

## **DIVERSION NOT DETENTION FOR YOUNG OFFENDERS IN NIGERIA: AN URGENT CALL TO RETHINK**

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**ABSTRACT:** The paper examined the prevailing approach to detaining young offenders in Nigeria. Specifically, the objectives of the study were to evaluate the existing methods of detaining young offenders and their effectiveness in terms of rehabilitation and reintegration into society and to examine the negative impacts of current detention approaches on young offenders. The methodology was based on the review of published articles, books and journals and an exemplar case study technique in order to draw a conclusion on the contemporary issues of diversion and detention in Nigeria. Findings from the paper revealed that the current detention approach exacerbates criminal behaviour, impedes rehabilitation opportunities, and fails to address the root causes of youth crime. Factors such as poverty, dysfunctional families, limited access to resources, and a lack of rehabilitative efforts contribute to a cycle of criminal behaviour among young offenders. The study further revealed that to address these issues, diversion programs are proposed as a promising alternative. Successful examples from various countries, such as restorative justice programs in New Zealand, youth offender panels in England and Wales, drug treatment courts in Canada, and juvenile mental health courts in the United States, provide valuable insights for Nigeria. The paper concludes by recommending the strengthening of legislation to explicitly recognize diversion programs as alternatives to traditional criminal justice processes, which would involve establishing eligibility criteria, defining procedures, and implementing safeguards to protect the rights of participants.

**Keywords:** Detention, Diversion, Rehabilitation, Young Offenders, Nigeria

### **INTRODUCTION**

In every civic society the correctional institution ought to be more than a place for detention, but a place where inmates or potential offenders are re-socialized and prepared back for their final integration back into the society. Regrettably this has not turned out to be so; available evidence indicates that inmates or offenders in most countries of the world, particularly in third world countries such as Nigeria, have not been able to re-integrate back into society (Diyoke, 2016). It has been noted that Nigerian correctional centres have proved dysfunctional, rather than serving as avenues for reconciling the offender with the social order and its laws; detention centres have become centres for the dissemination and exchange of criminal influences and ideas, and have usually rendered the prison processed offenders unable to re-integrate into the society (Ugwoke, 2010).

Therefore, the issue of young offenders in Nigeria and the existing system of detention has raised concerns about its effectiveness and impact on rehabilitation. According to Alemika and Chukwuma (2010), the current practice of detention often exacerbates criminal behaviour and fails to provide adequate rehabilitation opportunities for young offenders. The current detention system for young offenders in Nigeria involves placing them in correctional facilities or remand homes (Alemika & Chukwuma, 2010). These facilities are intended to hold young offenders

during the period of investigation, trial, or upon sentencing. However, this approach has been subject to criticism due to its shortcomings and negative consequences. Studies have highlighted that detention can lead to the development of criminal skills and increase the likelihood of recidivism among young offenders (Ogaga, 2018).

Therefore, relying on instruments like arrest, prosecution, and incarceration hasn't made us safer and hurts communities, jurisdictions around the world are looking into other paths to safety. For instance, while making up only 12 percent of the population, Black people account for 38% of those who are incarcerated Akhi and Mustafa, (2022). Here in Nigeria, the overuse of imprisonment in Nigeria's criminal justice system is a significant issue, with the incidence of pretrial detention being among the most worrisome. Inmates who are accused and waiting for trial make up more than 60% of the jail population in Nigeria (Nigeria Prison Service, 2023).

Furthermore, it has been argued that detention fails to provide adequate rehabilitation opportunities for young offenders, limiting their access to education and vocational training (Alemika & Chukwuma, 2010). This lack of rehabilitative efforts within the detention system undermines the potential for long-term positive outcomes for young offenders. Moreover, the current detention system in Nigeria often fails to address the underlying causes of youth crime, such as poverty, lack of family support, and limited access to resources (Alemika & Chukwuma, 2010). Geldenhuys (2007), also asserted that teenage criminal behaviour is influenced by other factors such as poverty, dysfunctional families, the home environment, emotional adjustment, social control, social estrangement and academic underachievement, existence of a family member who acts criminally and violates the law (Geldenhuys, 2007).

These factors, if left unaddressed, can contribute to a cycle of criminal behaviour and reoffending among young offenders. Youth diversion may reduce crime, save money, and improve results for adolescents, according to a substantial body of research that has been collected both nationally and globally. For instance, Steyn, (2010) are of the opinion that diversion programmes have a positive effect on adolescent offenders minimizing the risks of re-offending. It is thus because of these problems that the paper, through diverse works of literature seeks to critically examine the need for diversion programs as an urgent alternative approach for young offenders in Nigeria.

## **Conceptual Issues**

### **Concept of Diversion as an Alternative Approach**

Diversion is a concept within the criminal justice system that aims to divert young offenders away from formal court proceedings and incarceration. It focuses on rehabilitation, community involvement, and accountability. According to Marshall (2011), diversion programs provide individualized interventions that address the underlying factors contributing to criminal behaviour and offer appropriate support and guidance. The key objective of diversion is to reintegrate young offenders into society as law-abiding citizens (Marshall, 2011).

Put differently Diversion is a method of criminal adjudication, that does not require the presence of a Defendant/Accused person in Court to answer to any Charge and there is no trial in the proper sense of it, unlike the usual criminal proceeding involving the necessity of a charge, the presence of a Defendant/Accused person in Court and full trial to conviction or

acquittal as the case may be. In essence, Diversion, simply put, is a deviation from the usual system of criminal adjudication or trial procedures (Weise-Pengelly & Dammer, 2014).

Thus, we can conclude that diversion is an approach of redirecting an offender (usually not a serious offender or if the offender is a teenager or a first-timer) away from the formal procedure involved in the normal criminal adjudication while still holding the offenders concerned accountable for their actions. In other words, diversion entails conviction, sentencing and service without the formalities of the usual trial.

### **The Principles and Objectives of Diversion**

The principles and objectives of diversion vary depending on the context and the specific programme, but here are some general principles and objectives commonly associated with diversion

#### **Rehabilitation and Treatment Objective**

To address the underlying causes of criminal behaviour and promote positive change. Diversion programs often emphasize providing offenders with access to education, mental health services, substance abuse treatment, and other interventions to reduce the likelihood of reoffending. According to Schubert and Mulvey (2014), "The principle of rehabilitation and treatment is central to diversion programs, which aim to address the needs of offenders through targeted interventions such as substance abuse treatment, mental health services, and educational programs.

#### **Community Integration and Support Objective**

To promote community safety and reduce the reliance on incarceration by facilitating the successful reintegration of offenders into society. Diversion programs often involve community-based supervision and support services that help individuals reintegrate into their communities, find stable housing and employment, and develop pro-social connections. As noted by Wilson and Hoge (2012), "Diversion programs are grounded in the principle of community integration and support, which involves engaging the community in the reentry process and providing individuals with the necessary resources and support to successfully reintegrate into society.

#### **Proportionality and Fairness Objective**

To ensure that the response to criminal behaviour is proportionate to the offence committed and fair to the individual involved. Diversion programs aim to divert individuals who are low-risk and non-violent offenders away from formal criminal justice processing, allowing for a more appropriate and just response that matches the severity of the offence. In their study, Smith et al. (2018) state that "The principle of proportionality and fairness underpins diversion programs, as they seek to divert low-risk, non-violent offenders from the traditional criminal justice system and provide them with a more proportionate and fair response" (p. 78).

### **Cost-Effectiveness Objective**

To reduce the costs associated with incarceration and criminal justice processing by diverting individuals into alternative programs that are less resource-intensive. Diversion programs often strive to achieve cost savings by providing targeted interventions that address the underlying causes of criminal behaviour and reduce recidivism rates. According to a report by the Vera Institute of Justice (2017), one of the main objectives of diversion is cost-effectiveness, as these programs can reduce the burden on the criminal justice system and generate cost savings by diverting individuals from expensive incarceration and providing them with targeted interventions.

### **The Need for Diversion for Young Offenders in Nigeria**

The prevailing approach of detention for young offenders in Nigeria has raised concerns about its effectiveness and its impact on the rehabilitation of youth (Alemika & Chukwuma, 2010). As a result, there is a pressing need to reconsider the existing system and explore diversion as an alternative approach. Diversion programs have gained prominence globally for their potential to address the underlying causes of youth crime and promote rehabilitation and reintegration into society (Marshall, 2011). This section will discuss the need for diversion for young offenders in Nigeria and its potential benefits.

One of the primary reasons for the need for diversion programs in Nigeria is the limited success of detention in rehabilitating young offenders. Alemika and Chukwuma (2010) argue that the current practice of detention often fails to address the underlying factors contributing to youth crime, such as poverty, lack of education, and limited access to resources. In contrast, diversion programs offer individualized interventions that aim to address these underlying causes and provide appropriate support and guidance (Marshall, 2011). By addressing the root causes, diversion programs have the potential to break the cycle of criminal behaviour among young offenders.

Additionally, diversion programs have been found to be effective in reducing recidivism rates among young offenders. Ogaga (2018) highlights that diversion programs focusing on rehabilitation and skill-building contribute to positive long-term outcomes for young offenders. By providing educational and vocational opportunities, counselling, and community support, diversion programs empower young offenders to reintegrate into society as law-abiding citizens (Ogaga, 2018). This focus on rehabilitation and reintegration is crucial for preventing future criminal behaviour and promoting positive social outcomes. Furthermore, diversion programs can be more cost-effective compared to detention. Alemika and Chukwuma (2010) argue that investing in diversion programs allows for the efficient allocation of resources. By redirecting young offenders away from formal court proceedings and incarceration, diversion programs can reduce the strain on correctional facilities and associated costs. These cost savings can then be reinvested into comprehensive rehabilitation initiatives, ensuring that young offenders receive the necessary support and guidance for successful reintegration. Additionally, Diversion programs tailored to the Nigerian context offer numerous advantages. First and foremost, they have the potential to reduce recidivism rates significantly (Ogaga, 2018). Research by Gelb (2012) indicates that diversion programs focusing on rehabilitation and skill-building contribute to positive long-term outcomes for young offenders. Moreover, diversion programs are often more cost-effective than detention, as highlighted by Alemika and Chukwuma (2010). By investing in diversion, the Nigerian government can allocate

resources more efficiently and allocate sufficient funds for comprehensive rehabilitation initiatives.

### **Successful Diversion Models and Case Studies from Other Countries**

Several countries have successfully implemented diversion programs for young offenders, providing valuable insights for Nigeria. For instance, the Youth Advocacy Centre in Australia has been commended for its effective diversion strategies, including community conferencing and restorative justice approaches (Goldson, Muncie, & McVie, 2012). These programs have demonstrated reduced reoffending rates and increased victim satisfaction. By studying such successful models, Nigeria can adapt and tailor diversion programs to its specific.

In the same manner Morris, Maxwell, and Robertson (2012) conducted a study on diversion and family group conferences in New Zealand, highlighting their effectiveness in reducing youth reoffending and child welfare notifications. In a separate study, Morris and Maxwell (2013) found that restorative justice and diversion programs in New Zealand had a positive impact on reducing reoffending among young people. However, for the purpose of this paper we will focus on the following successful diversion programmes Restorative Justice Programs in New Zealand, Youth Offender Panels in England and Wales, Drug Treatment Courts in Canada and Juvenile Mental Health Courts in the United States.

### **Restorative Justice Programs in New Zealand**

Restorative justice programs in New Zealand are designed to address harm caused by crime through a process that involves the offender, the victim, and the wider community. These programs aim to repair the harm, promote healing, and reintegrate offenders back into society. Restorative justice in New Zealand is grounded in the principles of inclusivity, respect, and responsibility. The process typically begins with a referral from the New Zealand Police or the court system, identifying cases that are suitable for restorative justice intervention (Morrison, 2016). Once a case is referred, a trained facilitator is assigned to guide the process and ensure the safety and well-being of all participants (Roche et al., 2017).

The central focus of restorative justice is on providing a space for dialogue and understanding between the victim and the offender. This is achieved through a face-to-face meeting, known as a conference, where the victim and the offender, along with their support persons, come together to discuss the harm that has been caused, express their feelings and needs, and work towards a resolution (Braithwaite et al., 2017). The conference is facilitated in a controlled environment that encourages open communication and active listening (Roche et al., 2017). The involvement of the wider community is a key aspect of restorative justice in New Zealand. Community members, including representatives from community organizations, can participate in the conference as community supporters. Their role is to provide guidance and support, help ensure accountability, and facilitate the reintegration of the offender into the community (Morrison, 2016).

The outcomes of a restorative justice conference in New Zealand can vary depending on the specific circumstances of the case. Possible outcomes include the offender taking responsibility for their actions, apologizing to the victim, and agreeing to make amends or reparations (Roche et al., 2017). The process can also result in the development of a plan that outlines steps for the offender to address the underlying issues that contributed to their offending behavior, such as

substance abuse or anger management (Braithwaite et al., 2017). Research on restorative justice programs in New Zealand has shown positive outcomes for both victims and offenders. Studies have found that victims who participate in restorative justice conferences experience higher levels of satisfaction, healing, and empowerment compared to those who do not (McCold & Wachtel, 2015). Offenders who engage in restorative justice processes are more likely to feel a sense of accountability, make amends, and avoid re-offending (Braithwaite et al., 2017).

Therefore, restorative justice programs in New Zealand provide a framework for addressing harm caused by crime through dialogue, understanding, and community involvement. By bringing together victims, offenders, and the wider community, these programs aim to repair harm, promote healing, and reintegrate offenders. Scholarly research has demonstrated the positive impact of restorative justice on both victims and offenders in New Zealand.

### **Youth Offender Panels in England and Wales**

Youth Offender Panels in England and Wales play a crucial role in the criminal justice system by providing a restorative approach to addressing the needs of young offenders. These panels are designed to involve the community in the decision-making process and aim to hold young people accountable for their actions while supporting their rehabilitation. According to the Ministry of Justice in the United Kingdom (2021), Youth Offender Panels are part of the Youth Justice System and operate under the provisions of the Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999. These panels consist of trained volunteers who work with young offenders, their families, and victims to create a tailored plan that addresses the underlying causes of offending behaviour.

During the process, the panel members meet with the young offender and their parents or guardians to discuss the offence and its impact on the victim and the community. The Magistrates' Association (2021) states that the panel members actively engage with the young person, aiming to understand their motivations, challenges, and potential for change. They work collaboratively to develop a contract, known as a "Youth Offender Contract," that sets out specific goals and actions to address the offender's behaviour and support their rehabilitation.

The Youth Justice Board for England and Wales (2020) explains that the panel can recommend a range of interventions, such as education, employment, counselling, and restorative justice processes, to address the young offender's needs. These recommendations are based on a comprehensive assessment of the individual's circumstances and risks of reoffending. The panel's decision is shared with the youth offender, their parents or guardians, and relevant professionals involved in their supervision and support. Throughout the duration of the contract, the panel regularly reviews the young person's progress. The Magistrates' Association (2021) notes that if the young offender fails to comply with the terms of the contract or reoffends, the case may be referred back to court for further action. Youth Offender Panels in England and Wales provide an inclusive and restorative approach to addressing youth offending. By involving the community, considering individual circumstances, and tailoring interventions, these panels strive to rehabilitate young offenders while ensuring accountability for their actions.

## **Drug Treatment Courts in Canada**

Drug Treatment Courts (DTCs) in Canada are specialized court programs designed to address the needs of individuals with substance abuse issues who are involved in the criminal justice system. These courts aim to provide an alternative to traditional criminal court proceedings by offering treatment and rehabilitation services as an integral part of the judicial process.

### **Eligibility and Referral**

Individuals who have been charged with drug-related offences and have substance abuse problems are typically eligible for participation in DTCs. The eligibility criteria may vary across jurisdictions, but common factors include the nature of the offence, the individual's history of substance abuse, and their willingness to engage in treatment. Referrals to DTCs can come from various sources, including defence counsel, crown prosecutors, or judges (Marsh, 2011).

### **Assessment and Treatment Planning**

Once a referral is made, a comprehensive assessment is conducted to evaluate the individual's treatment needs. This assessment may involve substance abuse screening, mental health assessments, and gathering information on the individual's social circumstances. The results of the assessment guide the development of an individualized treatment plan tailored to address the specific needs of the participant (Marsh, 2011).

### **Integrated Treatment and Supervision**

Drug treatment courts and DTCs combine judicial oversight with intensive treatment and supervision. Participants are typically required to undergo substance abuse treatment, which may include detoxification, counselling, and participation in support groups. The court actively monitors the progress of participants and may impose sanctions or incentives based on their compliance with the treatment plan (Marsh, 2011; Turnbull et al., 2018).

### **Collaborative Approach**

Drug Treatment Courts, DTCs adopt a collaborative approach involving various stakeholders, including judges, prosecutors, defence counsel, treatment providers, and probation officers. Regular meetings, known as judicial case conferences, are held to discuss the progress of participants, address any challenges, and make necessary adjustments to the treatment plan (Marsh, 2011; Turnbull et al., 2018).

### **Graduation and Follow-Up**

Successful completion of the DTC program results in graduation, which often involves reducing or dismissing charges or imposing a lesser sentence. After graduation, individuals may continue to receive support through aftercare programs to maintain their recovery and prevent relapse (Marsh, 2011).

### **Juvenile Mental Health Courts in the United States**

Juvenile Mental Health Courts (JMHCs) in the United States are specialized courts designed to address the unique needs and circumstances of juveniles with mental health disorders who are involved in the justice system. These courts aim to divert young offenders with mental health issues away from traditional juvenile justice proceedings and into treatment programs that address their underlying mental health needs. This approach recognizes the complex interplay between mental health and delinquent behaviour, seeking to promote rehabilitation and reduce recidivism among this vulnerable population.

According to a study by Steadman et al. (2013), JMHCs follow a collaborative and interdisciplinary model, bringing together key stakeholders including judges, prosecutors, defence attorneys, mental health professionals, probation officers, and other relevant community resources. These stakeholders work together to develop individualized treatment plans that integrate mental health services, substance abuse treatment, educational support, family therapy, and other necessary interventions.

The primary goal of JMHCs is to improve outcomes for youth by addressing their mental health needs and reducing the likelihood of further involvement in the justice system. In their analysis of JMHCs in Ohio, Davis et al. (2016) found that the programs were associated with reduced recidivism rates and increased utilization of mental health services among participating youth. The authors emphasized the importance of collaboration between the court and mental health agencies in providing comprehensive and coordinated services to these young individuals.

To achieve these outcomes, JMHCs employ a range of strategies. Firstly, they conduct comprehensive mental health assessments to identify the specific needs of each youth. This assessment process helps determine appropriate treatment plans and services tailored to the individual's mental health condition. Secondly, these courts establish regular judicial review hearings to monitor progress, address any challenges or barriers to treatment, and modify treatment plans as necessary. Furthermore, JMHCs often emphasize a team-based approach to decision-making. In their evaluation of a JMHC in Florida, Morrissey et al. (2019) highlight the significance of regular staff meetings, where stakeholders discuss individual cases, share information, and make informed decisions regarding treatment and supervision strategies.

The effectiveness of JMHCs is also influenced by community collaborations and linkages. These courts foster partnerships with community organizations, mental health providers, schools, and other relevant service providers to ensure a continuum of care beyond the court's jurisdiction. Such collaborations help facilitate smooth transitions for youth from the justice system to community-based mental health services, thereby promoting long-term success.

Thus, Juvenile Mental Health Courts in the United States operate by bringing together various stakeholders to address the mental health needs of young offenders. Through collaborative and interdisciplinary approaches, these courts strive to provide individualized treatment plans and support services that promote rehabilitation and reduce recidivism. Scholarly research supports the positive impact of JMHCs in terms of reduced reoffending rates and increased utilization of mental health services among participating youth.



## **Challenges and Considerations in Implementing Diversion Programs in Nigeria**

Implementing diversion programs in Nigeria faces several challenges and considerations. These can be categorized into social, institutional, and practical aspects. Here are some key challenges and considerations.

### **Limited Awareness and Understanding**

One challenge is the lack of awareness and understanding of diversion programs among stakeholders, including law enforcement agencies, the judiciary, and the general public. Diversion is a relatively new concept in Nigeria, and there is a need for education and awareness campaigns to promote its benefits. (Adekoya, 2019) Cultural and Societal Factors: Nigeria has a diverse cultural landscape, and certain cultural norms and beliefs may pose challenges to the implementation of diversion programs. For example, there might be a preference for punitive approaches rather than rehabilitative measures due to societal attitudes and expectations regarding crime and punishment (Ajayi & Agoha, 2017).

### **Inadequate Legislative Framework**

A comprehensive legislative framework is crucial for the successful implementation of diversion programs. Nigeria lacks specific legislation that clearly outlines the principles, procedures, and eligibility criteria for diversion. The absence of a legal framework poses challenges in standardizing and regulating diversion practices (Olanipekun, 2020).

### **Limited Resources**

Implementation of diversion programs requires adequate resources, including funding, trained personnel, and infrastructure. However, Nigeria faces resource constraints in various sectors, including criminal justice. Limited resources can impede the effective implementation and sustainability of diversion initiatives (Okorie, 2020).

### **Capacity Building and Training**

To implement diversion programs effectively, personnel involved in the criminal justice system, such as police officers, prosecutors, and probation officers, need specialized training and capacity building. The lack of training programs and resources can hinder the successful implementation of diversion initiatives. (Adekoya, 2019).

### **Monitoring and Evaluation**

Regular monitoring and evaluation of diversion programs are essential to assess their effectiveness and make necessary improvements. However, Nigeria faces challenges in establishing robust monitoring and evaluation mechanisms, including data collection and analysis systems, which are crucial for evidence-based decision-making and program improvement. (Oyewo et al., 2020).

### **Stakeholder Collaboration and Coordination**

The successful implementation of diversion programs requires collaboration and coordination among multiple stakeholders, including law enforcement agencies, judiciary, social welfare agencies, and civil society organizations. Lack of coordination and cooperation among these entities can hinder the effective implementation and sustainability of diversion initiatives (Ajayi & Agoha, 2017). These challenges and considerations need to be addressed systematically to facilitate the successful implementation of diversion programs in Nigeria and promote more effective and rehabilitative approaches to dealing with offenders.

### **Conclusion and Recommendations**

In conclusion, the need for diversion programs for young offenders in Nigeria is evident. Detention has shown limitations in addressing the underlying causes of youth crime and providing effective rehabilitation opportunities. Diversion programs, on the other hand, offer individualized interventions, reduce recidivism rates, and can be more cost-effective. By prioritizing diversion, Nigeria has the opportunity to promote rehabilitation, address the root causes of youth crime, and foster positive outcomes for young offenders. Implementing diversion programs in Nigeria can be an effective approach to address various issues within the criminal justice system and promote rehabilitation. Here are some practical recommendations for implementing diversion programs in Nigeria.

1. **Strengthen Legislation:** Develop and enact legislation that explicitly recognizes diversion programs as an alternative to traditional criminal justice processes. This should include provisions for eligibility criteria, procedures, and safeguards to protect the rights of participants.
2. **Establish Multidisciplinary Diversion Teams:** Form multidisciplinary teams comprising professionals from various fields such as law enforcement, social work, psychology, and education. These teams can assess and provide appropriate interventions tailored to the needs of individuals in diversion programs.
3. **Enhance Training and Capacity Building:** Conduct comprehensive training programs for criminal justice practitioners, including police officers, prosecutors, and judges, to enhance their understanding of diversion programs and their implementation.
4. **Develop Community-Based Services:** Establish community-based services such as counselling, substance abuse treatment, vocational training, and educational programs to address the underlying causes of criminal behaviour and support the successful reintegration of participants.
5. **Promote Stakeholder Collaboration:** Foster collaboration and coordination among relevant stakeholders, including government agencies, non-governmental organizations (NGOs), community leaders, and civil society organizations, to ensure effective implementation and sustainability of diversion programs.
6. **Monitor and Evaluate Program Effectiveness:** Implement a robust monitoring and evaluation system to assess the impact of diversion programs on recidivism rates, participant outcomes, and cost-effectiveness. This data can inform evidence-based decision-making and program improvements.
7. **Raise Public Awareness:** Conduct awareness campaigns to educate the general public about the benefits of diversion programs, dispel misconceptions, and reduce stigma associated with participation. This can foster community support and engagement.

8. Secure Adequate Funding: Allocate sufficient resources from the government budget and explore partnerships with international organizations, philanthropic foundations, and corporate entities to ensure sustainable funding for the implementation and expansion of diversion programs.

By following these practical recommendations, Nigeria can effectively implement diversion programs and contribute to a more rehabilitative and restorative criminal justice system.

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