



AN OVERVIEW OF THE CONCEPT OF DIVERSION IN THE ADMINISTRATION OF THE CRIMINAL JUSTICE SYSTEM IN AUSTRALIA: LESSONS FOR NIGERIA

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Abstract:

The percentage of conviction and trial has reduced greatly in countries that practice diversion programs. One concept that promotes restorative justice is diversion. It is devoid of conviction and sentence; it rather provides an alternative and more flexible punishment for the defendant. It is often adopted to avoid recidivism. However, some countries do not adopt diversion due to the likelihood of abuse by potential misdemeanor defendants. This study examined restorative justice, diversion, types and benefits of diversion, and recidivism. It drew some lessons from Australia and adopted doctrinal research methodology. It employed primary sources such as case law, statutes, and secondary sources, such as textbooks, journal articles, and online materials. Findings revealed that diversion has not received wide publicity and adoption because it is believed it might increase criminal activities in society. This study concluded that diversion reduces the backlog of cases in court, helps first-time defendants, and encourages communication and settlement between victims and defendants. This paper recommended that diversion should be incorporated into Nigerian law with stringent conditions to avoid abuse of the program.

Keywords: *Crime, Defendant, Diversion, Restorative Justice, Victim*

1. INTRODUCTION

Criminal justice administration administers justice to defendants, victims, and society at large. One notable model of criminal justice administration is diversion. It is a restorative justice principle that focuses on reintegrating defendants into society without any stringent punishment or criminal record. It is only applicable to misdemeanor offences and is recognized and practiced in countries such as Australia, the United States, the United Kingdom, and India. Although diversion applies to misdemeanour offences, it is not popular in Nigeria because there is no legal framework that supports it. Thus, it has not been adopted in countries like Nigeria because of the erroneous belief that regular criminals may exploit diversion as a loophole. In other words, if adopted, it might increase criminal activities in Nigeria.

However, Nigeria is set to embrace diversion as the Attorney General of the Federation (AGF), Lateef Fagbemi (SAN), the Inspector General of Police (IGP), Kayode Egbetokun, the Chief Judge of the Federal High Court, Justice John Tsoho, and his counterpart in the High Court of the Federal Capital Territory (FCT), Justice Hussein Baba Yusuf, advocated restorative justice principles in Nigeria at the wider stakeholders review and validation session of the Restorative Justice Documents, organised by the Federal Ministry of Justice, with

support from the United Nations Office on Drugs and Crime (UNODC).¹ The effective integration of restorative justice into Nigeria's existing justice administration system will effectively eliminate the inherent challenges in its criminal justice system. Current setbacks include recidivism, prolonged trial durations, overcrowded custodial centres, and punishments that are incommensurate with the severity of offences, falling short of delivering justice to victims and survivors of crime.² Restorative justice is an evolving approach to justice that seeks to reconcile victims and perpetrators in the aftermath of a crime. Restorative justice provides defendants an opportunity to make amends and correct the wrongs and harms inflicted on their victims. It is an innovative approach that reduces reoffending rates by punishing and correcting offenders.³ For the victims, the goal of restorative justice is to give them an active role in the criminal justice process and to reduce feelings of anxiety and powerlessness. While traditional criminal justice solely focuses on punishing defendants, restorative justice focuses on victims and survivors harmed by defendants' conduct.⁴

Furthermore, the adoption of restorative principles represents a significant shift in Nigeria's approach to justice, prioritizing healing and reintegration over punishment. This approach recognizes the worth and dignity of every individual, victims, defendants, and the community.⁵ Restorative justice offers a unique opportunity to foster a more compassionate and inclusive justice system, addresses the roots of conflicts and crimes, promotes accountability and responsibility, supports victims' recovery and empowerment, and builds safer and more harmonious communities. It offers a path toward a more holistic approach to justice, one that prioritizes healing, reconciliation, and the reintegration of defendants into society.⁶ Restorative justice is a transformative approach that emphasizes healing the harm caused by criminal behavior, rehabilitating defendants, and restoring victims and communities. It is the country's journey toward a more just, humane, and effective criminal justice system.⁷

Diversion has been adopted in many countries to avoid recidivism. In other words, it prevents a situation where a person commits the same crime again. Diversion is often adopted in criminal cases involving juvenile or young defendants who are first-time offenders. The essence of this program is to protect the image of the persons involved and provide an alternative to imprisonment. Where the defendant or young defendant accepts responsibility for their actions and follows the diversion plan, they can have their charge dropped by the prosecution.⁸ The options available are flexible, preserve system resources, and avoid collateral consequences that may affect the defendant.⁹

2. RESTORATIVE JUSTICE

Restorative justice is based on respect and compassion but conceives crime as a violation of people.¹⁰ It encourages accountability, reparation, and reintegration, and it contributes largely to the criminal justice

¹ U Chioma, <https://thenigerialawyer.com/agf-igp-chief-judges-advocate-for-restorative-justice-principles-in-nigeria/> accessed 1 July 2024

² *Ibid*

³ *Ibid*

⁴ Chioma (n 3)

⁵ *Ibid*

⁶ *Ibid*

⁷ *Ibid*

⁸ John Devendorf and Gary Almeter, 'What is Diversion?' (2024) <<https://lawinfo.com/resources/criminal-defense/sentencing/what-is-diversion.html>> accessed 18 June 2024.

⁹ M M Carter, Diversion 101: What is Diversion? accessed 18 June 2024.

¹⁰ What is Restorative Justice? <https://www.justice.gc.ca> accessed 17 June

system.¹¹ It is a justice theory that prioritizes reconciliation than punishment; it is premised on the fact that a functional society operates with a balance of rights and responsibilities, and where this balance is compromised, measures must be adopted to restore the balance.¹²

Restorative justice is a broad concept that encompasses a wide range of criminal justice administration alternatives.¹³ It is a principle based on reintegrating the defendant into society and allows him to take responsibility for his crime. It is a problem-solving approach that involves the defendant, victim, and community. It is a process whereby stakeholders involved collectively deal with the repercussions of the crime committed and the future implications.¹⁴ It emphasizes the restoration of the defendant to a better individual in society. It allows the defendant to acknowledge the crime committed and encourages the direct involvement of defendants, victims, and affected members of society. It repairs the harm caused by defendants and stimulates the cooperation of all parties involved or affected by a criminal behavior.¹⁵ Some of the restorative programs are victim-offender and community meetings (such as victim-defendant mediation, family or community group conferencing, peace-making or sentencing circles), restitution, and community service.¹⁶

Defendant-community meeting is an assembly between victims, defendants, and members of a community affected by the defendant's crime. It involves the voluntary participation of all concerned parties. Victims and defendants have the opportunity to converse, and the defendant is allowed to take responsibility for the harm caused.¹⁷ In repairing the harm caused by the defendant, the parties could agree to compensate a victim monetarily for their financial loss. This method is also known as restitution, and it holds the defendant accountable for his wrongdoing.¹⁸ Community service, on the other hand, is often beneficial to the community because it is an act of service rendered to the community. It is a way of compensating the community for the harm caused. The essence of restorative justice is to prevent conflict and build relationships. It encourages communication between the parties concerned and exposes the effect of the harm on the victim and/or community.¹⁹

3. CONCEPT OF RECIDIVISM

Recidivism is derived from a latin word *recidivus*, meaning *falling back*. It means reoffending; it encompasses terms such as habitual defendant, reoffending behaviour, and pro-criminal lifestyle.²⁰ Recidivism involves rearrest, resistance to rehabilitation programs, reconviction, and re-incarceration.²¹ This is a serious challenge

¹¹ Ibid.

¹² What is Restorative Justice? <https://www.westerncape.gov.za> accessed 17 June 2024.

¹³ Rachel Rogers and Holly Ventura Miller, 'Restorative Justice' in Mathieu Deflem (eds), *The Handbook of Social Control* (John Wiley & Sons Ltd, 2019), 167-180..

¹⁴ T E Marshall, Restorative Justice: An Overview (A Report by the Home Office, Research Development and Directorate 1999) 1-35 at 5.

¹⁵ Restorative Justice, (Restorative Justice Briefing Paper, Centre for Justice & Reconciliation at Prison Fellowship International 2005) <https://www.d.umn.edu> accessed 17 June 2024

¹⁶ Ibid.

¹⁷ Ibid

¹⁸ Ibid

¹⁹ What is restorative Justice? <https://www.restorativejustice.org.uk> accessed 17 June 2024

²⁰ Marelize Schoeman., 'Recidivism: A Conceptual and Operational Conundrum,' *Acta Criminologica: CRIMSA 2009 Conference Special Edition*, 1/2010: 80. A recidivist is a person who repeatedly commits a crime. He is otherwise known as a perpetual criminal with criminal record that shows his criminal antecedents. He is often a prisoner who has been imprisonment on one or several occasions.

²¹ Sorochi M. Otu, 'Analysis of the Causes and Effects of Recidivism in the Nigerian Prison System,' *International Journal of Development and Management Review* (2015) 10, 136-145.

facing the criminal justice system, correctional centres, and society. Statistics have shown that 60% of inmates are recidivists because they are perpetual criminals who commit crimes, get re-arrested, prosecuted, and imprisoned.²² One of the reasons people repeatedly commit crimes is the discriminatory attitude of society toward ex-convicts. Sometimes, they are stigmatized and labelled as criminals in society, thereby making it difficult to abstain from their criminal behaviour and groups. Another reason is a lack of proper follow-up on ex-convict who have served their term at correctional homes. Where there is no appropriate follow-up to reintegrate them to society and help them earn a living, they might likely commit another crime.²³ Where a defendant reoffends, the public fund spent on him during previous incarceration is wasted because it did not have any positive effect on him.²⁴ The defendant returns to his criminal behaviour until he is eventually arrested. Imprisonment poses more harm than good to the defendant due to the constant interaction and relationship maintained by defendants with other prisoners while at the correctional centre, police detention, or remand homes. While maintaining their relationships with other prisoners, defendants ignore rehabilitation and correction programs offered at the correctional centre. This has made the correctional centre a training home for criminality for defendants who voluntarily ignore rehabilitation. They wait patiently to be released and go back to their criminal act, which is often seen as a way of life.²⁵ Their personality differs from ordinary criminals, as their drive to engage in crime makes them habitual reoffenders.

Despite the prevalence of recidivism, it can be controlled in society. The first point of call is the correctional centres where recidivists are trained to become hardened criminals, thereby reoffending and not minding the consequences of their actions.²⁶ Inmates should be allowed to participate fully in rehabilitation, educational, and reintegration programs, and there must be constant follow-up after their release. Also, the attitude of society and diversion programs will go a long way in reducing recidivism.

4. CONCEPT OF DIVERSION

Diversion became popular in the United States in the 1960s due to the need to divert a certain group of people (such as veterans, adolescents, and suspects of substance abuse) from the criminal justice system's retribution.²⁷ It is an alternative to sentencing or judicial punishment. It relies on the discretion of judges, magistrates, and prosecutors to provide an alternative sanction. It provides support services to prepare individuals through community partnerships and a range of community-specific options.²⁸ It is the process whereby an individual is diverted from continuing with a formal criminal justice process to a rehabilitative program.²⁹ It may sometimes be referred to as a contractual agreement between a defendant and the prosecution team, which may precipitate subsequent dismissal of the case (when a defendant meets the stipulated conditions).³⁰ It is also regarded as a program where a defendant is required to undertake some procedures in lieu of being prosecuted for the crime committed. When the defendant completes the program, the charge is

²² U Chukwumerije 'Explanatory Memorandum on Amendment of Prison Act' accessed 18 June 2024 (Reconfirm the link; it is inaccessible)

²³ *Ibid*

²⁴ S Sanyal., Recidivism: A failure of rehabilitation <https://www.researchgate.net/publication/343500298> accessed 18 June 2024

²⁵ *ibid*

²⁶ Sorochi (n 23) at 141

²⁷ Burcu Ozturk, Andrew Bell, David McLeod, and Ryan Gentzler, 'Criminal Justice Diversion and the Importance of Program Retention' *Journal of Forensic Social Work* (2022) 4, 34-56 at 45.

²⁸ *Ibid*

²⁹ D Carter, M. Holcomb and K. Mclean. What is Diversion? <https://www.louis.pressbooks.pub/criminaljustice/chapter/9-1-diversion/> accessed 17 June 2024 (The link is inaccessible.)

³⁰ Diversion and Plea Bargains <https://www.parsonsksk.com> accessed 17 June 2024 (Inaccessible)

dismissed.³¹ Where the program is not completed, the defendant is prosecuted for the crime allegedly committed.³²

Diversion is a concept in criminal justice administration founded on restorative justice ideas. It is an alternative procedure in the administration of criminal justice where criminal proceeding is interjected through an agreement between the prosecutor and the defendant for a program to be undertaken by the defendant to redress their unlawful act.³³ It is not a common phenomenon and it is often referred to as a new model of social control. It is a form of criminal justice administration and procedure where the prosecution of a defendant's case is suspended for an alternative program, such as counseling, training, and others. It is also known as a pre-trial sentence. It is a situation where the defendant joins a rehabilitation program to correct the behavior that precipitated their criminal act.³⁴ It involves diversity programs that seek to prevent the formal criminal justice system. It minimises criminal procedures and avoids arrest, prosecution, and incarceration.³⁵ Countries such as India, the United States, and Australia have incorporated diversion in their laws. For Instance, section 40-35-313 of the Tennessee Code of 2019 provides that:³⁶

The court may defer further proceedings against a qualified defendant and place the defendant on probation upon such reasonable conditions as it may require without entering a judgement of guilty and with the consent of the qualified defendant. The deferral shall be for a period of time not less than the period of the maximum sentence for the misdemeanour with which the person is charged...

From the provision above, for there to be a diversion in the case of deferment of proceedings, the trial court must suspend proceedings for a certain period that must not be less than the maximum sentence for the offence which the defendant has committed. The Australian Law, on the other hand, makes provision for the eligibility of a defendant for diversion. The law provides that:

1. The defendant must be charged with summary offence or an indictable offence that may be heard and determined summarily;
2. Acknowledge responsibility for the offence(s)
3. Approval of the prosecution is necessary. This can be the police officer responsible for the case or the police prosecutors working at Court and they must sign a diversion notice recommending the defendant.

Under the Australian Law, diversion applies to indictable offences such as traffic or driving offences, shoplifting, etc., that can be prosecuted in a summary trial. Unlike the Tennessee Code, Australian Law requires notice of diversion to be filed and signed by the prosecution. A notice of diversion is filed, and the case is prepared for hearing for the court to decide whether the defendant is eligible for diversion (based on the notice of diversion).³⁷

³¹ N Shouse., What is Diversion? A Criminal Defense Lawyer explains <https://www.shoselaw.com> accessed 17 June 2024. (Inaccessible link)

³² Ibid

³³ 'Diversion' <<https://www.law.cornell.edu/wex/diversion>> accessed 23 May 2024

³⁴ 'Pre-Trial Diversion from Criminal Proceedings: The Need for Legal Frameworks in Nigeria' <<https://lawpavilion.com/blog/pre-trial-diversion-from-criminal-proceedings-the-need-for-legal-frameworks-in-nigeria/>> accessed 23 May 2024

³⁵ A Johnson and M Ali-Smith., 'Diversion Programs, explained' (2022) <https://www.vera.org> accessed 17 June 2024

³⁶ Tennessee Code 2019, s 40-35-313

³⁷ Pre-Trial Diversion from Criminal Proceedings: The Need for Legal Frameworks in Nigeria (n 36).

5. TYPES OF DIVERSION

Diversion can either be formal or informal. Diversion is informal, where officials of the criminal justice system use their discretion to divert a defendant who commits a minor offence; it involves a warning or caution. It is formal when the defendant is expected to undergo a program as a condition of diversion.³⁸ Formal diversion is a structured program that involves certain requirements, such as counseling or community service.³⁹ There is a jail-diversion program where the defendant is not confined in any facility while awaiting trial. In this case, the defendant is given a specific date and time to face his charges.⁴⁰ The different types of diversion include the following: pre-arrest diversion, pre-charge diversion, and pre-trial diversion.

Pre-arrest diversion is a program designed to minimize the number of people arrested and detained by the police. Where there is a cause to arrest the defendant, law enforcement agents decide on an alternative to arrest (such as programs) to ascertain the cause of the act. This program gives the police or any law enforcement agent the discretion to divert simple and misdemeanor defendants from arrest and further prosecution.⁴¹ Pre-charge diversion comes before the defendant is charged in court but after arrest or before the commencement of proceedings. The prosecution has the power to divert the defendant without charging him in court or before the charge is issued. This program is also known as prosecution-led intervention.⁴²

Pretrial diversion may occur after the prosecution files charges and the defendant is formally charged. At this stage, the judge or magistrate may defer adjudication and allow the prosecution and the defendant to reach an agreement that would prevent the imprisonment of the defendant.⁴³

6. Benefits of Diversion

Diversion is often adopted due to its numerous benefits. It prevents criminal conviction and sentencing of defendants. This benefit is associated with a pre-trial diversion program for first-time offenders or defendants.⁴⁴ For instance, counseling sessions and community services may be imposed for first-time defendants and substance abuse defendants. Depending on the diversion program adopted, a successful program may eliminate criminal charges against the defendant.⁴⁵

Diversion promotes rehabilitation and reintegration of the defendant into society.⁴⁶ It helps the defendant develop positive skills and become a better version. Since there is no criminal record of the defendant's act, the defendant is not labeled a criminal or an ex-convict.⁴⁷ It reduces the stigma that may be attributed to the act committed or the defendant. A successful diversion program saves the defendant from the rigors of adjudication, the criminal justice process, and criminal association. Keeping defendants in remand homes and correctional centres, where several degrees of criminals are incarcerated, may be detrimental to defendants.⁴⁸

³⁸ Harry Dammer and Carrie Weise-Pengelly, 'Diversion: Criminal Justice Reform and Alternatives' *Britannica* <<https://www.britannica.com/topic/diversion>> accessed 23 May 2024.

³⁹ What is a Diversion: How can you get Justice in Criminal Cases? accessed 17 June 2024.

⁴⁰ Britannica (n 40)

⁴¹ Johnson and Ali-Smith (n 37).

⁴² *Ibid*

⁴³ *Ibid*

⁴⁴ Devendorf and G. Almeter (n 10)

⁴⁵ *Ibid*

⁴⁶ 'Pre-court Diversion' <<https://youthendowmentfund.org.uk/toolkit/pre-court-diversion>> accessed 18 June 2024

⁴⁷ *Ibid*

⁴⁸ Youth Diversion Programs: 8 benefits for At-Risk Youth and providers <https://info.mstservices.com> accessed 18 June 2024

In diversion, defendants are held responsible and accountable for their actions. It develops defendants' confidence and helps them confront their criminal behaviour and work toward engaging a long-term solution. This program allows defendants to disclose reasons for committing such crimes and helps to prevent further occurrences in the future.⁴⁹ The defendant can make amends for their criminal behaviour.

Diversion reduces the court dockets and costs incurred in prosecuting a case.⁵⁰ This program provides an alternative to prosecution and imprisonment. Alternatives available to defendants are settlement program, community services, and probation. The cost of prosecution is reduced when court proceeding in connection with the defendant is diverted.⁵¹ It also saves the state the cost of housing the defendant in its facilities. In the case of a financial loss, the victim is compensated for the loss incurred.⁵² The victim is also given the opportunity to air their grievances, and participate in the program.

It reduces the rate of recidivism. When diversion is implemented and successful, it reduces the rate at which defendants re-offend. In other words, defendants who participate in diversion are unlikely to commit another crime because the program focuses on the defendants, changes their orientation about criminal behavior, and provides necessary skills.⁵³ Another way diversion program reduces recidivism is through support and treatment program (such as substance abuse treatment, mental health counselling, educational programs), monitoring, and accountability; these interventions help them stay on track and prevent committing another crime. Diversion program diverts the defendant from imprisonment and decongests correctional facilities and reduce the strain on criminal justice system.⁵⁴

7. DIVERSION IN AUSTRALIA

Diversion is popular in Australia and forms part of the Australian criminal justice system. It is otherwise known as Diversion Program (DP). It is often adopted in respect of first-time offenders and persons with no serious criminal record. It is often adopted in respect of drugs and alcoholism. Diversion program is a special provision in section 59 of the Criminal Procedure Act 2009 as an alternative to sentencing. Most beneficiaries of this program are young defendants. To be eligible for this program, the defendant must accept the wrong done, the offence must be a less serious offence that can be summarily determined by a magistrate court, the offence must not have minimum penalty or sentence provided under the law and the prosecution must consent to the application of the program.⁵⁵ To support these conditions, Section 59(2) provides that:

If, at anytime before taking a formal plea from an accused in a criminal proceeding for a summary offence or an indictable offence that may be heard and determined summarily:

- a) The accused acknowledges to the Magistrate's Court responsibility for the offence; and
- b) It appears appropriate to the Magistrates' Court, which may inform itself in anyway it considers appropriate, that the accused should participate in a diversion program; and

⁴⁹ *Ibid.*

⁵⁰ Pre-Trial Diversion from Criminal Proceedings: The Need for Legal Frameworks in Nigeria (n 36)

⁵¹ *Ibid*

⁵² Youth Diversion Program (n 50)

⁵³ 'Pros and Cons of Diversion Programs' <https://www.luxwisp.com/pros-and-cons-of-diversion-programs/#google_vignette> accessed 18 June 2024

⁵⁴ *Ibid*

⁵⁵ Diversion program in Australia <https://www.australainationalcharactercheck.com> accessed 11 February 2025. (Inaccessible url)

- c) Both the prosecution and the accused consent to the Magistrates' Court adjourning the proceeding for this purpose.

The Magistrates Court may adjourn the proceeding for a period not exceeding 12 months to enable the accused to participate in and complete the diversion program.

Where an offender acknowledges and accepts responsibility for his crime, it will not be admissible as evidence against him and will not constitute a plea against him when he is charged for the same offence.⁵⁶ Where the defendant completes the diversion program to the satisfaction of the Magistrates' Court, the Court is not required to take the plea of the defendant and must discharge the defendant without finding him guilty.⁵⁷ Participation in the program and a defendant's discharge can be pleaded as a defence to the same offence or a similar offence where the need arises.⁵⁸ This does not give the defendant the liberty to reoffending after the program. The opportunity for this program may present itself during arrest, before trial, before sentence, and post-sentence.⁵⁹

Where the Police is to recommend diversion before trial, it must be authorised by a senior police officer. This program is not automatic; the police have the discretion to agree or reject diversion program. Where the program is accepted by the police, a diversion notice must contain a letter of apology and willingness to undertake some program that can help or rehabilitate the defendant.⁶⁰ In addition to the letter of apology or verbal apology, the victim may be asked to undergo some sessions on anger management, drug and alcohol treatment, do community work and make donations where necessary.⁶¹

Australia also offers diversion program such as the intellectually disabled list at the Central Law Courts in Perth to defendants with special needs and street workers.⁶² The most popular diversion program is the Magistrate Early Referral into Treatment (MERIT) program. It is a program that commences before the accused's plea is taken and while the defendant is on bail.⁶³ Referral to this program can be made by the magistrate, arresting police officer, accused lawyer, or the accused. This is a three months program that significantly reduces the number of young offenders. MERIT is a court-based diversion program that targets adult offenders who suffer drug or alcohol addiction, help them undergo treatment, break the cycle of drug related crimes, and provide rehabilitation programs.⁶⁴ Other programs are family conferencing⁶⁵ circle sentencing,⁶⁶ youth justice conferencing,⁶⁷ domestic violence court intervention program⁶⁸ and traffic offender intervention program.⁶⁹ Apart from MERIT, caution is another diversion program for young offenders. The

⁵⁶ Australian Criminal Procedure Act 2009, s59(3).

⁵⁷ Ibid, s59(4)(a-c).

⁵⁸ Ibid, s59(4)(d).

⁵⁹ S. Vaghan., 'Australian Diversionary Programmes: An Alternative to Imprisonment for Drug and Alcohol defendants' (121st International Training Course: Visiting Experts' Paper) <https://www.unafei.or.jp> accessed 11 February 2025. (Wrong url)

⁶⁰ 'Diversion Program', < <https://www.criminal-lawyers.com.au/criminal-penalties/diversion> > accessed 12 February 2025

⁶¹ 'Going to Court-Diversion' <<https://www.legalaid.vic.gov.au/going-court-diversion>> accessed 12 February 11, 2025.

⁶² Court Diversion Programs <https://www.aija.org.au/atjc-court-diversion-programs-2/> accessed 11 February 2025.

⁶³ Court Diversion Program <https://www.slnsw.gov.au> 11 February 2025

⁶⁴ Ibid

⁶⁵ Family conferencing is a conference between the police, defendants, victims, parents or guardians of the defendant, and anyone who is affected by the act of the defendant on how to deal with the defendant.

⁶⁶ Circle conferencing addresses the delinquent behaviour of the defendant and considers the needs of victim, families, and the community.

⁶⁷ Youth justice conferencing diverts defendants from court and provides opportunities for defendants to meet the victim of the crime to produce an agreed outcome and make up for the harm done.

⁶⁸ This program guarantees the safety of victims and holds defendants accountable for their actions.

⁶⁹ This program creates safe-driving habits in traffic offenders.

Police may give an informal caution when a young person has committed an offence without charging him to court.⁷⁰ Once the defendant is informally cautioned no other action will be taken against him. However, a formal caution may require an apology, community service and compensation.⁷¹

8. LESSONS FOR NIGERIA

Despite the wide recognition and adoption of diversion in Australia, Georgia, the United States, the United Kingdom, and other countries, Nigeria's laws do not recognize diversion. Lessons can be drawn from Australia to aid the amendment of our procedural laws to accommodate diversion program and give first time offender a second chance. Just like in Australia, diversion program should be made applicable to first-time juvenile offenders who have committed less serious offences such as drug abuse, alcoholism, gambling, prostitution, and others. Diversion programs such as mentoring, drug diversion program, community-based program, family-based programs, programs on mental health needs, and rehabilitation programs should be introduced to juvenile offenders. These programs are to be made mandatory for defendants, and failure to undergo or complete the program may lead to prosecution, just like in Australia and other jurisdictions. The essence of this program is to redirect defendants from offences committed to becoming better citizens. After the program, defendants are expected to report back to the court to have their case dismissed after showing evidence of full participation in the program.

9. Conclusion and Recommendations

Diversion has been identified as one of the concepts of restorative justice that allows defendants to go through some programs for the purpose of making them a better person in the society. It prevents a repeat of their criminal acts, reduces stigma, and decreases the case load of cases in court. Diversion also reduces the rate of recidivism in society because it prevents situations where defendants are sent to correctional centres only to come back and reoffend. However, where defendants are made to go through some programs or engage in community service to better their lives, there would be no situation or case of recidivism. Diversion is beneficial to victims, defendants, and society at large because it is organised in such a way that parties are allowed to communicate and defendants take responsibility for his actions. Diversion manifests alternative dispute resolution mechanisms in criminal cases such as plea bargain, nolle prosequi, amnesty, etc. Hence, this paper recommends that diversion should be codified into the Nigerian justice criminal system but with stringent conditions attached to its applicability to avoid its being misappropriated by juvenile defendants. It should be a privilege, not a right.

⁷⁰ 'Diversion in South Australia' <https://www.gotocourt.com.au/criminal-law/sa/diversion/> accessed 12 February 13, 2025

⁷¹ Ibid