal Justice Act, 1972,[1] provides in section 34:

> (1) In any case in which a constable has power to arrest a person under any of the provisions mentioned in subsection (3) of this section the constable may, if he thinks fit, take him to any place approved for the purposes of this section by the Secretary of State as a medical treatment centre for alocholics, and while a person is being so taken he shall be deemed to be in lawful custody.
> (2) A person shall not by virtue of this section be liable to be detained in any such centre as aforesaid to which he has been taken, but the exercise in this case of the power conferred by this section shall not preclude his being charged with any offence.

The offences covered by this section are being drunk and disorderly, being drunk and incapable, and being drunk and disorderly in a public place. Making attendance at the treatment centre voluntary avoids the "due process" complications which have affected other legislation, that is, the defendant is not being deprived of his liberty without a fair hearing. Nonetheless, the provision is not without its coercive aspects, as subsection (2) carries with it the heavy implication that failure to cooperate on this voluntary basis will result in regular criminal charges being laid.

This section was not proclaimed in force until 1976,[2] and even then it was to have practical effect only in those areas where medical treatment centres for alcoholics ("detoxification centres") had been approved for the purposes of section 34 by the Secretary of State for Social Services. A Home Office Circular, issued upon the proclamation of section 34, stated that Chief Constables would be advised individually of any intention to approve an establishment as a detoxification centre in their area. In practice, since the cooperation of the police is necessary in order to enable a detoxification centre to function - the referral of alcoholics to these centres is purely within the discretionary power of the police officer - the representations of the police were likely to be taken into account in any discussions which preceded the setting up and approval of a centre. In addition, the circular expressed the hope that experimental detoxification centres, coupled with other facilities for the long-term care and treatment of alcoholics, would have the effect of reducing the number of their court appearances and convictions for drunkenness offences.[3]

The first centre for males was opened in May, 1976 in the West Yorkshire Police Area. In the first six months of operation there were 462 admissions involving 197 offenders. Altogether, 4,257 males were convicted of alcohol-related offences in this area in 1976, compared with 4,318 in 1975. If both convictions and admissions to the detoxification centre are combined, however, the 1976 total for that area was nine per cent higher than the 1975 total.[4] This pattern is also evident in the figures for 1978: the centre dealt with 347 persons in 1978, slightly fewer than in 1977. This fall was not associated with a reduction in the number of offences of drunkenness in the area; the total number of findings of guilt and admissions to the centre was 5,553 in 1978, six per cent more than in 1977.[5] This may mean that the police, rather than using the detoxification centre where they might normally have charged the alcoholic, were using it where formerly they would not have laid charges, merely issuing a caution, On the whole though, police cautions are used only in a tiny proportion of drunkenness cases - approximately 0.5 per cent. The second centre, for both sexes, was opened in the Greater Manchester Area in October, 1977. This centre dealt with 286 persons in 1978, the number of admissions being 432. In contrast with the results from the original centre, the number of findings of guilt for offences of drunkenness in the area in the first year of operation fell by 11 per cent from 8,119 in 1977 to 7,192 in 1978, while the total findings of guilt and admissions to a detoxification centre fell by seven per cent from 8,156 in 1977 to 7,624 in 1978.[6]

Ontario has also initiated a programme to channel alcoholics into medical treatment facilities rather than the criminal courts. An experimental unit operated in Toronto by the Addiction Research Foundation proved that expensive medical staffing in detoxification centres was unnecessary because physical complications were rare. Consequently, other units set up in Toronto and those planned for other areas are manned by non-medical staffs. Although they are not a part of the criminal justice system, such units depend on some arrangement for rescuing homeless drunks from the streets. As a result, Ontario, like Britain, has continued to depend on the police. The Liquor Control Act of Ontario[7] has been amended to empower police officers to escort public inebriates to a detoxification centre in lieu of laying a criminal charge. It is a mixed system in the sense that the police, at their discretion or because beds are sometimes available, may use the criminal justice system for some inebriates and the detoxification centre for others.[8]

The objection to detoxification centres in the absence of more long term treatment and care-taking facilities is that they tend to become revolving doors, just like the courts, but rotating even more rapidly. The prescribed stay is only a few days and experience in Ontario has shown that many men leave after a few hours. The health protection of the longer jail term is lost, and the motivation of the police to operate what essentially becomes a "taxi service" may be weakened.[9]

The Criminal Law and Penal Methods Reform Committee of South Australia recommended that the offence of public drunkenness be abolished and that "sobering up" units be established wherever practicable and that police cells be designated as sobering up units elsewhere.[10] This recommendation was enacted in amendments made to the Alcohol and Drug Addicts (Treatment) Act, 1961, in 1976 and 1978.[11] As the title of the statute implies, these provisions apply to drug addicts as well as alocholics. The procedure followed in South Australia is that where a police officer or other "authorised person" has reasonable grounds to believe that a person is under the influence of a drug (which includes alcohol) in a public place, and, as a result, is unable to take proper care of himself, he shall, using any reasonable force, either,

(a) take him home,

(b) take him to a sobering up centre or

(c) take him to a police station.

The addict may be kept at the police station for a maximum period of four hours after which he must either be released or transferred to a sobering up centre. A person admitted to a sobering up centre shall be discharged as soon as he has recovered from the effects of the drug. In any case he cannot be detained longer than 18 hours from the time of apprehension unless, before the expiry of the 18 hours, a medical practitioner has certified that further detention is necessary for full recovery. A drug-dependent person can be detained for a maximum period of 102 hours if, within the initial 30 hours, the superintendent of the institution has satisfied a court of summary jurisdiction that such further detention is necessary. Once more, the maximum sobering up period is quite short - a little over four days - but longer detention without giving the addict the chance to challenge his detention would probably be perceived as a fundamental breach of a person's civil liberties.

Tasmania has had a similar piece of legislation in operation since 1968: the Alcohol and Drug Dependency Act,[12] provides that if a police officer finds in a public place someone apparently suffering from alcohol or drug dependency who is in immediate need of care and control he may remove him to a "place of safety" for medical, social welfare and treatment arrangements to be made.[13] The dependent person may be detained in a place of safety such as a hospital, treatment centre or police station for a maximum period of 72 hours.[14]

The above provisions appear to provide an effective means of dealing with persons who are alcohol or drug dependent, without recourse to the courts. But the Tasmanian Law Reform Commission, in its study of the decriminalisation of drunkenness and vagrancy, was told that these provisions have been little used. The main reason for this seems to be that police officers are understandably hesitant about presuming to say whether or not a person is alcohol or drug dependent. There is, in addition, a body of opinion opposed to the use of this system on the grounds that it does not give the person concerned any rights to have his case determined by the courts.[15]

A number of other Commonwealth jurisdictions have chosen to try and provide longer term care and protection without the necessity of imposing a prison term on the alcoholic or drug addict. This does necessitate a court appearance to satisfy due process requirements, but the judge in such proceedings is sitting in a quasi-civil capacity much like the judge in hearings for civil commitment under mental health legislation.

The Alcoholism and Drug Addiction Act, 1966, of New Zealand provides:[16]

> s. 9(1) On the application in the prescribed form of a relative (as defined in this section) of any person, or on the application in the prescribed form of a member of the Police or of any other reputable person, that the person to whom the application relates is an alcoholic, any Magistrate may if he thinks fit issue his summons to the alleged alcoholic to show cause why an order should not be made requiring him to be detained for treatment for alcoholism in an institution.
>
> (2) On the hearing of the application the Magistrate shall not make an order under subsection (7) of this section unless two medical practitioners either give evidence to the effect that they believe the alleged alcoholic to be an alcoholic within the meaning of this Act and that the making of an order for his detention and treatment as such is expedient in his own interest or in that of his relatives.

> (7) Subject to subsection (6) of this section, on the hearing of the application, the alleged alcoholic then being present before him, the Magistrate may, if he thinks fit, and if he is satisfied of the truth of the application, and that the managers or the superintendent of an institution, as the case may require, are willing to receive the alcoholic into the institution, make an order requiring the alcoholic to be detained for treatment for alcoholism in that institution.

The maximum period of detention that can be ordered under this provision is two years,[17] which is substantially more than the few days allowed in the jurisdictions examined above. An "alcoholic" under the New Zealand statute is defined as "a person whose persistent and excessive indulgence in alcoholic liquor is causing or is likely to cause serious injury to his health or is a source of harm, suffering, or serious annoyance to others or renders him incapable of properly managing himself or his affairs".[18] Thus, a police officer or relative does not have to wait until an alcohol-related criminal act is committed before setting this process in motion as he generally does under the detoxification centre schemes, although criminal behaviour while intoxicated would be prima facie evidence that the alleged alcoholic is a "source of harm...or serious annoyance". Under section 23 of this Act, any person ordered to be detained in a treatment institution has a right of appeal under the Summary Proceedings Act, 1957, in the same manner as if he had been sentenced to detention within the meaning of that Act.

Victoria also has a more long-term treatment alternative for alcoholics and drug addicts. The Alcoholics and Drug-dependent Persons Act, 1968, provides that, upon a complaint by a police officer, relative or business partner that a person is an addict, a judge or magistrate may order that person to attend an assessment centre for seven days.[19] In contrast to the system in New Zealand, after this period of assessment, the decision as to whether the alcoholic or addict should be committed to a treatment centre for an unspecified period of time is made, not by a member of the judiciary, but by the medical practitioners and the medical officer in charge of the assessment centre.[20] The person so committed is however provided with a right of appeal against such committal "as if the order of the medical officer committing such person to a treatment centre were an order made by a judge or magistrate...in the course of some duly appointed sitting of the court."[21]

In March 1973, the Vagrancy (Insufficient Means) Bill was read in the Victorian Legislative Council. This Bill had as a central proposal the idea that a person arrested under the Vagrancy Act, 1966, would have a choice of being dealt with by the criminal courts or under the provisions of the Alcoholics and Drug-dependent Persons Act, 1968. In addition to alcoholics and addicts, the Bill also embraced people "in need of medical, psychiatric, or nursing treatment or care, or persons otherwise in need of care and protection". The Bill did not provide a right of appeal, which, to some would seem to be a breach of fundamental rights.[22] In any event, the Victorian Statute Law Revision Committee recommended that the Bill not proceed.[23]

> The recommendation seems to have been premised basically upon a perceived overlap between the provisions of the Bill and the 1968 Act. Whatever the reasons, there is obviously a mood developing in favour of such pieces of legislation. There is undoubtedly good will and the best interests of all at work. While we need to guard against is precipitously falling into a therapeutic model of criminal justice without taking into account the fundamental tenets of fairness, human rights, legal rights and the overall humanitarian and administrative concept of accountability to the individual who is subjected to the process.[24]

To summarise: depenalisation endeavours through deregulation to substitute administrative and social welfare measures in place of the criminal justice system in dealing with certain classes of offences or offenders. Similarly, diversion also attempts to use alternative measures to the criminal justice system in dealing with offenders; but it does so on a more informal basis. Diversion depends more on police and prosecutorial discretion than on legislation. It is more in the nature of being selective law enforcement rather than trying to apply to a class of offenders as a whole.

Screening cases out of the criminal courts through selective law enforcement is certainly not a new concept. In most legal systems, whether the decision to prosecute is in the hands of the police or of a public prosecuting service, a discretion whether or not to proceed with a case exists. In exercising that discretion the police officer or prosecutor will take into account such factors as the seriousness of the offence, the criminal history of the offender and the strength of the case against him. In this way, weak cases and unnecessary prosecutions may be kept out of our overworked courts.

In some jurisdictions the discretion to prosecute is placed on a more formal basis through the mechanism of police cautions or warnings. This decision may be taken at one of two levels: the officer on patrol may decide, on his own initiative, not to report the offender but to end the matter there and then with a firm word of warning. Since such warnings are informal and off the record, little is known of the extent to which they are used, although in the case of minor offences it is thought that their use must be considerable.[25] Even those countries which do not formally recognise cautioning will have this ad hoc process in operation. In Canada, for example, a few provinces employ a warning or caution and in cases where cautioning does occur, it is primarily a discretionary decision by an individual police officer which is informal, unrecorded and not subject to review.[26] When an offence is reported, in those jurisdictions which formally recognise cautioning, a senior police officer or the public prosecutor may still decide to take no further action, or to issue a formal caution as an alternative to proceedings in court. In Scotland, which has a system of public prosecution, police discretion is exercised in cases referred to the procurator fiscal and the police may warn some offenders on their own initiative. Others are warned by the police at the request of the procurator fiscal, or by the fiscal himself.[27] In England and Wales, which have no public prosecuting service, the system is one of police cautions.

The decision not to prosecute most resembles an embryonic form of diversion when it reaches the stage of a formal caution.[28] In England, if the formal caution is for an indictable offence, the offender will most probably be asked to attend a police station where, if the offence is admitted and the complainant does not insist on a prosecution, he will be given a verbal caution by a senior police officer in uniform. Otherwise, the caution will be sent in the form of a letter from the chief constable. In either event, it will consist of a sharp reminder of the seriousness and consequences of offending, threatening prosecution for any further law breaking.[29]

A study of cautioning in England and Wales in the late 1960s found that cautioning was used most commonly in relation to juvenile offenders; the majority of adult offenders cautioned had admitted to minor theft or to receiving stolen property. These two groups accounted for more than three-quarters of the cases in which the police administered a caution. The only other numerically large groups were sexual offenders and those who admitted to breaking and entering offences.[30] More recent studies have supported these findings.[31] In 1977 there were approximately 115,000 offenders cautioned for indictable offences in England and Wales, and 34,000 for non-indictable offences, excluding motoring offences for which cautioning is not used. Between 1969 and 1977 the number of persons cautioned for indictable offences increased by 132 per cent, but the cautioning rate for adults has remained between four and five per cent since 1960.[32] This represents a substantial saving in court time.

Thus, exercising the discretion not to prosecute and issuing formal and informal cautions to offenders is one way to screen suitable cases out of the criminal justice system. The decision not to prosecute, however, is mainly a negative one. Nothing positive happens apart from the decision not to proceed or the issuing of a caution. Diversion, on the other hand, which is a development of police and prosecutorial screening, has a marked positive component. Diversion may be defined as the halting or suspending, prior to a court appearance, of formal criminal proceedings against a person on the condition or assumption that he will do something in return.[33] This definition serves to emphasize those characteristics of diversion which distinguish it from the everyday processes of police and prosecutorial screening. Unlike screening, diversion involves imposing some obligation on the divertee to do something, generally something intended to have rehabilitative value. Diversion then is not merely a measure born of the realisation that the criminal law is overutilised, but is also fostered by a recognition that the current range and application of dispositional alternatives in the criminal process treats too many persons either too harshly or too ineffectively.[34]

The concept of diversion originated in the United States. Within the Commonwealth, the initiative has been taken by Canada following the publication of the federal Law Reform Commission's Working Paper No. 7 on Diversion in 1975. The following discussion will concentrate more or less exclusively on developments and experience within that jurisdiction.

The Law Reform Commission of Canada saw diversion as a useful compromise between adjudication and decriminalisation: it represents an approach which recognises that problems exist and cannot just be defined away and seeks solutions which maximise conciliation and problem settlement.[35] The full force of the criminal process can thus be restricted to offences which raise serious public concerns.

> Underlying diversion is an attitude of restraint in the use of the criminal law. This is only natural for restraint in the use of criminal law is demanded in the name of justice. It is unjust and unreasonable to inflict upon a wrong-doer more harm than necessary. Accordingly, as an incident is investigated by police and passed along the criminal process an onus should rest upon officials to show why the case should proceed

further.[36]

If the dispute can be settled satisfactorily, adequate restitution be made, community work be performed or medical treatment and social services be forthcoming, officials should make use of these options if this would be in the best interests of the accused and the community. The Commission itself acknowledged that diversion programmes, if they are to be successful, will require the expenditure of large sums of money in new areas, although hopefully, it will reduce the demand for services in other parts of the criminal justice system. Increased demands will be placed on the community for services including probation, child welfare, family counselling, manpower training, special education of different kinds, and medical or health services. It noted, for example, that probation services and counselling through drug and alcohol addiction agencies were already overloaded in some communities.[37]

The Law Reform Commission's project also had a research component, testing the theses underlying diversion in one area of Toronto.[38] It was known as the East York Project and its object was to see how difficult it was to divert people away from the criminal justice system by finding alternatives available to people in the community. In particular, would it be possible to develop some form of mediation or arbitration that could be used systematically? The project was operated in an existing police district in which police officers were instructed by the Attorney General and his deputy, supported by the police chief, that they did not have to, if they did not wish, lay criminal charges in any case (regardless of seriousness) if, in their judgement, the public interest would be better served by an alternative. One caveat was added: that if it was a crime in which there was a specific victim, both victim and offender had to agree to the alternative way of handling the situation. If the police officer, offender and victim agreed to seek a settlement, a project worker was called in to work out a settlement and this resulted in no criminal charges being laid. The project officials provided a mediation service and referral to relevant outside agencies.

Compared to an adjacent police district, cases referred to court were reduced by one-third in the experimental area. The system appeared to have advantages lost in the adversary system as presentation in court occurs only after a long process involving a great deal of hurt which by necessity is neglected, the purpose of the court hearing being to deal with the substantive issue at stake. Before trial there is a six to eight month period and during that time the offender may develop a self-concept of his innocence while the victim is absolutely convinced that the accused is guilty.

In such a win-lose situation, the end result is bound to make someone dissatisfied.[39] The crime rate in the area also dropped slightly, although this was possibly only a reflection of a country-wide trend. The project was deemed to have been successful.

Although the practice of diversion has still to receive formal recognition, informal schemes have been set up across the country. One further example will be examined.[40] Believing that the community has the ability and responsibility to deal with many of its own offenders, a segment of the community in Victoria, British Columbia, has set up a community diversion centre which operates basically as follows.[41] A police officer, satisfied that a law has been broken and that evidence exists to warrant laying a charge, uses his discretion to divert the accused rather than charge him. He contacts a diversion worker who comes immediately to the police station. With the accused, the police officer and the accused's parents (where the accused is a juvenile) all present, the diversion worker describes the nature of the diversion programme and the accused is given the opportunity to choose either to be charged and seek acquittal in the courts or to accept diversion, which is, in effect, an admission of guilt. The diversion worker endeavours to ensure that the accused understands what the charge would be against him and what evidence the police have. His legal rights to counsel and trial and the real possibility of acquittal are clearly set out. The worker then makes sure that the accused understands the requirements of the diversion programme.

A second source of referrals comes from the prosecutor. When a charge reaches his desk, the prosecutor has the prerogative to direct less serious cases to alternative programmes. If he considers that a particular case can best be handled by the community, he will contact the diversion centre. A diversion worker will interview the accused, and if the case is suitable and the accused willing, the prosecutor will inform the court clerk, the charging officer and the victim and the diversion will go forward.

Should the person choose the programme but fail to appear as required, his case is returned to the police or prosecutor who may then proceed with the charge. If he begins the programme but does not complete it, or completes it unsatisfactorily, neither the police nor the prosecutor will pursue the matter further. Thus, the accused is not subjected to double jeopardy by having a criminal charge hanging over him indefinitely. Nevertheless, a report will be made to the police or prosecutor, and this presumably might affect his future chances of being offered the diversion alternative.

The elements of the diversion programme are:

(1) to make restitution of stolen goods or money;

(2) to meet the victim in person, whenever possible, in order to apologise for the wrong done;

(3) to attend meetings with a diversion worker in order to work out the reconciliation contract and account for its fulfilment and also to enable the worker to assess the basic needs of the divertee and to begin them;

(4) to perform a period of voluntary community service and

(5) to attend a workshop of three to four hours which helps the divertee to examine his situation and the causes and consequences of his offence. The function of law in society is explored and he is helped to understand his responsibility for his own actions.[42]

In 1978, when the programme had been operating for two and a half years staffed by five full-time and three part-time workers, an evaluation was conducted. In that period it had dealt with 607 accused people. Initial expense had been high both because of start-up costs and because, until the programme came to be known, there were few referrals. However, the costs dropped rapidly, while the budget remained constant, as referrals rose from 65 in the first year to 210 in the second and to 311 in the first half of the third. There was no formal follow-up done on divertees, but from monitoring court lists, the staff was left with the impression that well below five per cent of their clients have been charged with a subsequent offence.

The offences dealt with through the diversion programme were usually first offences, minor, and property-related, with a heavy emphasis on shop-lifting. Other offences which might be considered appropriate, such as alcohol-related assault and impaired driving were seldom referred because of the low official and community tolerance for them. On the other hand, the policy of the diversion programme itself was against accepting drug addicts and alcoholics for whom Victoria contains no adequate treatment resources.[43]

Overall, the project found that diversion had the following advantages:

- the offender could be dealt with immediately without long court delays;
- flexibility and wider discretion could be exercised in choosing remedial action. In other words, the sanction could be more directly related to the offence;
- the offender could be dealt with in terms of community values;
- the opportunity for the offender and the victim to meet tended to alleviate bitterness and to focus feelings so that they could be dealt with;

- the offender remained in the community instead of being removed from it and
- the programme provided a much-needed non-adversarial process to relieve the burden on the courts.[44]

It must also be noted, however, that a number of negative factors also appeared, in that it was shown that the possibility existed that the legal rights of the accused to seek acquittal in the courts might not be safeguarded during the referral process. In addition, people might be referred to the programme simply because it is there, when ordinarily they would be warned by the police and sent home, or their cases would simply be dropped by the prosecutor.[45]

Those findings echo concerns which have been expressed in the literature and which, to a great extent, were pointed out by the Law Reform Commission itself.[46] Proceedings in open court do have inherent advantages in that accused persons can be represented and the safeguards of judicial procedure will be observed and kept under open scrutiny. Courts are able to exercise judicial control over improper practices, their decisions can be enforced, follow-up enquiries can be ordered, records will be maintained and the vital check of appeal proceedings provided.[47] Extreme caution needs to be exercised to ensure that informal diversionary proceedings, conducted in private, without legal advice, do not leave the accused too exposed to the coercive aspects of diversion.[48]

The Canadian courts have had a limited opportunity to examine a few of the more troublesome aspects of diversion. In R. v. Jones[49] the accused was charged with possession of marijuana and shoplifting. On that occasion she was judged a suitable candidate for diversion but failed to comply with all the terms of the agreement. Subsequently, she was apprehended on an unrelated charge, but on the grounds that she had failed to comply with the agreement, the Crown Attorney restored the original charge to the list. Mr. Justice Anderson of the British Columbia Court of Appeal held that the diversion process in this particular instance was an abuse of process because it gave the prosecutor the power to hold the threat of criminal proceedings over an accused in order to induce him to enter into and carry out what is, in effect, a sentence of probation.

> While it can be argued that the discretionary program is voluntary in the sense that the accused was not compelled to agree to the "diversion" conditions fixed by the prosecutor, it seems to me that one cannot avoid the fact that there was coercion in a very real sense.[50]

This decision carries with it the implication that "default" sanctions have no place in diversion agreements.

In another British Columbia case, R. v. Drew,[51] a sentence was appealed on the grounds that the provincial court judge had taken into account in passing sentence the fact that the accused had previously been charged with shoplifting and had entered into a diversion agreement which had been successfully completed. The trial judge had stated that, had it not been for the diversion, he could have granted the accused a discharge on condition that he enter into a probation order for six months. Instead, his sentence was suspended and he was placed on probation for 12 months. The Court of Appeal allowed his appeal:

> I do not think that it would be appropriate for the court to interfere with the decision not to proceed with the shoplifting charge by assuming that there is something akin to a conviction. The Crown's election not to proceed resulted in the appellant doing community service and entering into certain conditions. He has completed his side of the bargain. I presume that he is not now liable to prosecution. A purpose of diversion is to avoid court proceedings and a conviction. That purpose should not be defeated by our treating the allegation as a conviction.[52]

We must also prove to ourselves that we have not become so wedded to formal, state-sanctioned processes and to authoritative decisions that a development such as diversion, noted for its flexibility and informality, is in danger of leading to an extension rather than a contraction of the criminal justice system.

Footnotes

[1]c. 71.

[2]Great Britain, Criminal Justice Act, 1972, (Commencement No. 5) Order, 1976, bringing the section into force on April 1, 1976.

[3]Great Britain, Home Office Circular 111/1976, "Criminal Justice Act 1972, section 34: Medical Treatment Centres for Alcoholics", (1976), 126 New Law Journal 811.

[4]Great Britain, Home Office, Offences of Drunkenness 1976 England and Wales (London, 1977), Cmnd. 6952. See also "Detoxification", (1977), 127 New Law Journal 975.

[5]"Offences of drunkenness", (1980), 6 Commonwealth Law Bulletin 334.

[6]Id.

[7]1970, R.S.O. c. 249 as amended by 1971 S.O. c. 88, section 1.

[8]P.J. Giffen, "The Criminal Courts and the Control of Addiction" in M.L. Friedland (ed.), Courts and Trials (Toronto, 1975), p. 110.

[9]Id.

[10]See brief summary in Tasmania Law Reform Commission, Report on Decriminalisation of Drunkenness and Vagrancy (Tasmania, 1977), p. 5.

[11]South Australia, Alcohol and Drug Addicts (Treatment) Act Amendment Act, No. 96 of 1976 and No. 97 of 1978.

[12]No. 61 of 1968.

[13]Id. section 58.

[14]Id. section 60.

[15]Tasmania, Law Reform Commission, supra footnote 8 at p. 7.

[16]No. 97 of 1966, section 9.

[17]Id. sections 10 and 11.

[18]Id. section 2.

[19]No. 772 of 1968, section 11.

[20]Id. section 12(1). A scheme operating in British Columbia reverses these two stages: a physician may order temporary detention for observation and treatment up to a maximum of 12 hours. Thereafter a confirming order of a magistrate must be sought to enable the alcoholic to be ordered to attend at or be detained in a treatment institution for an indeterminate term not exceeding 12 months - Summary Convictions Act; 1960, R.S.B.C. c, 373, as amended, section 64A.

[21]Id. section 12(2).

[22]P.A. Sallman, "Accountability in criminal justice administration" in P. Wilson and D. Chappell (eds.), The Australian Criminal Justice System (Toronto, 1977) pp. 492-505 at p. 503.

[23]Victoria, Report from the Statute Law Revision Committee upon the proposals contained in the Vagrancy (Insufficient Means) Bill, 1974 and upon section 5 of the Vagrancy Act, 1966, (1974). A brief commentary on this report is to be found in Tasmania, Law Reform Commission, supra footnote 8 at p. 5.

[24]P.A. Sallman, supra footnote 20 at p. 503.

[25]D. Steer, Police Cautions - A Study in the Exercise of Police Discretion (London, 1970), p. 5.

[26]Saskatchewan Law Reform Commission, Working Paper on Provincial Offences: Tentative Recommendations for Reform (Saskatoon, 1977), pp. 96-97.

[27]D. Steer, supra footnote 23.

[28]NACRO, Diversion from the Criminal Justice System in an English Context (London, 1975), p. 6.

[29]See J.A. Ditchfield, Police Cautioning in England and Wales Home Office Research Study No. 37 (1976).

[30]F.H. McClintock and N.H. Avison, Crime in England and Wales (London, 1968), p. 160.

[31]D. Steer, supra footnote 23, and M. Hough, "Police Cautioning", Great Britain Home Office Research Bulletin no. 4, 1977.

[32]Great Britain Home Office, Criminal Statistics England and Wales 1977 (London, 1978), Cmnd. 7289, para. 5.5.

[33]NACRO, supra footnote 26 at p. 10 and N. Cameron, "Diversion: Recent proposals in criminal justice", (1976), 8 Victoria University of Wellington Law Review 220. "Diversion" is capable of a much wider definition encompassing, for example, alternatives to imprisonment, but for our present purposes, the definition given is the most relevant.

[34]NACRO, supra footnote 26 at p. 41.

[35]Canada Law Reform Commission, Working Paper No. 7, Diversion (Ottawa, 1975), p. 1.

[36]Id. at p. 3.

[37]Id. at p. 22.

[38]Canada Law Reform Commission, East York Community Law Reform Project. Studies on Diversion (Ottawa, 1975).

[39]Id. at pp. 97-98.

[40]For a brief description of other schemes in operation see Saskatchewan Law Reform Commission, supra footnote 24 at pp. 15-20 and

P.A.R. Johnston, "Another Viewpoint on Diversion", (1977), Crime et/and Justice 292.

[41] J. Aubuchon, "Model for Community Diversion", (1978), 20 Canadian Journal of Criminology 296.

[42] *Id.* at pp. 296-98.

[43] *Id.* at p. 298.

[44] *Id.*

[45] *Id.* at p. 299.

[46] For example, the Commission took particular care to point out that if restraint were not exercised in the diversion process as well as in the criminal justice process, diversion programmes would have the opposite effect to that which was intended - *supra* footnote 33 at p. 24.

[47] A.F. Wilcox, The Decision to Prosecute (London, 1972), p. 111.

[48] D. Biles and B. Swanton, "The Future of Criminal Justice in Australia" in D. Biles (ed.), Crime and Justice in Australia (Canberra, 1977), pp. 167-187 at p. 180; N. Cameron, *supra* footnote 31 at p. 221 and K.L. Chasse, "Diversion and the Prosecutor" Crown's Newsletter, July/August 1976, p. 1.

[49] [1978] 3 W.W.R. 271 (British Columbia Court of Appeal).

[50] *Id.* at p. 283.

[51] [1979] 7 Criminal Reports (3d) S-21 (British Columbia Court of Appeal).

[52] Per Seaton J.A., Lambert J.A. concurring at p. S-24.