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U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
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NCJRS

Corrections

National Advisory Commission on Criminal Justice Standards and Goals
Foreword

This volume, Report on Corrections, is one of six reports of the National Advisory Commission on Criminal Justice Standards and Goals. This Commission was appointed by Jerris Leonard, Administrator of the Law Enforcement Assistance Administration (LEAA), on October 20, 1971, to formulate for the first time national criminal justice standards and goals for crime reduction and prevention at the State and local levels.

The views and recommendations presented in this volume are those of a majority of the Commission and do not necessarily represent those of the Department of Justice. Although LEAA provided $1.75 million in discretionary grants for the work of the Commission, it did not direct that work and had no voting participation in the Commission.

Membership of the Commission was drawn from the three branches of State and local government, from industry, and from citizen groups. Commissioners were chosen in part, for their working experience in the criminal justice area. Police chiefs, judges, correctional leaders, and prosecutors were represented.

Other recent Commissions have studied the cause and debilitating effects of crime in our society. We have sought to expand their work and build upon it by developing a clear statement of priorities, goals, and standards to help set a national strategy to reduce crime through the timely and equitable administration of justice: the protection of life, liberty, and property; and the efficient mobilization of resources.

Some State or local governments already have equalized or surpassed standards or recommendations proposed in this report; most in the Nation have not. But in any case, each State and local government is encouraged to evaluate its present status and to implement those standards and recommendations that are appropriate.

The process of setting the standards that appear in the Report on Corrections and the other Commission volumes was a dynamic one. Some of the standards proposed are based on program and projects already in operation, and in these cases the standards are supported with empirical data and examples.

The Commission recommends specific guidelines for evaluating existing practices or for setting up new programs. In some areas, however, the Commission was unable to be as specific as it would have liked because of the lack of reliable information. The Commission urges research in these areas.

The Commission anticipates that as the standards are implemented, experience will dictate that some be upgraded, some modified, and perhaps some discarded. Practitioners in the criminal justice field will contribute to the dynamic process as they test the validity of the Commission's assumptions in the field.

One of the main priorities of this volume—and of the Commission itself—is to encourage and facilitate cooperation among all the elements of the criminal justice system and with the communities they serve. Consequently, some of the subjects discussed in this volume bear a close correlation to standards in the other volumes. The Commission has attempted to maintain a consistent approach to basic problems, but different facets of common concerns are discussed in the volume that seems most appropriate.

This Commission has completed its work and submitted its report. The Commission hopes that its standards and recommendations will influence the shape of the criminal justice system in this Nation for many years to come. And it believes that adoption of these standards and recommendations will contribute to a measurable reduction of the amount of crime in America.

The Commission thanks Jerris Leonard, Administrator of LEAA, and Richard W. Velde and Clarence M. Coster, Associate Administrators, for their efforts in authorizing and funding this Commission and for their support and encouragement during the life of the Commission.

The Commission expresses its sincerest gratitude to the chairman, Judge Joe Frazier Brown, and members of the Task Force on Corrections; to the many practitioners, scholars, and advisers who contributed their expertise to this effort. We are also grateful to the Commission and Corrections Task Force staffs for their hard and dedicated work.

On behalf of the Commission, I extend special and warmest thanks and admiration to Thomas J. Madden, Executive Director, for guiding this project through to completion.

Russell W. Peterson
Chairman
Washington, D.C.
January 23, 1973

RUSSELL W. PETERSON
This report constitutes one of the few nationwide studies of corrections in the United States. Predecessors in this century number only three.

In 1931, the National Commission on Law Observance and Enforcement (the Wickersham Commission) issued 14 reports on crime and law enforcement, including the subject of corrections.

In 1966, the Joint Commission on Correctional Manpower and Training undertook a 3-year study to identify corrections' manpower and training needs and propose means for meeting those needs. It published 15 reports.

In 1967, the President's Commission on Law Enforcement and Administration of Justice published its report, The Challenge of Crime in a Free Society, and the reports of its several task forces, including the corrections task force.

All of these studies emphasized the fact that corrections is an integral part of the criminal justice system; that police, courts, and corrections must work in cooperation if the system is to function effectively. Recently, however, increased attention has been given to the systems aspect of criminal justice, recognizing that what happens in one part of the system affects all the other parts.

Police, for example, are coming to agree with correctional authorities that as many young people as possible, consistent with protection of the public, should be diverted to education, employment, counseling, or other services which will meet their needs and thus help them avoid the stigma of a criminal record. Police departments in several areas have set up their own diversion programs.

Courts have made an indelible imprint on corrections through recent decisions on violations of the civil rights of offenders. Whole State prison systems have been declared unconstitutional as violating the Eighth Amendment's ban on cruel and unusual punishment.

In the light of these developments, this report goes farther than any previous study in examining the interrelationships between corrections and the other elements of the criminal justice system. The report includes, for example, discussions of jails, which are traditionally a part of law enforcement rather than corrections; of the effects of sentencing on convicted offenders; of the need for judges to have continuing jurisdiction over offenders they have sentenced; and many other subjects that previously might not have been considered within the realm of corrections.

The task force which made the study and developed recommendations for submission to the Commission had among its members not only some of the leading correctional administrators of the country, but also representatives of the judiciary, the bar, law enforcement, and academic departments concerned with corrections. A committee named by the American Correctional Association and the membership of the Association of State Correctional Administrators assisted the Commission by reviewing proposed standards and making suggestions for improvement.

To all these persons, who gave unstintingly of their time and effort, as well as to those who contributed sections of the report, I should like to express my appreciation. Thanks are also due to Lawrence A. Carpenter and the task force staff he headed, and to those members of the Commission staff who had special responsibility for this report.

JOE FRAZIER BROWN
Chairman
Task Force on Corrections

Washington, D.C.
January 23, 1973
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### Interrelated Standards

#### Corrections

Chapter 1

Corrections and the Criminal Justice System

The pressures for change in the American correctional system today are building so fast that even the most complacent are finding them impossible to ignore. The pressures come not only from prisoners but also from the press, the courts, the rest of the criminal justice system, and even practicing correctional personnel.

During the past decade, conditions in several prison systems have been found by the courts to constitute cruel and unusual punishment in violation of the Constitution. In its 1971-72 term, the U.S. Supreme Court decided eight cases directly affecting offenders, and in each of them the offender's contention prevailed.

The facts and other disturbances that continue to occur in the Nation's prisons and jails confirm the feeling of thoughtful citizens that such institutions contribute little to the national effort to reduce crime. Some maintain that time spent in prisons is in fact counterproductive.

It is clear that a dramatic realignment of correctional methods is called for. It is essential to what use of institutions. Meanwhile much can be done to eliminate the worst effects of the institution—its crippling idleness, anonymous brutality, and destructive impact. Insofar as the institution has to be reformed, it must be small enough, so located, and so operated that it can relate to the problems offenders pose for themselves and the community.

These changes must not be made out of sympathy for the criminal or disregard of the threat of crime to society. They must be made precisely because that threat is too serious to be countered by ineffective methods.

Many arguments for correctional programs that deal with offenders in the community probation, parole, and others—meet the test of common sense on their own merits. Such arguments are greatly strengthened by the failing record of prisons, reformatories, and the like. The mega-institution, holding more than a thousand adult inmates, has been built in larger number and variety in this country than anywhere else in the world. Large institutions for young offenders have also proliferated here. In such surroundings, inmates become faceless people living out routine and meaningless lives. And where institutions are racially skewed and filled with a disproportionate number of ill-educated and vocationally inept persons, they magnify tensions already existing in our society.

The failure of major institutions to reduce crime is incontestable. Recidivism rates are notoriously high. Institutions do succeed in punishing, but they do not deter. They protect the community, but that protection is only temporary. They relieve the community of responsibility by removing the offender, but they make successful reintegration into the community unlikely. They change the committed offender, but the change is more likely to be negative than positive.

It is no surprise that institutions have not been
successful in reducing crime. The mystery is that they have not contributed even more to increasing crime. Correctional history has demonstrated clearly that tinkering with the system by changing specific components without attention to the larger problems can achieve only incidental and haphazard improvement.

Today's practitioners are forced to use the means of an older time. And dissatisfaction with correctional programs is related to the permanence of yesterday's institutions. We are addicted with the physical and ideological legacy that has implicitly accepted the controls of isolation, control, and punishment, as evidenced by correctional operations, policies, and programs.

Corrections must seek ways to become more attuned to its role of reducing criminal behavior. Changing corrections' role from one of merely housing society's rejects to one of sharing responsibility for their reintegration requires a major commitment on the part of correctional personnel and the rest of the criminal justice system.

Beyond these clear imperatives lies the achievable principle of a much greater selectivity and sophistication in use of crime control and correctional methods. These great powers should be reserved for those who seriously threaten the public and for those who are in direct conflict with others. They should not be applied to nuisances, the troublesome, and the rejected who now clutter our prisons and reformatories and fill our jails and youth detention facilities.

The criminal justice system should become the agency of last resort for social problems. The institution should be the last resort for correctional problems.

Of primary importance as the pressures for change gather momentum are the goals and objectives, articulation of standards to measure achievement, and establishment of benchmarks to judge progress. That is the purpose of this report on corrections.

DEFINITION AND PURPOSES OF CORRECTIONS

Technical terms can be defined as they arise later in this report, but to begin with a definition of corrections is needed. Corrections is defined here as the community's official reactions to convicted offenders, whether adult or juvenile.

This is a broad definition and it suffers, as most definitions do, from several shortcomings. The implications of the definition for the management of juveniles and for pretrial detention require further discussion. So does the fact that it states no purpose for corrections.

Juvenile Corrections

Use of the term "convicted offender" in a definition of corrections would seem to exclude all juveniles who pass through the juvenile court process since that process is noncriminal and no conviction may result from it. Juvenile court operations are based on the parents' patria concept in which the state assumes responsibility for a juvenile only to protect "the child's best interests." There is no charge or conviction; rather there is a hearing and a finding as to what action is in the child's interests. Only when the juvenile is tried as an adult on a criminal charge can he be termed a "convicted offender."

But the definition is worked with full understanding of the problem it creates. Juveniles who have not committed acts considered criminal for adults should not be subject to the coercive treatment that vague labels such as "juvenile delinquency" now allow. This is most obvious in the case of such categories as "minors in need of supervision," "dependent and neglected" children, or youths "laping into moral danger." The distinction is less clear for the groupings "truant," "juveniles found truancy," "habitual truants," or "habitually truant." The point here, however, is that if we are concerned with helping the child rather than with the child's noncriminal act, then this is not a proper function of the criminal justice system.

To define away corrections' role in the treatment of juveniles, however, is not automatically to change the current situation in which correctional systems are deeply enmeshed in juvenile programs, both in the community and in institutions. Regardless of propriety, corrections has accepted the role of "treating" and "helping" juveniles. By so doing, corrections has assumed a responsibility it cannot now evade, responsibility for reforming and rehabilitating and processes of treating juveniles. Such an assumption implies that reform must be approached realistically, recognizing current practice and the systems supporting it.

This report, therefore, will discuss the diversion of juveniles from the criminal justice system, juvenile intake and detention, juvenile institutions, and community programs for youth. As a long-range objective, juveniles not tried as adults for criminal acts should be removed from the purview of corrections. However, the current investment in juvenile corrections and the attitudes acquired by correctional staff over the years indicate that the ultimate goal is not immediately feasible.

Jails and Pretrial Detention

The second major difficulty raised by the definition used here is that it would seem to include the conviction of convicted misdeemeanants but would not cover pretrial detention. Again, this wording is that of the "rehabilitation" programs. Thus, the elimination of the imprisonment of convicted prisoners is not considered. It is assumed that the prison, "correctional," pure and simple, is a necessary and proper part of the criminal justice system but, if these programs have not been part of the correctional system, it then has not been the focus of the system's interest. Therefore, even though these programs have been run by law enforcement agencies, they are considered corrections.

In addition, what happens to the offender through every step of the criminal justice process has an effect on corrections. If he has been detained before conviction, the nature and quality of that detention may affect his attitude toward the system and his participation in correctional programs. Corrections, therefore, has a very real interest in how pretrial detention is conducted and should make its concerns known.

Detention before trial should be used only in circumstances in which the offender and the system both make a clear determination that pretrial detention is needed. Detention can be of several kinds: pretrial detention, which, as long as pretrial detention is used at all, it should be carried out in the recommended community correctional centers. These centers, if they are to be effective, must be to secure for the offender contacts, experiences, and opportunities that provide a means and a stimulus for pursuing a lawful style of living in the community. Thus, both the offender and the community become the focus of correctional activity. With this thrust, reintegration of the offender into the community comes to the fore as a major purpose of corrections.

Corrections clearly has many purposes. It is important to recognize that correctional purposes can differ for various types of offenders. In sentencing the convicted murderer we usually are interested rather than rehabilitative purposes. Precisely, rehabilitation, in fact, can be the answer. Convicted murder is viewed as essentially an illness rather than a rehabilitative or deterrent. Convicted murderer, if he is sentenced to prison, we are concerned with helping him. Clearly, the penal sanctions are essentially a means to an end: the prevention of crime. A swift and effective criminal justice system, respectful of due process and containing a firm and humane corrections component, may provide useful deterrents to crime. Therefore, it can contribute to the overall objective of crime reduction. This is an entirely worthy objective if it can be achieved without sacrificing important human values to which this society is dedicated.

There are other limits to the overarching purpose of reducing crime and the extent to which it can be accomplished. The report of the President's Task Force on Corrections is a very important step in setting forth the objectives of corrections. It is important to recognize that correctional purposes can differ for various types of offenders. In sentencing the convicted murderer we usually are interested only in the deterrence or punishment aspect of criminal justice. Propositions, however, the convicted murderer is viewed as essentially a illness rather than a rehabilitative or deterrent. Convicted murderer, if he is sentenced to prison, we are concerned with helping him. Clearly, the penal sanctions are essentially a means to an end: the prevention of crime. A swift and effective criminal justice system, respectful of due process and containing a firm and humane corrections component, may provide useful deterrents to crime. Therefore, it can contribute to the overall objective of crime reduction. This is an entirely worthy objective if it can be achieved without sacrificing important human values to which this society is dedicated.

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Force on Prisoner Rehabilitation (April 1970) was surely correct when it stressed that:

"... some of the toughest roots of crime lie buried in the soil of social conditions, especially poverty and racial discrimination, that prevail in the nation's inner cities. These conditions only make it difficult for millions of Americans to share in America's well-being, but make them doubt society's good faith toward them, leaving them disposed to flout society. America's benefits must be made available to all Americans. How successfully America reduces and eliminates crime depends, in the end, upon what it does about employment and education, housing and health, areas far outside our present mandate or, for that matter, our budget. It is clear that a system of such effectiveness as the correctional system is beside the point. ..."

One point is that improvements in the correctional system are necessarily tactical maneuvers that do not end in small and short-term victories unless they are executed as part of a grand strategy of improving all the nation's systems and institutions.

It is a mistake to expect massive social advance to flow either from corrections or from the criminal justice system as a whole. That system can be fair; it can be humane; it can be efficient and expeditious. To an appreciable extent it can reduce crime. Alone, it cannot substantially improve the quality and opportunity of life. It cannot save men from themselves. It can be a hallmark of a harmonious and decent community life, not a means of achieving it. There is another, inevitable, substantial potential to reduce and control crime. Corrections is only a small part of a social control system applied to defining, regulating, and treating crime and criminals. It is but a subsystem of the criminal justice system. And it is the inheritor of problems created by the many defects in the other subsystems.

Corrections alone cannot solve the diverse problems of crime and delinquency confronting America, but it can make a much more significant contribution to that task. Effective correctional planning and programs must be closely related to the planning of programs of police and courts. Corrections' goals must be defined realistically and pursued with determination by application of achievable and measurable standards.

STANDARDS AND GOALS IN CORRECTIONS

It may be objected: Here is still another list of uplifting aspirations for corrections. Will they never learn that rhetoric is not self-sustaining? It will be argued: More emphatic reaffirmations of the obvious are not needed; the need is for implementation of what we already know. The argument has force, but it misses the distinction between general principles that abound in corrections and specific standards that have been distantly scarce. Precise definitions of goals, and the steps toward their achievement, is the essence of any correctional system. It is the basis for evaluating programs as achievement of the standards, and for the recommendations that flow from that achievement. Operating without them, if it does not guarantee failure, is a small opportunity of life. It is but a pittance of what we should have. It prevents all of us from becoming that which we are simply because we have it. It reduces room for rationalization.

Achieving Standards

As a State moves from accepting these standards and goals to achieving them, new legislation may be required. More often, merely administrative and regulatory expression will be needed. The recent promulgation by the State of Illinois of an extensive system of administrative regulations for adult correctional institutions is a step of great significance toward the introduction of an enforceable rule of law into a penal system. The regulations were discussed with the staff before adoption and made receivable as a result of their adoption when instituted. They contain what are in effect self-enforcement mechanisms. For example, they include well-defined provisions concerning disciplinary offenses and hearings and a grievance procedure available to all prisoners. Indeed, one of the most effective methods of attaining standards and achieving goals is to add them to the rules and regulations that have been established. Standards and goals must be realistic and achievable, but that certainly does not mean that they need to be modest. The American culture has not only a strong objection to self-enforcement but has a remarkable capacity for adapting to change. What was unthinkable yesterday may be accepted as common practice today. In the criminal justice system, such changes have been observable in recent years with respect to the treatment of narcotics addiction and in the law's attitude toward a range of victimless crimes. They have been seen in the remarkable sweep of the movement toward procedural due process in all judicial and quasi-judicial hearings within the criminal justice system. When the courts abandoned the "hands-off" doctrine that led them to avoid inquiry into prison conditions, this was another aspect of change.

That was not true of the 1970 Declaration of Principles for Correctional Recommendations that followed. The rationale for individual interpretation has been too great in view of endemic political and social problems confronting correctional administrators.

The standard has another important practical advantage over the principle and the recommendations. It supports more strongly and authoritatively the passage of legislation, promulgation of regulations, and development of other quality control mechanisms that provide an element of enforcement. It encourages public opinion to focus on and press for correctional reform. It prevents all of us from considering that this is as far as we are likely to go because we have it. It reduces room for rationalization.

CORRECTIONS IN THE CRIMINAL JUSTICE SYSTEM

A substantial obstacle to development of effective corrections lies in its relationship to police and courts, the other subsystems of the criminal justice system. Corrections inherits any inefficiency, inequality and improper discrimination that may have occurred in any earlier step of the criminal justice process. Its clients come to it from the other subsystems; it is the automatic heir to their defects. The contemporary view is to consider society's institutionalized response to crime as the criminal justice system and its activities as the criminal justice process. This model envisions interdependent and interrelated agencies and programs that will provide a coordinated and consistent response to crime. The model, however, remains a model—it does not exist in fact. Although cooperation between the various components has improved noticeably in recent years, it cannot be said that a criminal justice "system" really exists.

Even under the model, each element of the system being allocated to this task. The low priority traditionally assigned to budgetary support for the penal system and to prisoners generally is being changed. It is being supplanted by realization that the quality of life depends in part on creation of a humane, just, and efficient criminal justice system. Coupled with this realization is the knowledge that American society as a whole must entail substantial correctional reform.

On the other hand, it must be recognized that the road to correctional reform is littered with discarded panaceas. Politically, there has been no great incentive to invest in correctional reform. Until quite recently, there was scant public recognition of the importance of the criminal justice system to community life, and so fiscal support for corrections was little more than a pittance grudgingly doled out. These attitudes have not disappeared completely. Simple solutions are still offered with the promise of dramatic consequences. Correctional reform has lacked both a constituency and a sound political base. Such is as it is in existing flows in part from the increasing recognition that, if there is to be an effective criminal justice system, an integral part of it must be an effective, humane, correctional system. Formulation and specification of standards and goals can be a step of permanent significance in moving forward in making the Federal blueprint for correctional reform with built-in quantitative and qualitative yardsticks of progress.
would have a specialized function to perform. The modern systems concept recognizes, however, that none of the elements can perform its tasks without directly affecting the efforts of the others. Thus, while each component must continue to concentrate on improving the performance of its specialized function, it also must be aware of its interactions with the other components. Likewise, when functions overlap, each component must be willing to appreciate and utilize the expertise of the others.

The interrelationships of the various elements must be understood in the context of the purposes for which the system is designed. It is generally agreed that the major goal of criminal law administration is to reduce crime through use of procedures consistent with protection of individual liberty. There is less agreement on the specific means of achieving that goal and the relative priority when one set of means conflicts with another. For example, the criminal justice system must act in relation to two sets of individuals—those who commit crimes and those who do not. Sinoles thought to deter potential lawbreakers may be destructive to offenders actually convicted. Long sentences of confinement in maximum-security penitentiaries once were thought to deter other individuals from committing criminal offenses. It is now recognized that long sentences of imprisonment not only breed hostility and resentment but also make it more difficult for the offender to avoid further law violations. Long sentences likewise fuel the emotions surrounding him. While the police can hope for, and often achieve, a short-range objective—the arrest of a criminal—the correctional staff can only hope for success in the long run. Corrections personnel must, therefore, realize that an offender will not commit crimes in the future.

Corrections and the Police

The police and corrections are the two elements of the criminal justice system that are farthest apart, both in their sequence of operations and, very often, in their attitudes toward crime and criminal offenders. Yet police and corrections serve critical functions in society's response to crime. And cooperation between police and correctional personnel is essential if the criminal justice system is to operate effectively.

Police personnel, because of their law enforcement and order maintenance role often take the view that shutting up an offender is an excellent, if temporal, answer to a "police problem." The police view the community largest as their responsibility and, removal of known offenders from it shifts the problem to someone else's shoulders.

Police are more intimately involved than correctional staff are with specific criminal offenders. They often spend more time with the victim than with the offender. They are subjected to and influenced by the emotional reactions of the community. It is thus understandable that police may reflect, and be more receptive to, concepts of retribution and incapacitation rather than rehabilitation and reintegration as objectives of corrections.

Correctional personnel more often take a longer view. They seldom are confronted with the victim and the emotions surrounding him. While the police can hope for, and often achieve, a short-range objective—the arrest of a criminal—the correctional staff can only hope for success in the long run. Corrections personnel must, therefore, realize that an offender will not commit crimes in the future.

Corrections with its long-range perspective is required, if it is to make the most effective use of its resources. The release of an offender into the community always contains some risks, whether it is at the end of his sentence or at some time before. These risks, although worth taking from the long-range perspective, are sometimes unacceptable to the police in the short run.

For the most part the released offenders whom police encounter are more those who have turned out to be bad risks. As a result the police acquire an imprecise and inaccurate view of the risks correctional officials take. With correctional failures—the parole or probation violation, the individual who fails to return from a furlough—adding a burden to already overtaxed police resources, misundertanding increases between police and corrections.

If many of the standards proposed in this report are adopted, the police will perhaps take an even dimmer view of correctional adequacy. If local jails and other detention institutions are brought within the correctional system's responsibility for a substantially larger number of problems that now fall to the police. Likewise, as additional techniques are implemented that divert more apparently salvageable offenders out of the criminal justice system at an early stage, those offenders who remain within the system will be the most dangerous and the poorest risks. Obviously, a higher percentage of the police are likely to fail in their readjustment to society.

The impact of police practices on corrections, while not so dramatic and tangible as the effects of corrections on the reformation of offenders, is important and often critical to the correctional system's ability to perform its functions properly. The police are the first point of contact with the law for most offenders. He is the initiator of the relationship between the offender and the criminal justice system. He is likewise the ambassador and representative of the society that systems serve.

To the extent that the offender's attitude toward society and its institutions will affect his willingness to accept society's laws, the police in their initial and continued contact with an offender may have substantial influence on his future behavior.

It is recognized widely that the police make a number of policy decisions. Obviously, they do not arrest everyone found violating the criminal law. Police exercise broad discretion in the decision to arrest, and the exercise of that discretion determines to a large extent the clientele of the correctional system. In fact, police arrest decisions may have a greater impact on the nature of the correctional system than do any other single decision. To delineating what kinds of conduct are criminal.

Police decisions to concentrate on particular types of offenses will directly affect correctional programming. A large number of arrests for offenses that do not involve a significant danger to the community may result in misplaced proportionality judgments. The correctional system may be ill-prepared to cope with a larger than normal influx of certain types of offenders.

The existence of broad, all-encompassing criminal statutes including dangerous, nondangerous, and merely annoying offenders assures broad police arrest discretion. Real or imagined discrimination against certain individuals or groups breeds hostility and resentment against the police, which inevitably is reflected when these individuals enter the correctional system.

Carefully developed, written criteria for the use of police discretion in making arrests of criminal offenders would relieve the present uncertainties and misunderstandings between police and correctional personnel. If the goals and purposes of the police in making these decisions are publicized, correctional staff should be able to work more effectively toward meaningful outcomes in arriving at meaningful standards and policies.

Similarly, community-based correctional programs cannot hope to be successful without police understanding and cooperation. Offenders in these programs are likely to come in contact with the police. The nature of the contact and the police response may directly affect an offender's adjustment.

Police understandably keep close surveillance on released felons, since they are more easily identifiable than the average citizen. When police make a special effort to check on an offender when ever a crime is committed, the ex-offenders may begin to feel that the presumption of innocence has been altered to a presumption of guilt.

When the felon returning to a community is re quired to register with the police and his name and address are published in police journals, his difficulties in readjusting to community life are compounded. Mass roundups of ex-offenders or continued street surveillance have limited or questionable advantages for the police and significant disadvantages for correctional programs.

Where evidence suggests that an offender is involved in criminal activity, the police obviously must take action. However, the police should recognize that the nature of their contact with ex-offenders, as with citizens in general, is critically important in developing respect for law and legal institutions. Where evidence suggests that an offender is bringing about a better community IS.

To the extent that the offender's attitude toward law and order is reflected on his future behavior, the police have a greater impact on the nature of the correctional system. He is likewise the ambassador and representative of the society that systems serve.

To the extent that the offender's attitude toward society and its institutions will affect his willingness to accept society's laws, the police in their initial and continued contact with an offender may have substantial influence on his future behavior.

It is recognized widely that the police make a number of policy decisions. Obviously, they do not arrest everyone found violating the criminal law. Police exercise broad discretion in the decision to arrest, and the exercise of that discretion determines to a large extent the clientele of the correctional system. In fact, police arrest decisions may have a greater impact on the nature of the correctional system than do any other single decision. To delineating what kinds of conduct are criminal.

Police decisions to concentrate on particular types of offenses will directly affect correctional programming. A large number of arrests for offenses that do not involve a significant danger to the community may result in misplaced proportionality judgments. The correctional system may be ill-prepared to cope with a larger than normal influx of certain types of offenders.

The existence of broad, all-encompassing criminal statutes including dangerous, nondangerous, and merely annoying offenders assures broad police arrest discretion. Real or imagined discrimination against certain individuals or groups breeds hostility and resentment against the police, which inevitably is reflected when these individuals enter the correctional system.

Carefully developed, written criteria for the use of police discretion in making arrests of criminal offenders would relieve the present uncertainties and misunderstandings between police and correctional personnel. If the goals and purposes of the police in making these decisions are publicized, correctional staff should be able to work more effectively toward meaningful outcomes in arriving at meaningful standards and policies.

Similarly, community-based correctional programs cannot hope to be successful without police understanding and cooperation. Offenders in these programs are likely to come in contact with the police. The nature of the contact and the police response may directly affect an offender's adjustment.

Police understandably keep close surveillance on released felons, since they are more easily identifiable than the average citizen. When police make a special effort to check on an offender when ever a crime is committed, the ex-offenders may begin to feel that the presumption of innocence has been altered to a presumption of guilt.

When the felon returning to a community is re quired to register with the police and his name and address are published in police journals, his difficulties in readjusting to community life are compounded. Mass roundups of ex-offenders or continued street surveillance have limited or questionable advantages for the police and significant disadvantages for correctional programs.

Where evidence suggests that an offender is involved in criminal activity, the police obviously must take action. However, the police should recognize that the nature of their contact with ex-offenders, as with citizens in general, is critically important in developing respect for law and legal institutions. Where evidence suggests that an offender is bringing about a better
grams. Police should designate certain officers to maintain liaison between correctional agencies and law enforcement and thus help to assure better police-corrections coordination. The problems and recommendations discussed in this section are addressed in the Commission's report on the Police Standards set out in that report's chapter on crime, justice, and the future. If fully implemented, would materially enhance the working relationships between police and corrections.

**Corrections and the Courts**

The court has a dual role in the criminal justice system; it is both a participant in the criminal justice process and the supervisor of its practices. As participant, the court and its officers determine guilt or innocence and impose sanctions. In many jurisdictions, the court also serves as a correctional agency by administering the probation system.

In addition to being a participant, the court plays another important role. When practices of the criminal justice system conflict with other values in society, the courts must determine which takes precedence over the other.

In recent years the courts have increasingly found that values reflected in the Constitution take precedence over efficient administration of correctional programs. Some of these presently encountered in the relationship between corrections and the courts result primarily from the dual role that courts must play.

The relationship between courts and corrections is clearly understood by both parties when the court is viewed as a participant in the administration of the law. Correctional officers and sentencing judges recognize the courts' viewpoints, although they may not always agree. Those practices of the courts that affect corrections adversely are recognized by the courts themselves as areas needing reform.

Both recognize that sentencing decisions by the courts affect the discretion of correctional administrators in applying correctional programs. Sentencing courts generally have accepted the concept of the indeterminate sentence, which grants correctional administrators broad discretion in individualizing programs for particular offenders.

There is growing recognition that disparity in sentencing limits corrections' ability to develop sound attitudes and relate. The man who is serving a 10-year sentence for the same act for which a fellow prisoner is serving 3 years is not likely to be receptive to correctional programs. He is in fact unlikely to respect any of society's institutions. Some courts have attempted to solve the problem of disparity in sentencing through the use of sentencing councils and other programs. Appellate review of sentencing would further diminish the possibility of disparity.

The appropriateness of the sentence imposed by the court will determine in large measure the effectiveness of the correctional program. This report recognizes that prison confinement is an inappropriate sanction for the vast majority of criminal offenders. Use of probation and other community-based programs will continue to grow. The essential integration of the integration of courts and corrections into a compatible system of correctional justice is the free flow of information regarding sentencing and its effect on individual offenders.

The traditional attitude of the sentencing judge was that his responsibility ended with the imposition of sentence. Many criminal court judges, often with great personal unreason, sentenced offenders to confinement without fully recognizing what would occur after sentence was imposed. In recent years, primarily because of the growing number of lawsuits by prisoners, courts have become increasingly aware of the conditions of prison confinement. Continuing judicial supervision of correctional practices to assure that the program applied is consistent with the court's decision is a necessary condition to the exercise of discretion by correctional administrators and parole boards.

It was recognized that the correctional immunity from constitutional requirements should end. The Constitution does not exempt prisoners from its protections. As courts began to examine many social institutions from schools to welfare agencies, prisons and other correctional programs naturally were considered. Once the courts agreed to review correctional decisions, it was predictable that an increasing number of offenders would go to the court for relief. The courts' willingness to become involved in prison administration resulted from intolerable conditions within the prisons.

Over the past decade in particular, a new and politically important professional group, the lawyers, has in effect been added to corrections, and it is not likely to go away. The Supreme Court of the United States has manifested its powerful concern that correctional processes avoid the infraction of needless suffering and achieve its free flow of information regarding sentencing and its effect on individual offenders.

The American Law Institute took legal initiative in the criminal justice field in drafting the Model Penal Code, which has stimulated widespread re-codifications of substantive criminal law at the Federal and State levels. An important subsequent move was extension of legal aid to the indigent accused, a development achieved by a series of Supreme Court decisions and by the Criminal Justice Act of 1964 and similar State legislation. This move brought more lawyers of skill and sensitivity into contact with the criminal justice system. Then the remarkable project on Minimum Standards for Criminal Justice, pursued over many years to completion by the American Bar Association, began to have a similar widespread influence.

But for the correctional system, judicially and repeatedly wracked by riot and rebellion, the most dramatic impact has been made by the courts' abandonment of the hands-off philosophy in relation to the exercise of discretion by correctional administrators and parole boards. Conviction is a threshold decision, which has provided corrections with public attention and concern. In the long run, these cases bring new and influential allies to correctional reform. Increasingly, these new allies of corrections are fitting themselves better for this collaboration. The law schools begin to provide training in correctional law. The American Bar Association provides energetic leadership. The Law Enforcement Assistance Administration supports these initiatives. The Federal Judicial Center develops creative United States v. Salerno, 481 U.S. 739 (1987).
training programs, and judicial administration finally is acknowledged as an important organization component. Federal and State judges, in increasing number attend sentencing institutes. Bridges are being built between the lawyers and corrections. What it comes to is this: Convicted offenders remain within the constitutional and legislative protection of the legal system. The illogic of attempting to train lawbreakers to obey the law in a system irresponsible to law should have been recognized a long ago. Forcing an offender to live in a situation in which all decisions are made for him is no training for life in a free society. Thus the two sets of rational and effective premises in most cases involving correctional practices are the choice between constitutional principle and correctional expediency, and the choice between an institution that runs smoothly and one that really helps the offender. In exercising their proper function as supervisors of the criminal justice system, the courts have upset practices that stifled any real correctional progress.

The courts will and should continue to monitor correctional decisions and practices. The Constitution requires it. The nature of the judicial process dictates that this supervision will be done case by case. The litigious process is time-consuming. Allowing free correspondence complicates police planning, impedes expeditious court processes, and increases police expenditures. The time is ripe for corrections to provide the benefits of its knowledge and experience to the correctional system operating as an integrated entity.

The Need for Cooperation in the System

It is unrealistic to believe that the tensions and misunderstandings among the components of the criminal justice system will quickly disappear. There are—and will continue to be—unavoidable conflicts of view. The police officer who must subdue an offender by force will never see him in the same light as the correctional officer who must win him with reason. The courts, which must retain their independence in order to oversee the practices of both police and corrections, are unlikely to be seen by either as a totally sympathetic partner. On the other hand, the governmental institutions designed to control and prevent crime are closely and irrevocably interrelated, whether they function cooperatively or cooperatively. The success of each component in its specific function depends on the actions of the other two. Most areas of disagreement are the result of inadequate understanding between the two for cooperation and of the existing interrelationships. The extent to which this misunderstanding can be minimized will determine if large measure the future course of our efforts against crime.

The Commission recognizes that correctional progress will be made only in the context of a criminal justice system operating as an integrated and coordinated system. Thus corrections must cooperate fully with the other components in developing a system that uses its resources more effectively. If there are persons who have committed legally proscribed acts but who can be better served outside the criminal justice system at lower cost and little or no increased risk, then police, courts, corrections, legislators, and the public must work together to establish effective diversion programs for such persons. If persons are being detained unnecessarily or for too long awaiting trial, the elements of the system must work together to remedy that situation. If sentencing practices are counterproductive to their intended purposes, a comprehensive restructuring of sentencing procedures and alternatives must be undertaken.

This perspective is in large measure responsible for the broad scope of this report on corrections. The time is ripe for corrections to provide the broad perspective that enables them to address the other components of the system. Such issues as diversion, pretrial release and detention, jails, juvenile processes, or prison are not subject to one departmental structure. If organizations are brought under one departmental structure, there is no doubt of that department's improved bargaining position in competition for resources in cabinet and legislature. Other flexibilities are opened up; cooperation among agencies is increased; and existing relationships are addressed. However, these measures are but compromises. The contrasting mode of organizational restructuring of corrections is an integrated State correctional system. If there is an interagency support for movement in that direction, for example, it is recommended in this report that supervision of offenders under probation should be separated from the courts' administrative control and integrated with the State correctional system. If prisons, probation, parole, and other community programs for adult and juvenile offenders are brought under one departmental structure, there is no doubt of that department's improved bargaining position in competition for resources in cabinet and legislature. Other flexibilities are opened up; cooperation among agencies is increased; and existing relationships are addressed. However, these measures are but compromises. The contrasting mode of organizational restructuring of corrections is an integrated State correctional system. If there is an interagency support for movement in that direction, for example, it is recommended in this report that supervision of offenders under probation should be separated from the courts' administrative control and integrated with the State correctional system. If prisons, probation, parole, and other community programs for adult and juvenile offenders are brought under one departmental structure, there is no doubt of that department's improved bargaining position in competition for resources in cabinet and legislature. Other flexibilities are opened up; cooperation among agencies is increased; and existing relationships are addressed. However, these measures are but compromises. The contrasting mode of organizational restructuring of corrections is an integrated State correctional system. If there is an interagency support for movement in that direction, for example, it is recommended in this report that supervision of offenders under probation should be separated from the courts' administrative control and integrated with the State correctional system.

The correctional administrator (and for the present purposes, the sentencing judge too) is the servant of a criminal justice system quite remarkable in its lack of restraint. Historically, the criminal law has been used not only in an effort to protect citizens but also to coerce men to private virtue. Crime by adopting the "timeless" crimes; that is, crimes without an effective complainant other than the authorities. This application of the law is a major obstacle under conditions of a criminal system.

When criminal law invades the sphere of private morality and social welfare, it often proves ineffec-

**OBSTACLES TO CORRECTIONAL REFORM**

**Fragmentation of Corrections**

One of the leading obstacles to reforming the criminal justice system is the range and variety of governmental authorities—Federal, State, and local—that are responsible for it. This balkanization complicates police planning, expedites development of separate, and divvies' responsibility for convicted offenders among a multiplicity of overlapping but barely communicating agencies. The courts, corrections, and police are the result of inadequate understanding between the two for cooperation and of the existing interrelationships. The extent to which this misunderstanding can be minimized will determine if large measure the future course of our efforts against crime. The Commission recognizes that correctional progress will be made only in the context of a criminal justice system operating as an integrated and coordinated system. Thus corrections must cooperate fully with the other components in developing a system that uses its resources more effectively. If there are persons who have committed legally proscribed acts but who can be better served outside the criminal justice system at lower cost and little or no increased risk, then police, courts, corrections, legislators, and the public must work together to establish effective diversion programs for such persons. If persons are being detained unnecessarily or for too long awaiting trial, the elements of the system must work together to remedy that situation. If sentencing practices are counterproductive to their intended purposes, a comprehensive restructuring of sentencing procedures and alternatives must be undertaken.

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The unwinding of law is more difficult than the making; to express moral outrage at objectionable conduct and to urge legislative prescription is politically popular. On the other hand, to urge the repair of community-based programs against objectionable conduct is politically risky since it can be equated in the popular mind with approval of that conduct. But corrections, like the rest of the criminal justice system, must reduce its load to what it has some chance of carrying. Too often we are fighting the wrong war, on the wrong front, at the wrong time, so that our ability to protect the community and serve the needs of the convic ted offender is attenuated. It is for this reason that a major emphasis in this report is placed on developing diversions from and alternatives to the correctional system.

It is particularly urgent to evict from corrections many of the alcoholics and drug addicts who now clutter that system. They should be brought under the aegis of more appropriate and less punitive mechanisms of social control. The same is true of truants and other juveniles who are in need of care and protection and have not committed criminal offenses. They should be removed from the delinquency jurisdiction of the courts as well as corrections.

At the same time, the rapid expansion of those discredited community-based programs that we call parole and probation is needed. Most States still lack parole and probation programs that are more than features toward effective supervision and monitoring as part of the correctional process. They facilitate a continuum of services from the institution through graduated release procedures to community-based programs.

Community-based programs are not merely a substitute for the institution. Often they will divert offenders from entering the institution. But they also have important functions as part of the correctional process. They facilitate a continuum of services from the institution through graduated release procedures to community-based programs. Large institutions for adult and juvenile offenders have been criticized for their abysmal conditions, overcrowding and the admixture of diverse ethnic groups, thrown together in idleness and boredom, is the basic condition. Race relations tend to be hostile and vicious in the racially skewed prisons and jails.

Increasing political activism complicates inmate-staff relations, with numerous violent reactions, both corporal and verbal, and influence from outside groups. Prisoners find a large proportion of staff to be hardened, degenerate, and exploitative. The correctional administrator thus confronts a stark reality. While making needed changes to benefit the great majority of inmates, he must cope with a volatile concentration of the most difficult offenders, whose hostility is directed against the staff.

For these reasons and others, continuing attention must be paid to conditions within the remaining institutions. Although the institution must be used only as a last resort, its conditions must not be neglected. Such attention is essential if the institution is to serve as the beginning place for reintegrating and not as the end of the line for the offender.

The principles of community-based corrections also extends to prisons and jails. Without these, the principle of community-based corrections would be unduly restricted. They must make available to these institutions smaller, more refined line which can they these more open and responsive to community influences, for only thus can it make its requirements for parole and staff alike to see what the community expects of them.

Lack of Financial Support

The reforms envisioned in this report will not be achieved without substantially increased government funds being allocated to the criminal justice system and without a larger portion of the total being allocated to corrections. There is little sense in the police arresting more offenders if the courts can't do enough to bring them to trial and corrections lacks the resources to deal with the cases efficiently and fairly. Happily, the Federal Government, followed by many States, already is providing important budgetary recognition.

Budgetary recognition is being given to the significance of crime and the fear it produces in the social fabric. For example, statutory provisions now require that at least 20 percent of the Federal funds disbursed by the Law Enforcement Assistance Administration to the States to aid crime problems be allocated to corrections. It is clearly a proper role for the Federal Government to assist States by funds and direct services to increase the momentum of the movement toward more effective community-based programs.

The principle of community-based corrections would probably be hampered if there is not a proper role for the Federal Government to assist States by funds and direct services to increase the momentum of the movement toward more effective community-based programs and to remedy existing organizational inefficiencies.

Two other obstacles to reform merit mention in this litany of adversity and the means of overcoming it. Like the other impediments to change, these obstacles are not intractable, but, like the rest, they must be recognized as genuine problems to be reckoned with if they are not to frustrate progress. They are, first, the community's ambivalence, and second, the lack of knowledge on which planning for the criminal justice system can be firmly based.

Ambivalence of the Community

If asked, a clear majority of the community would probably support a proposal to establish such a facility in the neighborhood is likely to arouse profound opposition. The criminal offender, adult or juvenile, is accorded a low level of community tolerance when he is no longer an abstract idea but a real person. Planning must be done, and goals and standards drafted, in recognition of this fact.

Responsibility to the community, in practical terms, the antithesis of correctional plans. The antedote to intolerance of convicted offenders is the active involvement of the community in programs. With imagination and a willingness to take some risks, members of minority groups, ex-offenders, and other highly motivated citizens can play an effective supporting role in correctional programs.

Part of this process of opening up the institution to outside influence is the creation of a wider base for staff selection. Obviously, recruitment of members of minority groups is vitally important and must be energetically pursued. Of parallel importance, women must be employed in community-based programs and at every level of the institution (men and women, for adults and youths) from top administration to line guard. Corrections must become a full equal opportunity employer.

Correctional administrators have tended to isolate corrections from the larger community. In light of the community's ambivalence toward corrections, lack of effort at collaboration with community groups and individual citizens is particularly unfortunate. In almost every community there are individuals and social groups with exceptional concern for problems of social welfare whose understanding of corrections.

A lobby for corrections lies at hand, to be mobilized not merely by public information and persuasion, but also by encouraging the active participation of the public in correctional work.

There are yet other advantages in such a determined community involvement in corrections. Obstacles to reform—such as the political and power-based opposition of ex-offenders—may be lowered. Probation and parole caseloads could be reduced if para-professionals and volunteers, including ex-offenders, were to be used. A "weekdays" syndrome of some probation and parole services can be cured, so that supervision and support can be available when most needed.

Lack of Knowledge Base for Planning

In this catalog of problems in corrections to be solved, the need for a knowledge base must be seriously considered. Research is the indispensable tool by which future needs are measured and met. Chapter 15 surveys present correctional knowledge.
and prescribes means to determine which of our correctional practices are effective and with which categories of offenders. Lack of adequate data about crime and delinquency, the consequences of sentencing practices, and the outcome of correctional programs is a major obstacle to planning for better community protection. It is a sad commentary on our social priorities that every conceivable statistic concerning sports is collected and available to all who are interested. One can readily find out how many left-handed hit triples in the 1927 World Series. Yet if we wish to know how many one-to-life sentences were handed out to the 1927 crop of burglars—or the 1972 crop for that matter—the facts are nowhere to be found.

Baseline data and outcome data are not self-generating; no computer is self-activating. Research is of central significance to every correctional agency. It is not, as it so often is regarded, merely a public relations gimmick to be manipulated for political and budgetary purposes. It is an indispensable tool for intelligent decision making and deployment of resources.

It is time we stopped giving mere lip service to research and to the critical evaluation of correctional practices. To fail to propound and to achieve ambitious research and data-gathering goals is to condemn corrections to the perpetual continuance of its present ineptitude.

THE PLAN OF THIS REPORT

This report deals with the problems and prospects of corrections in four parts. Each part carries standards for improving corrections.

Considered first is the setting for corrections, including the rights of offenders, the possibilities for diverting offenders out of corrections, pretrial release and detention, principles of sentencing, and the classification of offenders.

Part II treats the need for changes in major program areas of corrections. Basic to this section is the principle that large institutions should be phased out and remaining institutions used only for dangerous offenders. Hence, programs based in the community will be the major methods of dealing with offenders. To make such programs work and to promote public understanding of the problems of offenders and of corrections generally, concerned citizens must play an essential role.

Part III covers elements basic to improvement of the correctional system as a whole and each of its components—effective organization and administration, optimum use of manpower, acquisition of a knowledge base, and an adequate statutory framework.

Part IV sets forth priorities and strategies by which the Commission charts the way to making corrections an effective partner in the efforts of the criminal justice system to reduce crime and protect the community.
Part I

Setting for Corrections

Chapter 2

Rights of Offenders

Increased assertion and recognition of the rights of persons under correctional control has been an insistent force for change and accountability in correctional systems and practices. Traditional methods of doing things have been reexamined: myths about both institutionalized offenders and those under community supervision have been attacked and often proved to be without foundation. The public has become increasingly aware of both prisons and prisoners.

Although the process by which the courts are applying constitutional standards to corrections is far from complete, the magnitude and pace of change within corrections as the result of judicial decrees is remarkable. The correctional system is being subjected not only to law but also to public scrutiny. The courts have thus provided not only redress for offenders but also an opportunity for meaningful correctional reform.

In theory, the corrections profession has accepted the premise that persons are sent to prison as punishment, not for punishment. The American Prison Association in its famous "Declaration of Principles" in 1870 recognized that correctional programs should reflect the fact that offenders were human beings with the need for dignity as well as reformation. The following selection of principles is instructive:

V. The prisoner's destiny should be placed measurably in his own hands; he must be put into circumstances where he will be able, through his own exertions, to continually better his own condition.

XI. A system of prison discipline, to be truly reformatory, must gain the will of the prisoner. He is to be amended; but how is this possible with his mind in a state of hostility?

XIV. The prisoner's self-respect should be cultivated to the utmost, and every effort made to give back to him his manhood. There is no greater mistake in the whole complex of penal discipline, than its studied imposition, of degradation as a part of punishment,

More recently, the American Correctional Association and the President's Commission on Law Enforcement and Administration of Justice issued warnings about respect for offenders' rights.

In 1966, the American Correctional Association's Manual of Correctional Standards declared:

The administrator should always be certain that he is not acting capriciously or unreasonably but that established procedures are reasonable and not calculated to infringe upon the legal rights of the prisoners.

Until statutory and case law are more fully developed, it is vitally important within all of the correctional fields that there should be established and maintained reasonable norms and remedies against the sorts of abuses that are likely to develop where men have great power over their fellow-citizens and where relationships may become both mechanical and arbitrary. Minimum standards should become more uniform, and correctional administrators should play
an important role in the eventual formulation and enact-
ment of legal standards that are sound and fair. 1

In 1967, the President's Commission on Law En-
forcement and Administration of Justice empha-
sized the importance of such action.

Correctional administrators should develop guidelines de-
fining prisoners' rights with respect to such issues as legal
matters, correspondence, visitors, religious prac-
tice, medical care, and disciplinary sanctions. Only
those procedures in every correctional system have taken important steps in this direction, but
there is a long way to go.

Such actions on the part of correctional administrators will ease the courts in reviewing cases rather than a
directly supervisory capacity. Where administrative proce-
dures are adequate, courts are not likely to intervene in the
merits of correctional decisions. Where well thought-
trough policies regarding prisoners' procedural and substantive
right have been established, courts are likely to defer to
administrative expertise. 2

Despite the recognition of the need for reform, abuse of offenders' rights continued. It remained
from the judiciary to implement as a matter of con-
stitutional mandate that the corrections profession had
long accepted in theory as proper correctional practice.

EVOLVING JUDICIAL REGARD FOR OFFENDERS' RIGHTS

Until recently, an offender as a matter of law was
defined as a convict. Virtually all rights upon con-
frontation and to have retained such
rights as were expressly granted to him by statute or
correctional authority. The belief was common
that virtually anything could be done with an of-
fender in the name of "correction," or in some in-
stances "punishment," short of extreme physical abuse
without restraint of administrative and
their staff. Whatever comforts, services, or privileges
the offender received were a matter of grace—"in
the law's view a privilege to be granted or withheld
by the state. Inhumane conditions and practices
were permitted to develop and continue in many
systems.

The courts refused for the most part to intervene. Judges felt that correctional administration was a
technical matter to be left to experts rather than to
courts, which were deemed ill-equipped to make ap-
propriate evaluations. And, to the extent that courts
believed the offenders' complaints involved privi-
ger than rights, there was no special neces-
sity to confront correctional practices, even when
they were made in the name of the administration of
human rights and dignity protected for other groups by constitu-
tional doctrine.

This liberal view of corrections was possible only
because society at large did not care about correc-
tions. Few wanted to associate with offenders or
even to know about them. The new public con-
sciousness (and the accompanying legal doctrine) did not single out corrections alone as an object of
reform. Rather, it was part of a sweeping concern for
individual rights and administrative accountability
which began with the civil rights movement and
subsequently was reflected in areas such as student
rights, public tenure, mental institutions, juvenile
court systems, and military justice. It was rein-
forced by vastly increased contact of middle-class
groups with correctional agencies as byproducts of
other national problems (juvenile delinquency, drug
abuse, and political and social dissent). The net
result was a climate conducive to serious reexami-
nation of the legal rights of offenders.

Applying criminal law sanctions is the most dramatic
exercise of the power of the state over individual
liberties. Although necessary for maintaining social
order, administrative sanctions are more akin to the
general suspension of the freedom to exercise basic
rights. Since criminal sanctions impinge on the most
basic rights, it is imperative that other restric-
tions be used sparingly, if only for some socially
useful purpose.

Eventually the question of effective correctional
systems as rehabilitative instruments was consid-
ered with harsh and cruel conditions in institutions,
could no longer be ignored by courts. They began
to recognize the framework of corrections and place
restrictions on the exercise of unmerited
of correctional administrators. Strangely, cor-
rectional administrators, charged with rehabilitat-
ing and caring for offenders, persistently fought the
recognition of offenders' rights throughout the jus-
ticial process. This stance, combined with the
general liberalization of civil rights, has mandated
that correctional programs correct, shuck public
and judicial confidence in corrections.

The past few years have witnessed an explosion of
requests by offenders for judicial relief from the
conditions of their confinement or correctional pro-
gram. More dramatic is the increased willingness
of the courts to respond. Reflective of the new
j udicial attitude toward offenders is the fact that
in the 1971-72 term, the U.S. Sup-

1 American Correctional Association, Manual of Correc-
2 President's Commission on Law Enforcement and Ad-
ministration of Justice, Task Force Report: Corrections

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IMPLEMENTATION OF OFFENDERS' RIGHTS

Courts

The courts perform two functions within the criminal justice system. They are participants in the process of trying and sentencing those accused of crime; and at the same time they act as guardian of the requirements of the Constitution and statutory law. In the latter role, they oversee the criminal justice system as a whole. It was this function which inevitably forced the courts to evaluate correctional practices a decade before they subjected the police to constitutional scrutiny. Thus the courts have not only the authority but also the responsibility to judge corrections against constitutional dictates.

It should be recognized, however, that the Constitution requires only minimal standards. The prohibition against cruel and unusual punishment has not to date required affirmative treatment programs. If courts view their role as limited to constitutional requirements, litigation will merely flurry and degrading institutions into clean but unproductive institutions. Courts, however, bear a broader role. A criminal sentence is a court order and like any court order should be subject to continuing judicial supervision. Courts should specify the purpose for which the offender is given a particular sentence and the reasons for enforcing them. Violations of their role is considered a black mark on their integrity. Current institutional practices which degrade and undermine the offender.

On the other hand, litigation alone cannot solve the problems of corrections or of offenders' rights. The process of case-by-case adjudication of offenders' grievances inevitably results in uncertainties and less-than-comprehensive rulemaking. Courts decide the issue before them. They are ill-equipped to enter broad mandates for change. Similarly the same process of rehabilitation is hardly advanced by practices which degrade and humiliate the offender.

Correctional Agencies

Implementation of offenders' rights is consistent with good correctional practice. Corrections has moved from a punitive system to one which recognizes that 99 percent of those persons sentenced to confinement will one day return to the free society. This fact alone requires that offenders be prepared for reintegration into the community. An important precedent to successful reintegration is the establishment of a philosophy which inevitably forced the courts to evaluate correctional practices a decade before they subjected the police to constitutional scrutiny. Thus the courts have not only the authority but also the responsibility to judge corrections against constitutional dictates. It should be recognized, however, that the Constitution requires only minimal standards. The prohibition against cruel and unusual punishment has not to date required affirmative treatment programs. If courts view their role as limited to constitutional requirements, litigation will merely flurry and degrading institutions into clean but unproductive institutions. Courts, however, bear a broader role. A criminal sentence is a court order and like any court order should be subject to continuing judicial supervision. Courts should specify the purpose for which the offender is given a particular sentence and the reasons for enforcing them. Violations of their role is considered a black mark on their integrity.

Legislatures

Full implementation of offenders' rights will require participation by the legislature. The inefficiencies and uncertainties of case-by-case litigation cannot be minimized if legislatures are to create a new philosophy regarding the processes of offenders. Legislatures have generally been slow in offenders' rights but pressure from modernizing correctional legislation and the exercise of basic rights. Correctional institutions and programs should be opened to citizens' groups and individuals, not for amusement but so that citizens may interact on a one-to-one basis with offenders.

The Public

While the Constitution prescribes conduct by government rather than by private persons, the public has not only a stake in implementing offenders' rights but also a responsibility to help realize them. Most people think of corrections as a system that deals with violent individuals—murderers, rapists, thieves, and murderers, and to them the philosophy of rehabilitation seems juvenile. This attitude may account for public tolerance of cruel and unusual punishment has not to date required affirmative treatment programs. If courts view their role as limited to constitutional requirements, litigation will merely flurry and degrading institutions into clean but unproductive institutions. Courts, however, bear a broader role. A criminal sentence is a court order and like any court order should be subject to continuing judicial supervision. Courts should specify the purpose for which the offender is given a particular sentence and the reasons for enforcing them. Violations of their role is considered a black mark on their integrity.

The courts perform two functions within the criminal justice system. They are participants in the process of trying and sentencing those accused of crime; and at the same time they act as guardian of the requirements of the Constitution and statutory law. In the latter role, they oversee the criminal justice system as a whole. It was this function which inevitably forced the courts to evaluate correctional practices a decade before they subjected the police to constitutional scrutiny. Thus the courts have not only the authority but also the responsibility to judge corrections against constitutional dictates. It should be recognized, however, that the Constitution requires only minimal standards. The prohibition against cruel and unusual punishment has not to date required affirmative treatment programs. If courts view their role as limited to constitutional requirements, litigation will merely flurry and degrading institutions into clean but unproductive institutions. Courts, however, bear a broader role. A criminal sentence is a court order and like any court order should be subject to continuing judicial supervision. Courts should specify the purpose for which the offender is given a particular sentence and the reasons for enforcing them. Violations of their role is considered a black mark on their integrity.

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trial detainees as opposed to prisoners serving sentences.

The standards can be divided into five categories. The first three govern the right of offenders to seek the protection of the law within the judicial system. Access to the courts, and the corollary rights of access to legal services and materials are set forth. These three are fundamental if the remainder of the standards are to be implemented. And not unexpectedly, these methods of ensuring the right of access to the courts were among the first to be recognized as constitutionally mandated.

Standards 2.4 through 2.10 relate to the conditions under which a sentenced offender lives. Since the greater the level of confinement the more dependent the offender is on the state for basic needs, these standards have special force for institutionalized offenders. Whenever the state exercises control over an individual, it should retain some responsibility for his welfare. The standards are directed toward that end.

Standards 2.11 through 2.14 speak to the discretionary power which correctional agencies exercise over offenders and how that power is to be regulated and controlled. No system of individualized treatment can avoid discretionary power over those to be treated, but such power must be controlled in order to avoid arbitrary and capricious action.

Standards 2.15 through 2.17 are directed toward implementing the basic first amendment rights of offenders. Courts have been slow in responding to offenders' insistence that they retain such rights. Freedom to speak and to associate in the context of a correctional institution are particularly controversial subjects. Communication with the public at large directly and through the media not only are important personal rights but have public significance. The correctional system of the past, and too often of the present, has isolated itself from the public. To enlist public support for correctional reform, that isolation must be abandoned. Full implementation of the offender's rights to communicate not only supports the notion that he is an individual but likewise assists in bringing the needs of corrections to the public's attention.

Standard 2.18 addresses the question of remedies for violations of rights already declared. It is directed primarily at judicial enforcement.

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**Standard 2.1**

**Access to Courts**

Each correctional agency should immediately develop and implement policies and procedures to fulfill the right of persons under correctional supervision to have access to courts to present any issue cognizable therein, including (1) challenging the legality of their conviction or confinement; (2) seeking redress for illegal conditions or treatment while incarcerated or under correctional control; (3) pursuing remedies in connection with civil legal problems; and (4) asserting against correctional or other governmental authority any other rights protected by constitutional or statutory provision or common law.

1. The State should make available to persons under correctional authority for each of the purposes enumerated herein adequate remedies that permit, and are administered to provide, prompt resolution of suits, claims, and petitions. Where adequate remedies already exist, they should be available to offenders, including pretrial detainees, on the same basis as to citizens generally.

2. There should be no necessity for an inmate to wait until termination of confinement for access to the courts.

3. Where complaints are filed against conditions of correctional control or against the administrative actions or treatment by correctional or other governmental authorities, offenders may be required first to seek recourse under established administrative procedures and appeals and to exhaust their administrative remedies. Administrative remedies should be operative within 30 days and not in a way that would unduly delay or hamper their use by aggrieved offenders. Where no reasonable administrative means is available for presenting and resolving disputes or where past practice demonstrates the futility of such means, the doctrine of exhaustion should not apply.

4. Offenders should not be prevented by correctional authority administrative policies or actions from filing timely appeals of convictions or other judgments; from transmitting pleadings and engagements in correspondence with judges, other court officials, and attorneys; or from instituting suits and actions. Nor should they be penalized for so doing.

5. Transportation to and attendance at court proceedings may be subject to reasonable requirements of correctional security and scheduling. Courts dealing with offender matters and suits should cooperate in formulating arrangements to accommodate both offenders and correctional management.

6. Access to legal services and materials appropriate to the kind of action or remedy being pursued should be provided as an integral element of the offender's right to access to the courts. The right...
of offenders to have access to legal materials was affirmed in Younger v. Gilmore, 404 U.S. 15 (1971), which is discussed in Standard 2.3.

Commentary

The law clearly acknowledges and protects the right of prisoners and offenders to reasonable access to the courts. The doctrine has been affirmed by the Supreme Court, Ex parte Hull, 312 U.S. 546 (1941) and is adhered to by State courts as well. The guarantee is visibly evident, at least in the area of postconviction remedies, by the dramatic increase in the volume of prisoner petitions now filed annually, in the Federal courts (from 2,150 in 1960 to more than 16,000 in 1970, when they constituted 15.3 percent, of all civil filings in the Federal courts). Access is less evident in assertions of claims related to civil problems of prisoners or their treatment while under confinement or correctional supervision.

The chief problem relates not to the general principle as much as to its implementation. The standard is framed to address major problems of implementation rather than those of contact with counsel and access to legal materials, which are treated in other standards.

First, the problem of adequate remedies is addressed by calling for their creation, where non-existent, or for reasonable access by offenders when available. Many States, for example, have complex and unwieldy remedies for challenging conviction or confinement and could benefit by comprehensive, simplified systems for postconviction review such as proposed by the American Bar Association's Standards Relating to Post-Conviction Remedies (Project on Minimum Standards for Criminal Justice—1968).

In the area of civil actions, the standard takes a position contrary to the practice in many States (in some cases judicially approved) preventing offenders while confined from filing civil suits unrelated to their personal liberty. When offenders must wait years to commence actions, they are placed under great disadvantage in garnering witness and preserving evidence. The practice is a considerable burden to the effective provision of civil legal services to prisoners. Similarly, the prevailing atonement in most States that precludes prisoners from attacking indictments brought under detainer also is disapproved.

The principle that, in asserting right of access to courts, offenders must first use and exhaust administrative remedies is incorporated in the standard. This requirement is necessary for assuring use of less costly, more speedy, and possibly more responsive administrative grievance or negotiation machinery such as that suggested in these standards. It is seen as a legitimate qualification to the right of access to courts and an important protection to maintain the integrity of correctional authority or other nonjudicial apparatus for redressing abuses and legitimate grievances. Where no such reasonable administrative mechanism exists, the exhaustion principle should not apply.

Finally, the standard affirms the impropriety, established in numerous cases, of restrictions on the right of access through administrative policy or procedure. This would include such practices as prior staff screening of petitions for regularity or objectionable content, delay in parole hearings for prisoners who seek postconviction writs, and delay in transmitting petitions or failure to do so for inmates in disciplinary segregation.

References

1. Almond v. Kent, 459 F. 2d 200 (4th Cir. 1972) (Prisoners may not be forced to sue through a State-appointed committee rather than individually in presenting a claim for mistreatment under the Civil Rights Act.)
3. Campbell v. Beto, 460 F. 2d 765 (5th Cir. 1972) (Reversed lower court's refusal to docket an impoverished offender as defined by the Federal Civil Rights Act, which, if true, stated a good cause of action on its face.)
6. Ex parte Hull, 312 U.S. 546 (1941) (Invalidated regulation that all habeas corpus petitions be approved by parole board lawyers as "proper drawn.")
10. Smartt v. Avery, 370 F. 2d, 788 (6th Cir. 1967) (Invalidated parole board rule delaying parole hearings one year for prisoners unsuccessfully seeking writ of habeas corpus.)
Standard 2.2

Access to Legal Services

Each correctional agency should immediately develop and implement policies and procedures to facilitate the right of offenders to have access to legal assistance, through counsel or counsel substitute, with problems or proceedings relating to their custody, control, management, or legal affairs while under correctional authority. Correctional authorities should facilitate access to such assistance and offendereffortively in pursuing their legal rights. Governmental authority should furnish adequate attorney representation and, where appropriate, lay representation to meet the needs of offenders without the financial resources to retain such assistance privately.

The proceedings or matters to which this standard applies include the following:
1. Postconviction proceedings testing the legality of conviction or confinement.
2. Proceedings challenging conditions or treatment under confinement or other correctional supervision.
3. Probation revocation and parole grant and revocation proceedings.
4. Disciplinary proceedings in a correctional facility that impose major penalties and deprivations.
5. Proceedings or consultation in connection with civil legal problems relating to debts, marital status, property, or other personal affairs of the offender.

In the exercise of the foregoing rights:
1. Attorney representation should be required for all proceedings or matters related to the foregoing items 1 to 5, except that law students, if approved by rule of court or other proper authority, may provide consultation, advice, and initial representation to offenders in presentation of pro se postconviction positions.
2. In all proceedings or matters described herein, counsel substitutes (law students, correctional staff, inmate paraprofessionals, or other trained paralegal persons) may be used to provide assistance to attorneys of record or supervising attorneys.
3. Counsel substitutes may provide representation in proceedings or matters described in preceding items 4 and 5, provided the counsel substitute has been oriented and trained by qualified attorneys or educational institutions and receives continuing supervision from qualified attorneys.
4. Major deprivations or penalties should include loss of "good time," assignment to isolation status, transfer to another institution, transfer to higher security or custody status, and fine or forfeiture of inmate earnings. Such proceedings should be deemed to include administrative classification or reclassification actions essentially disciplinary in nature; that is, in response to specific acts of misconduct by the offender.
5. Assistance from other inmates should be provided only if legal counsel is reasonably available in the institution.
6. The access to legal services provided for herein should apply to all juveniles under correctional control.
7. Correctional authorities should assist inmates in making confidential contact with attorneys and lay counsel. This assistance includes visits during normal institutional hours, uncensored correspondence, telephone communication, and special consideration for after-hour visits where requested on the basis of special circumstances.

Commentary

Right to and availability of counsel, both in court litigation and critical phases of administrative decisionmaking on offender status, has been a major trend in the current expansion of prisoners' rights. The present of counsel assures that the complicated and adversary proceeding is carried out properly and that the factual bases for decisionmaking are accurate. This standard seeks to address virtually all issues now the subject of debate and does so without distinction between the indigent and nonindigent offender.

The emphasis on a full range of legal services is consistent with the opinions of today's correctional administrators. When Boston University's Center for Criminal Justice conducted a national survey in 1971 among correctional leaders (system administrators, institutional wardens, and treatment directors), majorities in each category expressed the view that legal service programs should be expanded. Corrections officials stressed that this expansion would be profitable to represent claims for grievances and help reduce inmate tension and power structures. They also said it would not have adverse effects on prison security and would provide a positive existence contributing to rehabilitation.

Representation of offenders in postconviction status always has lagged considerably behind that of the criminal courts. Although indigent defendants constitutionally are entitled to appointed counsel at their trial or appeal, lawyers have not generally been available to represent offenders seeking postconviction relief or challenging prison or supervision conditions through civil suits or administrative procedures. Where the right is asserted as part of the administrative procedure (for example, parole revocation and forfeiture of good time), counsel often is flatly denied, even when the offender has the means to retain his own lawyer.

Access to representation for those confronted by private legal problems such as divorce, debt, or social security claims is virtually nonexistent except for a few experimental legal aid, law school, or bar association programs. The offender must take his place at the bottom of the ladder of the still modest but growing national commitment to provision of legal services for the poor. In summary, prisoners generally must represent themselves, even though many are poorly educated and functionally illiterate.

The standard asserts a new right to representation for major disciplinary proceedings within correctional systems and to civil legal assistance. Here the principle of "counsel substitute" or "lay representation" is consistent with those court decisions that have examined the issue, the realities of effective correctional administration, and limited attorney resources for such services. The Supreme Court indirectly sanctioned lay representation, even in court actions, when it held in Johnson v. Avery, 393 U.S. 483 (1969), that States not providing reasonable legal service alternatives could not bar assistance to other prisoners by "jailhouse Lawyers."

Recognizing the large and probably unmanageable burden on existing attorney resources, the standard validates supplemental use of lay assistance (law students, trained paraprofessionals, or other paraprofessionals) even in matters requiring formal attorney representation. In this regard, a recent judicial observation in a California case holding with right to counsel in parole revocation is instructive. The ruling, In re Tucker, 5 Cal. 3d 171, 486 P. 2d 657, 95 Cal. Rptr. 761 (1971) stated:

Formal hearings, with counsel hired or provided, for the more than 4,000 parole suspensions annually would render the imagination. But alone require an undertaking of herculean proportions. But none are an undertaking of lesser proportions. The offender seeking postconviction relief or challenging prison or supervision conditions through civil suits or administrative procedures is flatly denied, even when the offender has the means to retain his own lawyer.

This standard rejects that view. If the criminal justice system must provide legal counsel in every instance where a man may be convicted, a clear reading of Argeringer v. Hamlin, 407 U.S. 25 (1972), would indicate that its duty is not directly at stake, those serving as counsel substitutes would be required to...
receive reasonable training and continuing supervision by attorneys. The opportunity this presents for broadening of perspectives on the part of correctional staff and a new legitimacy and vocational path for the trained "jailhouse lawyer" may prove to be valuable byproducts. In addition, full cooperation with correctional authorities by public defender programs, civil legal aid systems, law schools, bar groups, and federally supported legal service offices for the poor will be necessary to put the standard into practice.

Careful definition of those major disciplinary penalties involving the right to representation has been undertaken. There is general agreement on the substance of these penalties, including solitary confinement, loss of good time, and institutional transfer. Reasonable minimums have been established that would permit handling limited penalties in these categories by less formal procedure and without counsel or counsel substitute. The Federal system and several State systems already are making provision for representation while considering major disciplinary sanctions.

It will be noted that "classification proceedings" cannot be used under the standard to avoid disciplinary sanctions where the basic issue involved is offender misconduct. A preferred status also has been established for use of attorneys rather than counsel substitute, wherever possible.

In the juvenile area, the standard makes clear that right to counsel applies to the "person in need of supervision" category or other juveniles under correctional custody for noncriminal conduct. Finally, the right to free and confidential access between offenders and attorneys through visits, correspondence, and, where feasible, telephonic communication is made clear. Beyond that, a policy of special accommodation is suggested where the circumstances of the legal assistance being rendered reasonably support such a preference, as in after-hour visits and special telephone calls. Past interference in some jurisdictions with confidential and free inmate-attorney access is documented in recent case law—for example, In re Ferguson, 55 Cal. 2d 663, 361 P. 2d 417, 12 Cal. Rptr. 753 (1961) (State supreme court forbids authority to confer or screen letters to attorneys) and Stark v. Cory, 382 P. 2d 1019 (1963) (Electronic eavesdropping of attorney interviews banned)—and thus warrants that this critical facet of the attorney-client relationship be emphasized.

References
7. Johnson v. Avery, 393 U.S. 483 (1969) (Where State provided no reasonable alternative, it could not prohibit the operations of the "jailhouse lawyer.")

Standard 2.3
Access to Legal Materials

Each correctional agency, as part of its responsibility to facilitate access to courts for each person under its custody, should immediately establish policies and procedures to fulfill the right of offenders to have reasonable access to legal materials, as follows:
1. An appropriate law library should be established and maintained at each facility with a design capacity of 100 or more. A plan should be developed and implemented for other residential facilities to assure reasonable access to an adequate law library.
2. The library should include:
   a. The State constitution and State statutes, State decisions, State procedural rules and decisions thereon, and legal work discussing the foregoing.
   b. Federal case law materials.
   c. Court rules and practice treatises.
   d. One or more legal periodicals to facilitate current research.
   e. Appropriate digests and indexes for the above.
3. The correctional authority should make arrangements to insure that persons under its supervision but not confined also have access to legal materials.

Commentary
In 1971 the Supreme Court unanimously affirmed a lower court ruling that California's failure to provide an adequate law library in State institutions was a denial of the equal protection of the laws guaranteed by the Fourteenth Amendment, since only wealthy inmates could exercise their right of access to courts. The court thus settled the legal principle, although it did not resolve the administrative problem of what constitutes an adequate law library.

The standard, in providing for an actual law library only at those correctional facilities which can or do house 100 or more persons, recognizes a major dilemma. As stated, the standard would apply only to those institutions which house at least 100 persons. Thus, the total number of complete law libraries would approach 1,000. Establishment of this number of law libraries will be a major and costly undertaking, but the right to such access is undeniable.

In Younger v. Gilmore, 404 U.S. 15 (1971), a library containing the following list of titles was deemed an inadequate collection:
5. The United States and California Constitutions.
6. A recognized law dictionary.
7. Witkin's California Criminal Procedures.
8. Subscription to California Weekly Digest.
11. Rules of United States Supreme Court.
12. In addition, offenders had access to other sets of legal materials from the State Law Library although many of the sets available for offender use were incomplete.

Correctional authorities should consult with law librarians as well as with the appropriate State law officials to determine the contents of an appropriate law library. It is clear that a single prescription as to what would constitute a standard law library will not suffice for all States. At a minimum, copies of State and Federal criminal codes, State and Federal procedure and pleading treatises, and recent State and Federal decisions or reporters containing such decisions would be necessary components. In the case of juveniles or women, modified or augmented collections may be required to assure that materials relevant to the individuals concerned are available.

A leading law book publisher has estimated the cost of an adequate institution law library at $6,000 to $10,000. It must be recognized that maintenance of law libraries is required to sustain their usefulness, and that annual new acquisitions could total from 10 to 12 percent of the initial cost. Librarians and supervisory personnel represent other ongoing costs.

The standard suggests that the interests of those incarcerated in relatively small institutions can be met by development and implementation of a plan for securing legal materials on an as-needed basis. Such a plan could involve transporting inmates, when necessary, to an existing law library (county bar association, district judge's office, law school, etc.) in the vicinity of the facility in which they are incarcerated. These ideas do not exhaust the list of possibilities. For example, mobile library facilities and master libraries with full and prompt delivery of materials to smaller institutions also may be considered. The adopted plan should have the potential to meet the inmates' needs and the correctional authority should be committed to its implementation.

References

Related Standards
The following standards may be applicable in implementing Standard 2.3.
2.1 Access to Courts.
2.2 Access to Legal Services.
2.5 Continuing Jurisdiction of Sentencing Court.
16.3 Code of Offenders' Rights.

Standard 2.4
Protection Against Personal Abuse

Each correctional agency should establish immediately and policies and procedures to fulfill the right of offenders to be free from personal abuse by correctional staff or other offenders. The following should be prohibited:
1. Corporal punishment.
2. The use of physical force by correctional staff except as necessary for self-defense, protection of another person from imminent physical attack, or prevention of riot or escape.
3. Solitary or segregated confinement as a disciplinary or punitive measure except as a last resort and then not extending beyond 10 days' duration.
4. Any deprivation of clothing, bed and bedding, light, ventilation, heat, exercise, balanced diet, or hygienic necessities.
5. Any act or lack of care, whether by willful act or neglect, that injures or significantly impairs the health of any offender.
6. Infliction of mental distress, degradation, or humiliation.

Correctional authorities should:
1. Evaluate their staff periodically to identify persons who may constitute a threat to offenders and where such individuals are identified, reassign or discharge them.
2. Develop institution classification procedures that will identify violence-prone offenders and where such offenders are identified, insure greater supervision.
3. Implement supervision procedures and other techniques that will provide a reasonable measure of safety for offenders from the attacks of other offenders. Technological devices such as closed circuit television should not be exclusively relied upon for such purposes.

Correctional agencies should compensate offenders for injuries suffered because of the intentional or negligent acts or omissions of correctional staff.

Commentary
The courts recently have recognized a number of situations in which individual conditions of correctional confinement (for example, use of the strip search and beatings) or a multiplicity of conditions under which prisoners are housed and handled can amount to the infliction of "cruel and unusual punishments" prohibited by the eighth amendment.

In this area particularly, standards should be more prohibitive than judicial interpretation of the eighth amendment, because they give credence to the new philosophy of corrections as a reintegrative force, rather than a punitive one. This standard enumerates a variety of punitive activities which, at least
on an individual basis, may fall short of the eighth amendment ban but which should be included in the legal protections available to the offender.

The list of prohibited activities in the standard commences with the basic ban on imposition of corporal punishment (now recognized by the statute or case law in all jurisdictions) and proceeds to disapprove the use of any physical force beyond that necessary for self-defense; to prevent imminent physical attack on staff, inmates, or other persons; or to prevent riot or escape. In these instances, utilization of the least drastic means necessary to secure order or control should be the rule. The standard would fix a firm maximum limit on the use of solitary or segregated confinement (10 days) somewhat less than the general norm recommended in the 1966 standards of the American Correctional Association. This refers to "solitary" as a disciplinary or punitive imposition now utilized in all State correctional systems, rather than "separation" used as an emergency measure to protect the offender from self-destructive acts, from present danger of acts of violence to staff or other inmates, or voluntary reasons related to fear of subjection to physical harm by other inmates. Action of this emergency nature should be sanctioned only with proper determinations of key institutional problems, where the propositions of medical and psychiatric reviews. In all cases, solitary confinement should be the least preferred alternative.

Adoption of the standard would go far toward curtailment of excessive use of the most widespread, controversial, and inhumane of current penal practices—extended solitary confinement. One recent model act—NCCD's 1972 Model Act for the Protection of Rights of Prisoners—has refused to recognize any disciplinary use whatsoever of solitary confinement. Courts as yet have failed to clarify solitary confinement as "cruel and unusual punishment," except when conjoined with other inhuman conditions, although several decisions have viewed extended periods of isolation with disappear and some court orders have fixed maximum periods for such punishment. The standard recognizes, in setting its relatively modest maximum, that most institutions need require much shorter use of punitive segregation as a disciplinary measure and enjoins correctional authorities to minimize use of the technique.

The Commission recognizes that the field of corrections cannot yet be persuaded to give up the practice of solitary confinement as a disciplinary measure. But the Commission wishes to record its view that the practice is inhumane and in the long run brutalizes those who impose it as it brutalizes that upon whom it is imposed.

Two further prohibitions would assure offender against the deprivation of intimate institutional life. Under one, all offenders, even those in disciplinary status, would be accorded the right to basic clothing, bedding, sanitation, light, ventilation, adequate heat, exercise, and diet as applicable to the general confined population. Under the other prohibition, affirmative action or willful neglect that impairs the physical or mental health of any offender would be banned. Extreme abuse in these areas prompted the court decisions declaring that "strip cell" practices or shocking isolation, sanitary, or nutritional regimes as a punitive denial could amount to "cruel and unusual punishment."

The last prohibition recognizes that mental abuse can be as damaging to an offender as physical abuse. The infliction of mental distress, degradation, or humiliation as a disciplinary measure or as a correctional technique should be prohibited.

The standard requires correctional authorities to take affirmative steps to diminish the level of violence and abuse within correctional institutions. To minimize the problem of staff-caused violence, the correctional authority should institute screening of all new applicants, to determine those with potential personality problems. Staff with such problems should not be assigned to duties where they would interact with offenders in situations that might trigger an aggressive response.

Protecting offenders from the violent acts of other offenders is more difficult. A variety of measures undoubtedly is necessary, including physical changes in some units (converting to single rooms or cells) and changes in staff scheduling (extra night duty staff). A proactive program taking into account the situation in each institution should be developed. A more "normalized" institutional environment with positive inmate-staff relationships probably is the best safeguard against frequent violence. Inmates, properly disciplined, and placed under the authority of the state should not be forced to fear personal violence and abuse.

Existing law does not clearly establish that the correctional authority must require much shorter use of punitive segregation for protecting persons sentenced to incarceration. Most law in this area has been developed in the context of a civil suit in which an injured prisoner is seeking to recover damages from the correctional authority. In many cases, the prisoner has been able to recover where negligence or intent on the part of correctional authorities is shown. Correctional agencies should be required to respond in damages to compensate offenders for injuries suffered by the lack of care.

Only the correctional authority is in a position to protect inmates, and the need to do so is clear. Observers of correctional institutions agree that inmate attacks on one another—often sexually motivated—are commonplace and facilitated by lack of personal supervision or lack of concern on the part of supervisory personnel. In the past, many authorities have recognized the standard of a foreseeable risk of harm involving specific individuals has not been properly applied in the face of the pervasive and constant threat apparently existing today.

References
7. Idaho, Governor. 309 F. Supp. 362 (E.D. Ark. 1970), aff'd., 442 F. 2d 304 (8th Cir. 1971) (Totality of poor personal safety, physical, and mental conditions demanded to render whole State prison systems as unconstitutional imposition of cruel and unusual punishment.)
8. Jackson v. Bishop, 404 F. 2d 571 (8th Cir. 1968) (Use of strap as punitive device banned.)
10. Jordan v. Fitzharris, 257 F. Supp. 674 (N.D. Cal. 1966) (Strip cell confinement without clothing, bedding, medical care and adequate heat, light, ventilation, or means for keeping prisoner confined cruel and unusual punishment.)
13. Rigs v. German, 81 Wash. 128, 142 P. 479 (1914).
15. Tolbert v. Braman, 451 F. 2d 1020 (5th Cir. 1971) (Severe physical abuse of prisoners by their keepers without cause or provocation is actionable under Federal Civil Rights Act.)
16. Valvano v. McGrath, 325 F. Supp. 408 (E.D.N.Y. 1971) (Correctional authority ordered to present plan for impartial investigation and prosecution of charges against correctional officers and supervisors re the mistreatment of inmates.)
17. Watts v. United States, 217 U.S. 349 (1910) (Condemned chaining of prisoners and "hard and painful" labor for making false entries in a public record.)
18. Wright v. McManus, 387 F. 2d 519 (2d Cir. 1967) (1 month confinement in strip cell under conditions similar to Fitzharris case held cruel and unusual if prolonged.) See also: Winn v. McManus, 460 F. 2d 126 (2d Cir. 1972), where the conditions alleged were proved.

Related Standards
The following standards may be applicable in implementing Standard 2.4.
2.1 Access to Courts.
6.2 Classification for Inmate Management.
9.3 State Inspection of Local Facilities.
14.1 Staff Development.
16.3 Code of Offenders' Rights.
Healthful Surroundings

Each correctional agency should immediately examine and take action to fulfill the right of each person in its custody to a healthful place in which to live. After a reasonable time to make changes, a residential facility that does not meet the requirements set forth in State health and sanitation laws should be deemed a nuisance and abated.

The facility should provide each inmate with:
1. His own room or cell of adequate size.
2. Heat or cooling as appropriate to the season to maintain a temperature in the comfort range.
3. Natural and artificial light.
4. Clean and decent installations for the maintenance of personal cleanliness.
5. Recreational opportunities and equipment; when climatic conditions permit, recreation or exercise in the open air.

Healthful surroundings, appropriate to the purpose of the area, also should be provided in all other areas of the facility. Cleanliness and occupational health and safety rules should be complied with.

Independent comprehensive safety and sanitation inspections should be performed annually by qualified personnel. State or local inspectors of food, medical, housing, and industrial safety who are independent of the correctional agency. Correctional facilities should be subject to applicable State and local statutes or ordinances.

Commentary

Custody means more than possession; it means care. When a judge grants custody over an offender to the correctional authority, he is at once declaring that the correctional authority has power over the offender and that this power must be used to promote the health of the offender. The obligation of the correctional authority to a pretrial detainee—convicted of no crime—can be no less. Yet correctional facilities are remarkably health-endangering. In a 1972 study, "The Contemporary Jails of the United States: An Unknown and Neglected Area of Justice," Hans Mattick states:

Perhaps the most pervasive characteristic of jails, and a direct consequence of their general physical condition, is their state of sanitation and cleanliness. Some old jails can be kept tolerably clean and some new jails are filthy to the point of human degradation but, in general, the sanitary condition of jails leaves much to be desired. The general low level of cleanliness in jails has an immediate impact, not only on the health and morale of the inmates and staff who are confined together in the jail, but has the most serious and widespread effects on the surrounding community.

Especially in facilities for juvenile confinement, failure to implement the highest standards may have lifelong impact for the inmates, who are in formative years of life.

Correctional authorities are not unmindful of their obligation to avoid endangering the health of those they supervise. Principles and standards of the American Correctional Association, the National Council on Crime and Delinquency, and the National Sheriffs' Association leave no doubt about what constitutes good practice. Given the general level of sanitation and health in the United States, the current tolerance of deficient conditions, particularly in local jails and detention facilities, is inexplicable.

Overcrowding, which the standard implicitly prohibits, is especially harmful. It exacerbates health hazards and also contributes to tensions in the institutional context. It is recognized that the requirement of the standard for each inmate to have his own room or cell cannot be achieved immediately. But as the use of facilities for pretrial confinement and service of sentence declines (as recommended throughout this report), the goal should become achievable. All new construction, of course, should incorporate the requirement of this standard.

Medical literature indicates that recreation is essential to good health. All standard correctional literature recognizes the value of a well-designed and comprehensive recreation program for incarcerated offenders. Nevertheless, what most often stands out about correctional institutions—especially jails—is the amount of time when no program is being conducted and no organized recreation program is available. Correctional authorities have included recreation programs in evaluating the adequacy of institutions, particularly access of persons in solitary confinement to physical exercise.

The nonliving areas of the correctional facility also should be designed and maintained with health and safety in mind. Kitchens, especially, must be operated in accordance with the highest standards. Vocational education, shop, and industrial areas of the correctional facility should be operated in accordance with Federal and State occupational safety laws.

The standard recognizes that the States usually legislate comprehensively in the health area; therefore, specifics are minimized in favor of a general statement of essential factors. The standard does state a remedy that should be available in the case of any unhealthful institution. Courts of equity have power to take control of, or close, buildings that constitute a threat to the health or morals of the community.

References

2. Matter of Savoy, Doc. No. 70-4804 (D.C. Juv. Court, 1970) (Court finds lack of "big muscle" recreation facilities for indoor physical activity unacceptable for juveniles in pre-hearing detention.)

Related Standards

The following standards may be applicable in implementing Standard 2.5:
2.1 Access to Courts.
5.9 Continuing Jurisdiction of Sentencing Court.
8.3 Juvenile Detention Center Planning.
9.3 State Inspection of Local Facilities.
9.10 Local Facility Evaluation and Planning.
11.1 Planning New Correctional Institutions.
11.2 Modification of Existing Institutions.
16.3 Code of Offenders' Rights.
Standard 2.6

Medical Care

Each correctional agency should take immediate steps to fulfill the right of offenders to medical care. These steps should include services guaranteeing physical, mental, and social well-being as well as treatment for specific diseases or infirmities. Such medical care should be comparable in quality and availability to that obtainable by the general public and should include at least the following:

1. A prompt examination by a physician upon commitment to a correctional facility.
2. Medical services performed by persons with appropriate training under the supervision of a licensed physician.
3. Emergency medical treatment on a 24-hour basis.
4. Access to an accredited hospital.
5. Medical problems requiring special diagnosis, services, or equipment should be met by medical professionals or purchased services.

A particular offender's need for medical care should be determined by a licensed physician or other appropriately trained person. Correctional personnel should not be authorized or allowed to inhibit an offender's access to medical personnel or to interfere with medical treatment.

Complete and accurate records documenting all medical examinations, medical findings, and medical treatment should be maintained under the supervision of the physician in charge.

The prescription, dispensing, and administration of medication should be under strict medical supervision.

Coverage of any governmental medical or health program should include offenders to the same extent as the general public.

Commentary

One of the most fundamental responsibilities of a correctional agency is to care for offenders' medical needs. Adequate medical care is basic, as food and shelter are basic. Withholding medical treatment is not unlike the infliction of physical abuse. Offenders do not give up their rights to bodily integrity whether from human or natural forces because they were convicted of a crime.

With medical resources in short supply for the free community, it is not surprising that the level of medical services available to committed offenders is in many instances far below acceptable levels.

A 1970 survey conducted for the Law Enforcement Assistance Administration showed that nearly half of all jails in cities of 25,000 or more population have no medical facilities. A recent Alabama decision, Newman v. State, 12 Crim. L. Rptr. 2113 (M.D. Ala. 1972) documented conditions which the court found "barbarous" as well as unconstitutional. Medical services were withheld by prison staff for disciplinary purposes; medical treatment, including minor surgery, was provided by untrained persons without appropriate training; medical supplies were in short supply; and few if any trained medical personnel were available.

Medical care is of course a basic human necessity. It also contributes to the success of any correctional program. Physical disabilities or abnormalities may contribute to an individual's socially deviant behavior or restrict his employment. In these cases, medical or dental treatment is an integral part of the overall rehabilitation program. Most incarcerated offenders are from lower socioeconomic classes, which have a worse health status generally than the general population. Thus, there is a greater need for medical and dental services than in the population at large. Since "care" is implicitly or explicitly part of correctional agencies' enabling legislation, medical services at least comparable to those available to the general population should be provided. The standard should not be "what the individual was accustomed to." Finally, unlike persons in the free community, those who are institutionalized cannot seek out needed care. By denying normal access to such services, the state assumes the burden of assuring access to quality medical care for those to which it restricts.

A clear affirmative responsibility is imposed on the correctional authority. It extends beyond treatment of injuries and diseases to include preventive medicine and dentistry, corrective or restorative medicine, and mental as well as physical health.

Medical services should be part of the intake procedure at all correctional facilities. Regardless of the hour, trained practitioners should be available to investigate any suspicious conditions. Even brief delays in securing medical care can have and often do have fatal consequences.

The specific provisions of this standard should be read against the requirement that correctional medical services should be comparable to service obtainable by the general public. The medical program of each institution should accommodate private care, suitations and privileged communications between medical staff and inmates. In view of the usual limitations on the range of staff medical specialists, the correctional authority should be able to purchase the services of other medical practitioners. Contracts should be considered for the procurement for all services provided as a specified period with various practitioners or medical groups to maximize the individual's options for care and minimize problems of billing. Access to nonstaff physicians should be available to all inmates, regardless of ability to pay.

While the use of nurses and paraprofessionals is contemplated by the standard, they should be under the supervision of a licensed physician. He should also supervise the collection, retention, and dissemination of medical records and the dispensing and prescription of medicines. Inmates in many institutions serve as sources for illicit drugs, and strict procedures should be adopted to avoid this possibility. This may require the elimination, or reduction in the use, of offenders as staff in medical programs.

References

8. Talley v. Stephens, 247 F. Supp. 683 (E.D. Ark. 1965) (Arkansas prison official ordered to provide inmates with reasonable medical conditions and not work those in poor physical condition beyond their capacity.)

Related Standards

The following standards may be applicable in implementing Standard 2.6.

2.1 Access to Courts.
2.9 Continuing Jurisdiction of Sentencing Court.
8.3 Juvenile Detention Center Planning.
9.3 State Inspection of Local Facilities.
9.10 Local Facility Evaluation and Planning.
11.1 Planning New Correctional Institutions.
11.2 Modification of Existing Institutions.
16.3 Code of Offenders' Rights.
Standard 2.7

Searches

Each correctional agency should immediately develop and implement policies and procedures governing searches and seizures to insure that the rights of persons under their authority are observed.

1. Unless specifically authorized by the court as a condition of release, persons confined by correctional authorities in the community should be subject to the same rules governing searches and seizures that are applicable to the general public.

2. Correctional agencies operating institutions should develop and present to the appropriate judicial authority or the officer charged with providing legal advice to the corrections department a plan for making regular administrative searches of facilities and persons confined in correctional institutions.

Any search for a specific law enforcement purpose or one not otherwise provided for in the plan should be conducted in accordance with specific regulations which detail the officials authorized to order and conduct such searches and the manner in which the search is to be conducted. Only top management officials should be authorized to order such searches.

Commentary

Three situations should be distinguished when discussing searches of persons under correctional supervision:

- When a person is under community supervision.
- When a person is an inmate of a correctional institution and the proposed search is of the general type, routinely conducted to prevent accumulation of contraband (administrative searches).
- When a person is an inmate and the proposed search relates to a particular crime, incident, or seizure of contraband (law enforcement search).

Since the respective interests of the correctional authority and the person to be searched are different in each of these situations, different rules are necessary in each case.

By all accounts, even in programs with small caseloads, the amount of direct interaction between a correctional worker and probationer, parolee, or participant in another community correctional program is small. The paucity of those contacts eliminates security as a justification for any special search power in the correctional authority. Having few or no contacts with the offender means that searches of a supervised offender in the community are for law enforcement rather than administrative purposes. An entire body of law regulates the conditions under which government may invade an individual's privacy. The standard states that in the case of these offenders, except where periodic searches (in the case of former addicts, for example) are specifically authorized by the court or parole authority as a condition of release, the correctional authority must comply with the requirements of the fourth amendment regarding searches.

In correctional institutions, the acquisition of contraband by an inmate is power. The limitation of contraband facilitates maintenance of control and safety. Some contraband is inherently dangerous to institutional security. All weapons fall into this category. In other instances, possession of contraband may be a source of power to manipulate other inmates.

Establishing this need, however, does not justify carte blanche searches of inmates and their property. Indeed, since the threat is predictable and ongoing, the correctional authority has ample opportunity to evaluate the security requirements of the institution and plan and implement countermeasures.

In view of the constitutional issues possibly involved, the standard recommends that the correctional department seek judicial review or consult the officer charged with providing legal advice to the department. At the State level, the officer should be a member of the attorney general's staff. At the local level, the appropriate person would be the district attorney or the corporation counsel.

The recommendation of a judicially approved plan for administrative searches is not unlike the rules governing such searches in the free community. In Carnara v. Municipal Court of the City and County of San Francisco, 357 U.S. 523 (1957), and see v. City of Seattle, 387 U.S. 541 (1967), the Supreme Court held that general regulatory searches such as housing inspections must be conducted pursuant to a judicial warrant, which can authorize area searches if the governmental interest "reasonably justifies" the search. The court stated: "If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant."

There is no doubt that weapons and contraband are a valid interest justifying administrative searches. The recommendation for prior approval of an overall plan for such searches is intended to assure that such searches are "suitably restricted." Too frequent or too intrusive searches are unrelated to contraband; they are more often used as harassment.

Requiring judicial approval of the plan for administrative searches in advance may at first blush run counter to the general reluctance of courts to give advisory opinions. However, the Carnara and See cases support the notion that a warrant for administrative searches may extend over a wide geographic area rather than being confined to a specific site to be searched. Judicial approval of the correctional search plan is analogous to a warrant procedure extending not the geographic area but the time in which the search may take place. It is also consistent with the Court's practice of requiring that the courts maintain continuing jurisdiction over sentenced offenders to have a detached judicial determination of whether the frequency and manner of administrative searches is reasonable.

Rapid progress has been made in recent years in the development of sensors and detectors for a variety of law enforcement purposes. Those associated with prevention of "skyjacking" and sale or possession of narcotics are perhaps the most heralded. These various devices generally have not been integrated into institutional security systems. As a result, correctional authorities continue to rely on physical searches.

In addition to the apparently legitimate bases for many searches, correctional authorities sometimes have other purposes, including harassment. The balance between proper and improper motives between disruptive searches and less intrusive ones, is unknown. The correctional administrator in the past has exercised unreviewed discretion.

As a condition for approval of the plan, the reviewing authority could require periodic reviews, outside monitoring, and incorporation of advanced technology. It might require further that the secured plan include a means for controlling excessive zeal on the part of employees conducting the search.

Requirements for conducting specific law enforcement searches of confined offenders raise more complicated issues. These searches, directed at solving a particular crime, involve not only correctional interest but also the interest in a fair trial. The offender may, as a result of a specific search, face further criminal charges, and for persons in the free society the fourth amendment would not only govern such searches but also prohibit the introduction of evidence at the trial which was illegally obtained. Serious constitutional questions thus arise where
specific law enforcement searches are conducted within correctional institutions without compliance with the fourth amendment requirements.

The Commission does not make a recommendation as to the extent to which the fourth amendment applies to these searches within institutions. The Commission does recommend that in light of the seriousness of the issues involved, only specific top management correctional officials be authorized to order such searches and that middle managers and line officers not be allowed to conduct such searches on their own initiative. The correctional agency should also adopt specific regulations detailing the manner in which such searches are to be conducted and under what circumstances.

References
2. U.S. v. Hill, 447 F. 2d 817 (7th Cir. 1971) (Recognizing propriety of fourth amendment protection for probationer but rejecting application of exclusionary rule.)

Related Standards
The following standards may be applicable in implementing Standard 2.7.
1. Access to Courts.
2.4 Protection Against Personal Abuse.
5.9 Continuing Jurisdiction of Sentencing Court.
12.7 Measures of Control (Parole).
16.3 Code of Offenders' Rights.

Standard 2.8
Nondiscriminatory Treatment

Each correctional agency should immediately develop and implement policies and procedures ensuring the right of offenders not to be subjected to discriminatory treatment based on race, religion, nationality, sex, or political beliefs. The policies and procedures should assure:

1. An essential equality of opportunity in being considered for various program options, work assignments, and decisions concerning offender status.
2. An absence of bias in the decision process, either by intent or in results.
3. All remedies available to noninstitutionalized citizens open to prisoners in case of discriminatory treatment.

This standard would not prohibit segregation of juvenile or youthful offenders from mature offenders or male from female offenders in offender management and programming, except where separation of the sexes results in an adverse and discriminatory effect in program availability or institutional conditions.

Commentary
Perhaps the most sensitive problems in the "equal treatment" arena, at least in recent years, have revolved around the issue of racial discrimination and segregation. Generally, the courts have proceeded vigorously to disapprove correctional policies clearly discriminating against racial minorities. With the demise of the "separate but equal" doctrine in the field of public education (Brown v. Board of Education), it was inevitable that segregated programs in correctional institutions soon would be challenged.

Early cases dealing with juvenile training schools, in which the analogy to education was most obvious, brought an end to the practice. Subsequent cases attacked the overall operation of segregated prisons and jails. Here, also, the judicial response was to require integration. Soon the Supreme Court confirmed this constitutional interpretation in a case that invalidated State legislation requiring the segregation of the races in correctional institutions, Lee v. Washington, 390 U.S. 333 (1968).

The courts have made it clear that practices which on the surface seem unobjectionable but prove to be discriminatory in effect also are vulnerable to the equal protection mandate of the fourteenth amendment (for example, limiting prisoner literature to "hometown" newspapers where there are no such periodicals for black inmates).

Factors such as racial tension, political hostility, and treatment services tied to religious belief or nationality may be considered when placing in-
mates in situations where adequate supervision cannot guarantee personal safety, but only when demonstrably relevant to institutional security. Until now, courts have recognized that correctional authorities, in seeking to maintain institutional order and discipline, cannot ignore the marked racial tensions and aggressiveness frequently found in prisons. The burden of demonstrating lack of bias when such factors are taken into account, however, would fall on the correctional authority.

Some adjustments in current separation of the sexes is required where an adverse and discriminatory effect is shown in program availability or institutional conditions. Such separation has long been considered an important custodial requirement, but in recent years less so, particularly for juvenile and youthful offenders. The "equal treatment" guarantees of the standard do not necessarily prohibit separation of juvenile or youthful offenders from mature offenders.

Discriminatory treatment based on political views has been discouraged in cases dealing with free speech rights and imposition of unreasonable parole conditions. The standard includes political belief within its broad reach. It recognizes, in particular, the more "politically" character of present offender populations and the significant impact on correctional operations of those incarcerated for criminal conduct related to social and political dissent.

References
3. McClendon v. Sigler, 456 F. 2d 1266 (8th Cir. 1972) (Potential hostility of some white inmates not adequate ground for racial segregation of State facility.)

Related Standards
The following standards may be applicable in implementing Standard 2.8.
2.1 Access to Courts.
5.9 Continuing Jurisdiction of Sentencing Court.
6.1 Comprehensive Classification Systems.
16.2 Administrative Justice.
16.3 Code of Offenders' Rights.

Standard 2.9
Rehabilitation

Each correctional agency should immediately develop and implement policies, procedures, and practices to fulfill the right of offenders to rehabilitative programs. A rehabilitative purpose is or ought to be implicit in every sentence of an offender unless ordered otherwise by the sentencing court. A correctional authority should have the affirmative and enforceable duty to provide programs appropriate to the purpose for which a person was sentenced. Where such programs are absent, the correctional authority should (1) establish or provide access to such programs or (2) inform the sentencing court of its inability to comply with the purpose for which sentence was imposed. To further define this right to rehabilitative services:

1. The correctional authority and the governmental body of which it is a part should give first priority to implementation of statutory specifications or statements of purpose on rehabilitative services.
2. Each correctional agency providing parole, probation, or other community supervision, should supplement its rehabilitative services by referring offenders to social services and activities available to citizens generally. The correctional authority should, in planning its total range of rehabilitative programs, establish a presumption in favor of community-based programs to the maximum extent possible.
3. A correctional authority's rehabilitation program should include a mixture of educational, vocational, counseling, and other services appropriate to offender needs. Not every facility need offer the entire range of programs, except that:
   a. Every system should provide opportunities for basic education up to high school equivalency, on a basis comparable to that available to citizens generally, for offenders capable and desirous of such programs;
   b. Every system should have a selection of vocational training programs available to adult offenders; and
   c. A work program involving offender labor on public maintenance, construction, or other projects should not be considered part of an offender's access to rehabilitative services when he requests (and diagnostic efforts indicate that he needs) educational, counseling, or training opportunities.
4. Correctional authorities regularly should advise courts and sentencing judges of the extent and availability of rehabilitative services and programs within the correctional system to permit proper sentencing decisions and realistic evaluation of treatment alternatives.
5. Governmental authorities should be held responsible by courts for meeting the requirements of this standard.
6. No offender should be required or coerced to participate in programs of rehabilitation or treatment unless the offender voluntarily chooses to participate, and the sentence is not to be considered a hardship to the offender. This right should be used to prevent the imposition of a sentence that is not reasonably related to the gravity of the offense. The right to participate in treatment programs should not be considered a condition of parole but should be considered a condition of the sentence.

Commentary

An enforceable right to "treatment" or rehabilitative services has not yet been established in the courts in any significant measure. Although much discussed in recent years, it remains the most elusive and ephemeral of the offender rights being asserted. This is so despite the firm commitment of the corrections profession for more than a century to a rehabilitative concept. The concept has been established in only a few cases.

The right to treatment has been asserted in a number of cases. In the landmark Arkansas case, Holt v. Surber, 395 F. Supp. 362 (E.D. Ark. 1970), determining that conditions in the Arkansas prison system constituted cruel and unusual punishment, the court refused to implement rehabilitative plans and ordered the release of inmates who had served essential time. In the Massachusetts case, Watson v. Superintendent of Bridgewater State Hospital, 353 Mass. 604 (1968), a new trial was ordered for an offender incompetent to stand trial who was receiving only custodial care.

In some instances, the judge or the juvenile justice system was suggested by the court. In one case, McCray v. State 10 Crim. L. Rptr. 2132 (Montgomery Cty., Md. Cir., 1971), involving an institution for legally insane and mentally defective children, the court stated that the statute "complied with constitutional and rehabilitation principles." It found that a total rehabilitative effort was needed, and that the court should be accelerating burdens notwithstanding budgetary limitations by the State and even for the court itself. In another case, U.S. v. Alterbrook, 10 Crim. L. Rptr. 2183 (D.C. D.C. 1971), the court to public safety and recidivism was stressed. The court stated that failure to provide the full rehabilitative services or to implement the Federal Juvenile Corrections Act for District of Columbia offenders barred further commitments under the Act without a Justice Department certification of treatment availability. There was a further determination that this situation was in violation of the court's constitutional sentencing authority and justified orders to the executive branch to provide adequate facilities as contemplated by the Act.

The right to treatment in adult prisons concerning general rehabilitative programs has not been as yet recognized. In Georgia, Wilson v. Kelley, 294 F. Supp. 1005 (N.D. Ga. 1968), prisoners were unsuccessful in seeking a judicial declaration that sentencing convicts to county work camps where no effort was made to rehabilitate them was unconstitutional. And even in the landmark Arkansas case, Holt v. Surber, 395 F. Supp. 362 (E.D. Ark. 1970), determining that conditions in the Arkansas prison system constituted cruel and unusual punishment, the court refrained from implementing rehabilitative plans and ordered the release of inmates who had served essential time. Even here, however, the right to treatment was guaranteed.

The right to treatment was guaranteed in one case, U.S. v. Alterbrook, 10 Crim. L. Rptr. 2183 (D.C. D.C. 1971), the court to public safety and recidivism was stressed. The court stated that failure to provide the full rehabilitative services or to implement the Federal Juvenile Corrections Act for District of Columbia offenders barred further commitments under the Act without a Justice Department certification of treatment availability. There was a further determination that this situation was in violation of the court's constitutional sentencing authority and justified orders to the executive branch to provide adequate facilities as contemplated by the Act.

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Standard 2.10
Retention and Restoration of Rights

Each State should enact legislation immediately to assure that no person is deprived of any civil, labor, employment, office, post of trust or confidence, or other civil rights based solely on an accusation of criminal behavior. Also, in the implementation of Standard 16.17, Collateral Consequences of a Criminal Conviction, legislation depriving convicted persons of civil rights should be repealed. This legislation should provide further that a convicted and incarcerated person should have reduced to him on release all rights not otherwise retained.

The appropriate correctional authority should:
1. With the permission of an accused person, explain to employers, families, and others the limited meaning of an arrest as it relates to the above rights.
2. Work for the repeal of all laws and regulations depriving accused or convicted persons of civil rights.
3. Provide services to: a) cured or convicted persons to help them retain or exercise their civil rights or to obtain restoration of their rights or any other limiting civil disability that may occur.

Commentary

Modern rhetoric aside, punishment of the accused begins long before conviction. According to the National Jail Census, on March 15, 1970 more than 83,000 unconvicted persons were held in jails. Two-thirds of the 7,800 detained juveniles were adjudicated.

Retrial detention imposes an immediate economic hardship on accused persons who have jobs. Not only is their immediate source of income cut off but also an advantageous relationship with their employers is often terminated. An arrest record per se, although not proof of criminality, may forever reduce a person’s employability.

The theory is that these persons are being held to assure their attendance at trial or another judicial proceeding. Again in theory, every reasonable effort should be made to avoid interfering with the lives of these people. The overwhelming majority of detention facilities lack any recreation or educational facilities. Only half have medical facilities available, and what little is known of the quality of existing facilities makes even this half suspect. The theory is seldom recognized in practice.

The shameful fact is that these impositions fall with greater weight upon the poor than on any other group. Rarely is there any compensation—monetary or otherwise—for the losses suffered by pretrial detainees. When only one course of conduct or mode of operation can be followed, those who run the jails tend to treat each inmate as though he is dangerous.

In addition to loss of liberty and the direct consequences set out herein—and others like them—events are set in train that seriously interferes with individuals’ rights. The pretrial detainee retains the right to vote, but the right may be effectively lost unless a special effort is made to transport him to the poll or enroll him for absentee voting. Also, a license to lapse when renewal is due because no jail officer is empowered to notarize the inmate’s signature.

The standard seeks to minimize the number and severity of disadvantages to which accused but unconvicted persons are subject by requiring the correctional authority to develop and implement an affirmative program to protect their rights.

Civil liabilities resulting from criminal conviction directly restrict offender reintegration. Some outright employment restrictions force releases into the least remunerative jobs. Prohibiting contracts makes property holding impossible. Being unable to vote or hold public office only further aggravates the individual’s alienation and isolation.

Many individual judgments contribute to social stigmatization, and no standard can address those disabilities arising from personal choice. But a myriad of official governmental actions far too broad, counterproductive of rehabilitation and reintegration into the community, and no longer justifiable still operate in this field. Indeed, the very existence of governmental sanctions for these continuing punishments may produce, encourage, or buttress negative private actions.

The vision of an offender leaving a correctional institution, his debt to society paid, rejoining his community, and building a new life is a false image. In many ways, the punishment an ex-convict faces is more vicious than the physical scars sometimes inflicted in confinement. More vicious than the physical scars sometimes inflicted in confinement.

Most of the civil rights and privileges lost by those convicted of crimes are withdrawn by specific legislation. The content and effect of such statutory provisions differ among the various jurisdictions. Recommendations for repeal of most of these legislative disabilities are contained in Standard 16.17.

The standard would provide a broad, positive program to change the existing situation. First, it would provide a broad, positive program to change the existing situation. First, it would automatically restore lost, forfeited, and suspended rights and privileges. This is meant to include licenses of all types and the right to vote.

The correctional authority has a major interest in seeing the offender fully integrated into the community and, as a part of this reintegration process, the correctional authority is assigned the duty of helping the offender regain his rights. This assistance is analogous to the process of granting “gate money” to inmates being released from correctional institutions. Institutional training programs have no value if the individual cannot make use of the training. In today, it is not uncommon to operate training programs for licensed occupations (barbering, for example) that exclude ex-offenders. Many probation, parole, and other community-based correctional workers already provide help of the type indicated.

Federal, State, and local governments should take the lead in removing all employment restrictions based solely on prior criminal conviction. Since public sector employment is about one-sixth of total employment in the United States, to bar the ex-offender from government jobs considerably reduces his options. Interestingly, correctional agencies will employ someone at substantially wages in prison industries but refuse to employ the same person on release.

Restrictive government practices are a bad example to private employers who can ask properly why they should hire ex-offenders who are not “safe bets” for governmental employment. Example and active leadership by government is required. The standard calls on the correctional authority itself to lead the campaign to roll back restrictions that have developed over the years but are not consistent with and supportive of the current reintegration approach to corrections. This is a natural role, since the correctional authority has contributed to the rise of the problem and therefore must work to undo what it has done.

Limitations on political rights and those involving courts, such as the right to sue and the use of an ex-offender’s record as grounds for impeaching his testimony, are among the most onerous restrictions. They involve, in essence, a statement by government that offenders and former offenders, as a class, are worth less than other men. This reasoning is on the outside reinforces the dehumanizing role common in the institutional setting and hardens the resentments commonly feel toward society in general.

Most importantly, the state is responsible for the welfare and rights of all citizens. To the extent that the state abridges or denies the free exercise of those rights, for whatever purpose, it breaks a heavy burden to retain a deep interest in their full reinstatement and in minimizing their collateral effects, once that purpose has been fulfilled. Denial of liberty is so grave as to require greater attention and compensation to those so denied.
References

3. Carter v. Gallagher, 452 F. 2d 315 (8th Cir. 1971) (Fire Department enjoined from rejecting applicant for arrest information.)

Related Standards
The following standards may be applicable in implementing Standard 2.10.
1. Access to Courts.
2. Jail Release Program.
3. Employment of Ex-Offenders.
4. Collateral Consequences of a Criminal Conviction.

Standard 2.11
Rules of Conduct

Each correctional agency should immediately promulgate rules of conduct for offenders under its jurisdiction. Such rules should:

1. Be designed to effectuate or protect an important interest of the facility or program for which they are promulgated.
2. Be the least drastic means of achieving that interest.
3. Be specific enough to give offenders adequate notice of what is expected of them.
4. Be accompanied by a statement of the range of sanctions that can be imposed for violations. Such sanctions should be proportionate to the gravity of the rule and the severity of the violation.
5. Be promulgated after appropriate consultation with offenders and other interested parties consistent with procedures recommended in Standard 16.2, Administrative Justice.

Correctional agencies should provide offenders under their jurisdiction with an up-to-date written statement of rules of conduct applicable to them. Correctional agencies in promulgating rules of conduct should not attempt generally to duplicate the criminal law. Where an act is covered by administrative rules and statutory law the following standards should govern:
1. Acts of violence or other serious misconduct should be prosecuted criminally and not be the subject of administrative sanction.
2. Where the State intends to prosecute, disciplinary action should be deferred.
3. Where the State prosecutes and the offender is found not guilty, the correctional authority should not take further punitive action.

Commentary
A source of severe dissatisfaction with the correctional system is the belief widely held among offenders that the system charged with instilling respect for law punishes arbitrarily and unfairly.
Not only do such practices contribute to problems of managing offenders but they also violate one of the most basic concepts of due process. Advance notice of what behavior is expected must be given so that the person being controlled may avoid the certain sanctions for misbehavior. Failure to specific sanctions for misbehavior will result in legal challenge on grounds of vagueness.
Codes of offender conduct are notorious for their inclusiveness and ambiguity. In the absence of being controlled may avoid the certain sanctions for misbehavior. Failure to specific sanctions for misbehavior will result in legal challenge on grounds of vagueness.

and often are abused; rules trivial in their intent engender hostility and lack of respect for the correctional authority.

Codes of conduct should be limited to observable behavior that can be shown clearly to have a direct adverse effect on an individual or others. Rules prohibiting antisocial predispositions, such as "insolence," should be avoided because their ambiguity permits undue interpretative discretion. What one person describes as "insolence" another may consider a display of independence indicating improved self-perception. Ambiguous or abstract prohibitions make individual culpability questionable because they are difficult to communicate.

As evidenced by decisions regarding the elements of a fair disciplinary proceeding, courts deem an advance notice procedure to be of compelling importance. Notice of the alleged violation always is required to prepare an adequate defense. Giving full notice of the rules before alleged misconduct may contribute to a reduction of disciplinary cases.

Correctional agencies' rules of conduct, no less than the criminal code itself, should be enforced with penalties related to the gravity of the offense. The concept of proportionality of punishment should be fully applicable; several courts have recognized that disciplinary punishments in many instances are far in excess of this standard.

Virtually all correctional literature recognizes the need for established codes of offender conduct. The trend in practice today is to maximize offender participation in rulemaking. Procedures recommended in Standard 16.2 for promulgation of administrative rules generally should be applicable here. They would assure participation by offenders and other interested parties.

The criminal code is applicable to those already convicted of crime. Inevitably—because of the breadth of criminal codes—disciplinary rules promulgated by correctional authorities will duplicate the criminal law, but correctional agencies should not attempt to promulgate parallel rules. Criminal action by offenders should be subject to trial as in any other case, with the potential sanction and the appropriate formal safeguards.

Where overlap occurs, correctional administration should defer to prosecution wherever possible. And where prosecution is unsuccessful, justice requires that further administrative punitive measures be prohibited.

References

Related Standards
The following standards may be applicable in implementing Standard 2.11.
2.12 Disciplinary Procedures.
16.2 Administrative Justice.

Standard 2.12
Disciplinary Procedures

Each correctional agency immediately should adopt, consistent with Standard 16.2, disciplinary procedures for each type of residential facility it operates and for the persons residing therein. Minor violations of rules of conduct are those punishable by no more than a reprimand, or loss of commendary, entertainment, or recreation privileges for not more than 24 hours. Rules governing minor violations should provide that:
1. Staff may impose the prescribed sanctions after informing the offender of the nature of his misconduct and giving him the chance to explain or deny it.
2. If a report of the violation is placed in the offender's file, the officer should be so notified.
3. The offender should be provided with the opportunity to request a review by an impartial officer or board of the appropriateness of the staff action.
4. Where the review indicates that the offender did not commit the violation or the staff's action was not appropriate, all reference to the incident should be removed from the offender's file.

Major violations of rules of conduct are those punishable by sanctions more stringent than those for minor violations, including but not limited to, loss of good time, transfer to segregation or solitary confinement, transfer to a higher level of institutional custody or any other change in status which may tend to affect adversely an offender's time of release or discharge.

Rules governing major violations should provide for the following prehearing procedures:
1. Someone other than the reporting officer should conduct a complete investigation into the facts of the alleged misconduct to determine if there is probable cause to believe the offender committed a violation. If probable cause exists, a hearing date should be set.
2. The offender should receive a copy of any disciplinary report or charges of the alleged violation and notice of the time and place of the hearing.
3. The offender, if he desires, should receive assistance in preparing for the hearing from a member of the correctional staff, another inmate, or other authorized person (including legal counsel if available).
4. No sanction for the alleged violation should be imposed until after the hearing except that the offender may be segregated from the rest of the population if the hearing of the institution finds that he constitutes a threat to other inmates, staff members, or himself.

Rules governing major violations should provide for a hearing on the alleged violation which should be conducted as follows:

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1. The hearing should be held as quickly as possible, generally not more than 72 hours after the charges are made.

2. The hearing should be before an impartial officer or board.

3. The offender should be allowed to present evidence or witnesses on his behalf.

4. The officer may be allowed to confront and cross-examine the witnesses against him.

5. The offender should be allowed to select someone, including legal counsel, to assist him at the hearing.

6. The hearing officer or board should be required to find substantial evidence of guilt before imposing a sanction.

7. The hearing officer or board should be required to render its decision in writing setting forth its findings as to controverted facts, its conclusion, and the sanction imposed. If the decision finds that the offender did not commit the violation, all reference to the charge should be removed from the offender's file.

8. Governing major violations should provide for internal review of the hearing officer's or board's decision. Such review should be automatic. The reviewing authority should be authorized to accept or reject the decision, order further proceedings, or reduce the sanction imposed.

**Commentary**

The nature of prison discipline and the procedures utilized to impose it are very sensitive issues, both to correctional administrators and to committed offenders. The imposition of drastic disciplinary measures can have a direct impact on the length of time an offender serves in confinement. The history of inhumane and degrading forms of punishment, including institutional "holes" where offenders are confined without clothing, bedding, toilet facilities, and other deprivations, has been adequately documented in the courts. These practices are still widespread.

The administration of some form of discipline is necessary to maintain order within a prison institution. However, when that discipline violates constitutional safeguards or inhibits or seriously undermines reformative efforts, it becomes counterproductive and indefensible.

The very nature of a closed, inaccessible prison makes it almost impossible to access toilet facilities. It is this power, more than perhaps any other within the correctional system, which must be brought under the "rule of law."

Court decisions such as Goldberg v. Kelley, 397 U.S. 254 (1970) and Morissette v. Brewer, 409 U.S. 270 (1972) have established the hearing procedure as a basic due process requirement in significant, or potentially extends the period of incarceration, or substantially changes the status of the offender either by placing him in disciplinary segregation or removing him from advantageous work assignments, the wider range of procedural safeguards should be employed. These decisions are critical not only to the prisoner but to the public. Since these procedures are designed only to assure a proper factual basis for governmental action, both the public and the officer have an interest in their implementation.

**References**


3. Landman, Royster, 333 F. Supp. 621 (E.D. Va., 1971) (Virginia case on hearing and related procedures for imposition of solitary confinement, transfer to maximum security, paddock confinement over 10 days and loss of good time.)


7. Sostre v. McGinnis, 442 F. 2d 178 (2d Cir. 1971), cert. denied, 404 U.S. 1049 (1972). (Due process safeguards for cases of substantial discipline.)


**Related Standards**

The following standards may be applicable in implementing Standard 3.12.

1. Access to Legal Services.

2. Rules of Conduct.

5. Continuing Jurisdiction of Sentencing Court.

16.2 Administrative Justice.

16.3 Code of Offenders' Rights.
Standard 2.13

Procedures for Nondisciplinary Changes of Status

Each correctional agency should immediately promulgate written rules and regulations to prescribe the procedures for determining and changing offender status, including classification, transfers, and major changes or decisions on participation in treatment, education, and work programs within the same facilities.

1. The regulations should:
   a. Specify criteria for the several classifications to which offenders may be assigned and the privileges and duties of persons in each class.
   b. Specify frequency of status reviews or the nature of events that prompt such review.
   c. Be made available to offenders who may be affected by them.
   d. Provide for notice to the offender when his status is being reviewed.
   e. Provide for participation of the offender in decisions affecting his program.

2. The offender should be permitted to make his views known regarding the classification, transfer, or program decision under consideration. The offender should have an opportunity to oppose or support proposed changes in status or to initiate a review of his status.

3. Where reviews involving substantially adverse changes in degree, type, location, or level of custody are conducted, an administrative hearing should be held, involving notice to the offender, an opportunity to be heard, and a written report by the correctional authority communicating the final outcome of the review. Where such actions, particularly transfers, must be made on an emergency basis, this procedure should be followed subsequent to the action. In the case of transfers between correctional and mental institutions, whether or not maintained by the correctional authority, such procedures should include specified procedural safeguards available for new or initial commitments to the general population of such institutions.

4. Proceedings for nondisciplinary changes of status should not be used to impose disciplinary sanctions or otherwise punish offenders for violations of rules of conduct or other misbehavior.

Commentary

The area of nondisciplinary classification and status determinations has long been considered a part of the personal implications of each alternative for the offender's degree of liberty and opportunities to maintain contact with the world outside the institution. The basic components of this area are: careful study and analysis by the diagnostic staff of the offender's degree of liberty and personal implications of each alternative; the conference with the offender to solicit his views in all of the wide range of decision-making that may be applied while he is under correctional control. A formal hearing is specified for reviews involving potential changes in a substantially adverse character in the offender's degree, type, or level of custody. Courts already have shown concern for such procedural protections in the case of transfers from prisons to hospitals for the criminally insane and from juvenile institutions to adult facilities.

References

6. People ex rel Goldfinger v. Johnston, 53 Misc. 2d 949, 280 N.Y.S. 2d 304 (Sup. Ct. 1967) (Court requires hearing before transferring juvenile from correctional school to institution for "defective delinquents").
7. Stone v. Maine, 406 F. 2d 844 (1st Cir. 1969) (Juvenile entitled to hearing and assistance of attorney in procedure to transfer from a juvenile institution to a men's prison as an "incorrigible").
9. U.S. ex rel Schacter v. Herold, 410 F. 2d 1071 (2d Cir. 1969). (Prisoner under life sentence could not be transferred to hospital for criminally insane without procedures, periodic review, and jury determination available for involuntary civil commitments.)

Related Standards

The following standards may be applicable in implementing Standard 2.13.

6.2 Classification for Inmate Management.
16.2 Administrative Justice.
16.4 Unifying Correctional Programs.
Standard 2.14

Grievance Procedure

Each correctional agency immediately should develop and implement a grievance procedure. The procedure should have the following elements:

1. Each person being supervised by the correctional authority should be able to report a grievance.
2. The grievance should be transmitted without alteration, interference, or delay to the person or entity responsible for receiving and investigating grievances.
3. Such person or entity preferably should be independent of the correctional authority. It should not, in any case, be concerned with the day-to-day administration of the corrections function that is the subject of the grievance.
4. The person reporting the grievance should not be subject to any adverse action as a result of filing the report.
5. Promptly after receipt, each grievance not patently frivolous should be investigated. A written report should be prepared for the correctional authority and the complaining person. The report should set forth the findings of the investigation and the recommendations of the person or entity responsible for making the investigation.
6. The correctional authority should respond to each such report, indicating what disposition will be made of the recommendations received.

Commentary

Institutions, especially closed institutions, have a great capacity to produce unrest, dissatisfaction, and tension. By limiting a man's perspective and liberty, the institution focuses his attention inward and deprives him of the opportunity to avoid conditions or persons he finds unpleasant. Unresolved minor displeasures can grow to major grievances increasing hostility and institutional tension. Too frequently, grievances have multiplied until violence appears to be the only means available to secure relief.

Open lines of communication between inmate and staff can do much to keep the correctional authority alert to developing problems. Unfortunately, a number of factors frequently limit the viability of such informal means. The following are among them:

- Staff and inmates may not communicate effectively because of age, racial, or other differences.
- Investigators may be too close to conditions to perceive the validity of grievances or the existence of reasonable alternatives.
- Symposiums may discount offender views and complaints.
- Ordinarily a natural outcome is a report of what was found, with a copy to the originator of the grievance.

Finally, someone not directly connected with the function being investigated should be charged with the responsibility of evaluating the grievance. In addition to producing a balanced report, as free as possible of self-serving conclusions, this step is calculated to gain credibility for the mechanism. The standard encompasses use of an ombudsman, an independent grievance commission, or an internal review or inspection office.

References


Related Standards

The following standards may be applicable in implementing Standard 2.14.

5.9 Continuing Jurisdiction of Sentencing Court.
16.2 Administrative Justice.
Free Expression and Association

Each correctional agency should immediately develop policies and procedures to assure that individual offenders are able to exercise their constitutional rights of free expression and association to the same extent and subject to the same limitations as the public at large. Regulations limiting an offender's right of expression and association should be justified by a compelling state interest requiring limitation. Where such justification exists, the agency should adopt regulations which effectuate the state interest with as little interference with an offender's rights as possible.

Rights of expression and association are involved in the following contexts:
1. Exercise of free speech.
2. Exercise of religious beliefs and practices. (See Standard 2.16).
3. Sending or receipt of mail. (See Standard 2.17).
5. Access to the public through the media. (See Standard 2.17).
6. Engaging in peaceful assemblies.
7. Belonging to and participating in organizations.
8. Preserving identity through distinguishing clothing, hairstyles, and other characteristics related to physical appearance.

Justification for limiting an offender's right of expression or association would include regulations necessary to maintain order or protect other offenders, correctional staff, or other persons from violence, or the clear threat of violence. The existence of a justification for limiting an offender's rights should be determined in light of all the circumstances, including the nature of the correctional program or institution to which he is assigned.

Ordinarily, the following factors would not constitute sufficient justification for an interference with an offender's rights unless present in a situation which constituted a clear threat to personal or institutional security.

1. Protection of the correctional agency or its staff from criticism, whether or not justifiable.
2. Protection of other offenders from unpopular ideas.
3. Protection of offenders from views correctional officials deem not conducive to rehabilitation or other correctional treatment.
4. Administrative inconvenience.
5. Administrative cost except where unreasonable and disproportionate to that expended on other offenders for similar purposes.

Correctional authorities should encourage and facilitate the exercise of the right of expression and association by providing appropriate opportunities and facilities.

Commentary

Offenders' first amendment right of free expression and association has been one of the last to receive judicial review in the shift from the "hands off" doctrine. A number of older court decisions have upheld severe limitations on oral and written speech, particularly in the prison context, without consideration of the existence of any significant free-speech rights. Nevertheless, an intrusive and continually increasing number of recent decisions have made it clear that the legal status of the offender (and the pretrial detainee) must incorporate the first amendment right to free expression that may not be limited without a credible showing of significant danger to institutional order, security, or other major societal interests. These decisions have been applied to offenders under parole or probation supervision and those in prisons and other institutions.

This standard recommends the applicability of the first amendment to all offenders and detainees. For offenders the exercise of the right and any imposed limitations should be on the same basis applicable to the general population. Recent decisions have invalidated parole conditions prohibiting expression of opinion criticizing Federal laws limiting participation in peaceful political demonstrations.

In general, the first amendment as applied to ordinary citizens protects against two different forms of governmental regulation: (1) prior restraints, which include pre-speech censorship; and (2) punishments after the fact for speech or speech-related activities. In the correctional setting, prior restraints would include regulations prohibiting speech entirely on various subjects or censoring mail or other written matter. Disciplinary action for speech or speech-related activities also is common. The justifications asserted for prior restraints include protection of the public safety or national security. In some instances, censorship of material deemed obscene has been justified. All jurisdictions likewise have statutory crimes involving speech-related activities—many of which are of the type not protected by the first amendment. Acts providing criminal penalties for inciting riots or distributing obscene material are typical examples. In addition, in limited instances, persons injured by the spoken or written word may recover damages from the instigator through common law libel and slander doctrines. These principles encouraging or limiting the expression of ideas should be applicable to criminal offenders as well as to the general public.

Rights of expression and association are involved in a number of differing contexts. This standard proposes general rules protecting such rights in any context. More specific standards dealing with specific problems involved in specific contexts follow.

However, it is important to view the rights of expression and association as general rights. For example, in some cases offenders have been prohibited from wearing medals. Some courts have focused on whether the medalion had religious connotation sufficient to raise a first amendment right. Even if the medalion is not of religious significance, however, it may still be protected as a right of general expression unrelated to religious freedom. An offender has the right to belong to a political organization as well as a religious organization, and the same rules should govern correctional interference with that right. While mail and visitation procedures often are singled out for specific treatment and rules, they relate to forms of communication and association and should be governed by general standards protecting free speech.

The standard recommends two general rules that should govern the regulation of expression and association of offenders. First, they should not be sentenced to total confinement. The first is that there must be a compelling state interest before interference with expression or association is justified. Second, where such a showing is made, the authorities should intrude on freedom of expression to the least degree possible while protecting the state interest. All alternative means to protect the state interest not involving interference with these rights should be explored.

Free speech is not an absolute right in the free community and thus would not be an absolute right within a correctional program. It has long been recognized that one is not free to yell "fire" in a crowded theater, and an offender would not be free to yell "riot" within a prison. Correctional authorities would be justified in limiting speech and other related activities if it were necessary to protect institutional security or to protect persons from violence or the clear threat of violence. While the determinations are in a given case as to whether limitations are necessary is a difficult one, it can be made and should be made in light of all the surrounding circumstances. Among other things, the program or other community-based program would have wider latitude than a confined offender. A speech permissible in the context of a small, minimum security institution might exacerbate the tensions in a large maximum security prison to an unacceptable level. Traditionally, agencies have applied a flat rule regarding the circumstances and the standard seeks to correct this situation.

Various arguments have been advanced by correctional authorities to support infringement of
fenders' right of expression. It has been claimed that certain ideas are disruptive and influence the prison population, tending to promote violence or other forms of attacks on institutional authority. It has been argued that offenders often lie about prison conditions, bringing undue and often unfair pressure on correctional administrators by persons in the free community. Administrators also fear that other inmates will be encouraged by the idea of speeches of a few "troublemakers" and this will lead to tension within the prison. They also contend that certain expression is not conducive to rehabilita-

The first of the four arguments can be considered worthy of support for regulations involving interference with freedom of speech. In the confined atmosphere of a correctional facility, with its inevitable tensions and hostilities, speech inciting riots or violence cannot be tolerated.

Correctional administrators' fear of unjustified criticisms, real or imagined, does not alone repre-

sent a sufficient justification for abridgment of the offender's rights. A public dialogue, with its inevitable inaccuracies and misperceptions, is as useful to the correctional process as it is to the political process. Much of the current interest in corrections reform among the general public has been developed because of the complaints of offenders, generally through court proceedings. It is clear that many such complaints are frivolous or not supported in fact. But many are true. A democratic system requires a free flow of ideas—many of which will turn out to be false. Corrections has much to gain and little to lose by allowing and encouraging public discussion of correctional prac-

The first amendment does not authorize prohibi-
tion of speech because the audience finds what is said offensive, even for speech is considered unnecessary for their eventual release. In the prison setting, however, unlike free society, an individual cannot always escape offensive views. The audience, as well as the speech, is confined to a limited area. Where tensions are great and a threat of violence clear, correctional authorities can act. Speech not "conducive to rehabilitation" im-
plies inappropriate, inconsiderate conduct in
ing individual offenders into a precipice. It does not.

Corrective authorities should seek to assure reason-
able opportunities for dissemination of various points of view. Such facilities for oral and written expression should be available, based on a reasonable balance. Typhwriters, pencils and paper, musical instruments, and other types of materials should be accessible to those offenders who desire them. Leisure activities should allow for the exchange of ideas.

In a number of instances administrative incon-
venience has prevented correctional authorities from justifying interferences with the rights of expression and association. Society incurs responsibilities when it confines a defendant to jail or prison. Feeding inmates involves a substantial expense, but no one argues that offender's rights could be fed. Rights of expression and association cannot be withdrawn merely because they may require action on the part of correctional staff. In addition, facilitation of expression or association is effective correctional treatment and should not be considered "inconvenient" but a part of the staff's responsibility.

The extent to which administrative expense should justify prohibitions on free expression poses difficult issues. In all the rights proposed in this chapter there is a distinction between what the government must provide and what the government must allow. If the request of the offender is related to his rights of expression or association and he is willing to pay for the exercise of those rights, then the correc-
tional agency should be obliged to provide facilities or opportunities at reasonable cost.

Two concepts should govern determinations as to when expression justifies inaction. If the expense is reasonable in light of existing resources and the inability to provide such communications will be disruptive to the operation of the institution, the expense should be made. Likewise, if the government spends funds to facilitate the rights of some offenders, it is obligated to extend proportionately to all offenders. For example, to allow black Mau-

mims to abide by their dietary restrictions on eating pork may require some nominal expenditure. Rea-
sonable substitutes for pork do exist. However, if some religious faith required champagne and pheas-

des, the first amendment has been held in some circumstances to assure a person the right to maintain his identity. Some courts, while not relying on the first amendment, have found other constitu-
tional provisions which protect an individual in his manner of dress or style in which he wears his hair. These freedoms as applied to schoolchildren have caused conflict and controversy in the courts, with some courts accepting the view that school au-
thorities have a substantial burden to justify regula-
tions affecting appearance. Courts that have confronted similar claims by committed offenders have been reluctant to overturn prison regulations prohibiting facial hair.

Some of the prison grievances have indicated that their most degrading feature is the dehumanizing influence on prisoners. The institution for men and women has been developed as a means to maintain discipline and order in the prison and therefore to promote reasonable regulations. The court found no constitutional right to promote an organization that would advocate open defiance of authority within a prison. The court does not deal with the right to organize generally where the motive does not con-
stitute a danger to the institution or the public interest.

References
1. Barnett v. Rodgers, 410 F. 2d 995 (D.C. Cir. 1969) ("Treatment that degrades the inmate, in-

vades his privacy, and frustrates the ability to choose purposes through which he can manifest himself and gain gain—[in addition to the very foundations upon which he can prepare for a socially useful life.")
2. Bishop v. Colaw, 540 F. 2d 1069 (8th Cir. 1971) (Overturning dress code regulations for schoolchildren."
3. Cohen, Fred. The Legal Challenge to Correc-
tions: Washington: Joint Commission on Correc-
tional Manpower and Training, 1969, Ch. III.
4. Goldfarb, Ronald, and Singer, Linda. "Re-
dressing Prisoners' Grievances," George Washin-
5. Nolan v. Fitzpatrick, 451 F. 2d 545 (1st Cir. 1971) (First amendment protects prisoners in speech with news sources as long as it does not violate disciplinary rules against correspondence with press.)
7. Porth v. Templar, 453 F. 2d 330 (10th Cir. 1971) (Inappraching parole conditions barring ex-
novation of clothing is constitutionality of Fed-
eral income tax law.)
10. Sostre v. Ocis, 330 F. Supp. 941 (S.D.N.Y. 1971) (Requiring notice to prisoner and opportunity to be heard before withholding access to radical literature and periodicals otherwise protected as part of first amendment speech.)
12. U.S. ex rel. Shakur v. McGrath, 303 F. Supp. 303 (S.D. N.Y. 1969) (Permits inmate members of Black Panther party to read party magazine subject to correctional authority's discretion on dissemination to other inmates and when and how Panthers can read the periodical.)

Related Standards
The following standards may be applicable in implementing Standard 2.15.
2.1 Access to Courts.
5.9 Continuing Jurisdiction of Sentencing Court.
16.2 Administrative Justice.
16.3 Code of Offenders' Rights.

Standard 2.16
Exercise of Religious Beliefs and Practices

Each correctional agency immediately should develop and implement policies and procedures that will fulfill the right of offenders to exercise their own religious beliefs. These policies and procedures should allow and facilitate the practice of these beliefs to the maximum extent possible, within reason, consistent with Standard 2.15, and reflect the responsibility of the correctional agency to:

1. Provide access to appropriate facilities for worship or meditation.
2. Enable offenders to adhere to the dietary laws of their faith.
3. Arrange the institution's schedule to the extent reasonably possible so that inmates may worship or meditate at the time prescribed by their faith.
4. Allow access to clergymen or spiritual advisers of all faiths represented in the institution's population.
5. Permit receipt of any religious literature and publications that can be transmitted legally through the United States mails.
6. Allow religious medals and other symbols that are not unduly obtrusive.

Each correctional agency should give equal status and protection to all religions, traditional or unorthodox. In determining whether practices are religiously motivated, the following factors among others should be considered as supporting a religious foundation for the practice in question:

1. Whether there is substantial literature supporting the practice as related to religious principle.
2. Whether there is a formal, organized worship of shared belief by a recognizable and cohesive group supporting the practice.
3. Whether there is a loose and informal association of persons who share common ethical, moral, or intellectual views supporting the practice.
4. Whether the belief is deeply and sincerely held by the offender.

The following factors should not be considered as indicating a lack of religious support for the practice in question:

1. The belief is held by a small number of individuals.
2. The belief is of recent origin.
3. The belief is not based on the concept of a Supreme Being or its equivalent.
4. The belief is unpopular or controversial.

In determining whether practices are religiously
motivated, the correctional agency should allow the offender to present evidence of religious founda-

The first amendment as applied to the public a
tions, or offend the person concerned. Reasonable opportunities and access should be pro-

The correctional agency should not proselytize persons under its supervision or permit others to do so without the consent of the person concerned. Reasonable opportunity and access should be pro-

In making judgments regarding the adjustment or rehabilitation of an offender, the correctional agency may consider the attitudes and perceptions of the offender but should not:

1. Consider, in any manner prejudicial to the

tions or needs. The standard also

Commentary

Religious freedom has always been given pre-

The area of religious freedom was one of the first

The area of religious freedom was one of the first

2. Impose,.”

The criminal law reflects a number of moral

References

1. American Correctional Association. Manual of

2. Barnett v. Rogers, 410 F. 2d 995, 1001 (D.C. Cir. 1969) (Jail officials must make some effort to accommodate Muslim dietary restrictions.)


Frankino, Steven P. "Mincel's and the Mes-


Howard v. Smyth, 365 F. 2d 428 (4th Cir. 1966), cert. denied, 385 U.S. 988 (1967) (Inmate may not be punished for refusal to divulge names of Black Muslims in population.)

Long v. Parker, 390 F. 2d 816 (3rd Cir. 1968) (If the other religions receive religious literature, Muslims may be denied unless corrections authority shows “clear and present danger” to prison discipline.)


9. Walter v. Blackwell, 411 F. 2d 23 (5th Cir. 1969) (Should religious newspaper later develop inflammatory effect on inmates, officials could act to avoid violence.)

10. Gittensmaker v. Prasse, 428 F. 2d 1 (3rd Cir. 1970) (State need not provide full-time chaplain for every denomination.)

Related Standards

The following standards may be applicable in implementing Standard 2.16:

1. Free Expression and Association.

11. Religious Programs.

16.1 Administrative Justice.

16.3 Code of Offenders’ Rights.
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in these three areas are the rights of an offender
to express himself and associate with others. Thus
the general rules justifying correctional regulations
interfering with mail, visitation, and access to media
should be the same as those regulating speech in
general. The test of a clear and convincing evidence of
a compelling state interest proposed in Standard
2.15 should be applicable to these regulations. Stand­
ard 2.17 addresses specific aspects of mail, visita­
tion, and media access.

In discussing the rights of offenders to have access
to the public, the rights of the public to know what
occurs within correctional programs also should be
considered.

Mail. In censoring and regulating mail, correctio­
nal authorities have not limited themselves to
keeping out harmful or potentially dangerous ob­
jects or substances. The censorship of mail is
often too often has been utilized to exclude ideas deemed
by the censor to be threatening or harmful to of­
fenders or critical of the correctional agency. These
efforts result in generating and spreading from
other tasks and, to avoid excessive manpower
drains, limitations on the volume of correspondence
permitted. Censorship and limitations on correspond­
cence generally generate inmate hostilities and serve to
make correctional progress more difficult.

Courts began to look critically at this process
when it came to their attention that correctional au­
thorities were limiting access to courts. Instances
of failure to mail complaints, invasion of prveliged
attorney-client communications and retaliations
against inmates for attempting to send out informa­
tion about deficient conditions were documented.
Limitations on access to religious material also were
discovered and criticized.

Contraband must be excluded from correctional
institutions to preserve their security and good order
by limiting the development of inmate power groups
often resulting from acquisition of contraband. The standard authorizes the correctional administrator to inspect incoming and outgoing mail for contraband but not to read or censor the contents. A correctional authority has a duty to assure that offenders are able to correspond with members of the public. A reasonable postage allowance should be made for mail. Visitors to prisons may at this time be required to turn over any printed matter. In institutions where such facilities are not available, furloughs should be granted custodially qualified offenders in order to maintain family relationships. It is recognized that the so-called communal activities are controversial, partly because the concept seems to focus entirely on sexual activity.

The furlough system is far superior to the institutional arrangement. However, the recommendations of this report contemplate that, as institutional confinement ceases to be a common criminal sanction, prisons will increasingly house more dangerous offenders for whom furlough programs will not be appropriate. Provision of settings where an entire family can visit in private surroundings could add much to an offender's receptivity to correctional programs and strengthen his family relationships. Media. While mail and visitation allow offender contact with specific individuals, access to the communications media provides contact with the public generally. The public has a right to be informed of their government's activities through custom mass communications. Offenders have a right to have their story told as well as to be informed of events in the free society.

Several recent court decisions have recognized both the public's right to know and the offender's right to tell. In Washington Post Co. v. Kleindienst, 11 Crim. L. Rptr. 2045 (D.D.C. 1972), the court struck down the Federal Bureau of Prisons' now banned against press interviews with confined inmates. The court ordered that "the thrust of new press regulations should be to permit uncensored confidential interviews wherever possible and to withhold permission to interview on an individual basis only where demonstrable administrative or discipline considerations dominate." In Burnham v. Oswald, 333 F. Supp. 1128 (W.D.N.Y. 1971) the court required the correctional authorities to show a clear and present danger to prison order, security, or discipline, or prior abuse of an interview right by the inmate before press interviews could be prohibited.

Inmate interviews should be permitted when either party requests the interview, assuming media representatives show reasonable regard for the timing, duration, and location for interviews. Confidentiality should be preserved.

When press contacts are not initiated by the inmate, his desires must be considered. The correctional authority should not release information about individuals without their permission, except in connection with a legitimate news story. In this instance only matters of public record should be divulged. Incoming information from the press and other media should not be controlled. The laws governing printing, mailing, and electronic communications offer the needed protections to the correctional authority. In addition to meeting constitutional requirements, offenders' access to newspapers, magazines, periodicals, and other printed material is important in maintaining ties with the community.

References

7. Nolan v. Fitzpatrick, 541 F. 2d 545 (1st Cir. 1971) (Inmate right to correspond with news media upheld.)

Related Standards

The following standards may be applicable in implementing Standard 2.17.

8.3 Juvenile Detention Center Planning.
9.10 Local Facility Evaluation and Planning.
11.1 Planning New Correctional Institutions.
11.2 Modification of Existing Institutions.
11.3 Social Environment of Institutions.
16.3 Code of Offenders' Rights.
Standard 2.18

Remedies for Violation of an Offender's Rights

Each correctional agency immediately should adopt policies and procedures, and where applicable should seek judicial implementation, to secure where an offender's rights as enumerated in this chapter are abridged.

1. Administrative remedies, not requiring the intervention of a court, should include at least the following:
   a. Procedures allowing an offender to seek redress where he believes his rights have been or are about to be violated. Such procedures should be consistent with Standard 2.14, Grievance Procedure.
   b. Policies of inspection and supervision to assure periodic evaluation of institutional conditions and staff practices that may affect offenders' rights.
   c. Provisions which:
      (1) Ensure wide distribution and understanding of the rights of offenders among both offenders and correctional staff.
      (2) Provide that the intentional or persistent violation of an offender's rights is justification for removal from office or employment of any correctional warden.
      (3) Authorize the payment of claims to offenders as compensation for injury caused by a violation of any right.
   2. Judicial remedies for violation of rights should include at least the following:
      a. Authority for an injunction either prohibiting a practice violative of an offender's rights or requiring affirmative action on the part of governmental officials to assure compliance with offenders' rights.
      b. Authority for an award of damages against either the correctional agency or, in appropriate circumstances, the staff member involved to compensate the offender for injury caused by a violation of his rights.
      c. Authority for the court to exercise continuous supervision of a correctional facility or program including the power to appoint a special master responsible to the court to oversee implementation of offenders' rights.
      d. Authority for the court to prohibit further commitments to an institution or program.
      e. Authority for the court to shut down an institution or program and require either the transfer or release of confined or supervised offenders.
      f. Criminal penalties for intentional violations of an offender's rights.

Commentary

Recognition that those convicted of criminal offenses retain substantial rights is a necessary step toward the alleviation of the misery and degradation evident in many of our jails and prisons.

However, such recognition is ineffective unless mechanisms are designed to assure that the offender is able to enforce these rights against correctional authorities.

The pressure for recognition of rights of the offender has come through active judicial intervention into the correctional system, for the most part at the insistence of offenders. Thus, at first, traditional judicial relief was requested. It is not surprising that most prisoner rights cases arose through the use of the writ of habeas corpus, since that writ is designed primarily to test the legality of confinement and the offender's desired relief is, in most cases, release. Although courts accepted the responsibility to review correctional practices, release from the institution was considered impractical, and courts have attempted to fashion more flexible remedies. Judicial action, while necessary in many instances to define the rights available, should not be considered the exclusive method of enforcing rights once defined. Correctional administrators also have a responsibility to assure that the protection of offenders' rights is assured. Administrative policies and procedures should be designed to provide an effective way of assuring that offenders are properly treated. The standard recommends that correctional authorities develop such mechanisms.

Certain rights, where they involve a conflict with agency policy established at the highest level, will not be directly amenable to administrative resolution. However, particularly where staff practices contravene announced policies, administrative remedies would be available. A procedure available for handling offender grievances, as recommended elsewhere in this report, should be utilized for determination of these issues where appropriate. Also top management officials should assure through adequate inspection and supervision that offenders' rights are respected. Particularly in large agencies, administrative devices to assure review of intermediate and line staff practices are essential.

In addition, each correctional agency should assure wide-scale understanding of the rights of offenders. Inservice training programs for correctional staff should concentrate on the nature, as well as the justification, of the rights of offenders. The most effective assurance of respect for such rights in the long run is recognition by correctional personnel that protection of these rights not only is required by the Constitution but also is good correctional practice.

Agency policy should specify that respect for offenders' rights is a condition of employment with the agency. Personnel policies should insure that persons who intentionally or persistently violate offenders' rights are discharged. Where civil service or another statutory provisions govern correctional employment practices, the courts may require "cause" for removal, "cause" should either be defined to include violation of offenders' rights or be amended to provide such definition.

In many instances, violations of the rights of an offender result in injury that can be compensated in monetary terms. Offenders should be provided with a means of filing claims with the jurisdiction for such damages without the requirement of a lawsuit. In many jurisdictions, such procedures already exist for claims against other governmental agencies. These should be made applicable to violations of the rights of offenders.

Courts have been increasingly willing to fashion remedies appropriate to the right violated. Federal courts have available various remedies arising out of Federal statutes protecting civil rights, which are applicable to prisoner complaints. However, State courts may have more difficulty in devising flexible yet effective remedies. Where required, legislation should be enacted specifically authorizing the remedies recommended by this standard.

Courts should be authorized to grant injunctions to protect offenders' rights. This would include injunctions prohibiting conduct that violates offenders' rights as well as requiring affirmative acts to assure an offender's rights are preserved. Violation of such orders should be subjected to contempt charges as in other cases.

Civil liability for violating a person's rights is a particularly effective remedy and should be more widely utilized. In many instances, persons clothed with governmental authority have little incentive to comply with the rights of persons subject to their jurisdiction because they have no personal stake in compliance. Making governmental officials personally liable for money damages to those whose rights are violated provides such an incentive.

Where a governmental employee intentionally violates an offender's rights or the agency engages in tactics designed solely to make the attainment of an offender's rights more difficult, civil liability is an appropriate remedy. Such liability is provided, but rarely utilized, in Federal civil rights statutes. Some courts have taken even more drastic steps. In some instances, further commitments to a particular institution have been prohibited because of intolerable conditions. Courts likewise should be able to clore an institution or stop a program where other remedies are not effective.
Chapter 5 of this report recommends that sentencing courts exercise continuous jurisdiction over sentencers. This ensures that the sentence imposed by the court is carried out. It may be necessary to assure compliance with the rights of an offender that the court exercise similar supervisory powers over correctional officials. In exercising this power, courts should be authorized to appoint and pay a special master who would be responsible to the court. The master could engage in such inspection and supervision activities as is deemed appropriate to ensure that offenders are properly treated. Criminal penalties for most cases are ineffective and inappropriate. Making it a criminal offense to violate another person's rights is advisable only where there is intentional or willful conduct abridging the rights in question. It is unlikely that prosecutors would bring charges against correctional officials in any but the most unusual circumstances. Thus while criminal penalties should be available, they should not be considered effective remedies for the vast majority of cases arising to protect the rights of offenders.

References
4. Sorine v. McGinnis, 442 F. 2d 178 (2d Cir. 1971) (Awarding compensatory damages of $21 per day for each day spent in segregation under conditions constituting cruel and unusual punishment and also punitive damages of $5,000.)

Related Standards
The following standards may be applicable in implementing Standard 2.18.
2.1 Access to Courts.
2.14 Grievance Procedure.
5.9 Continuing Jurisdiction of Sentencing Court.
14.11 Staff Development.
16.2 Administrative Justice.
16.3 Code of Offenders' Rights.

Chapter 3
Diversion from the Criminal Justice Process

Diversion has been used informally and unofficially at all stages of the criminal justice process since its inception, but without being clearly identified and labeled. Desire to accommodate varying individuals and circumstances and to minimize the use of coercion resulted in many deviations from a formal justice system model that hypothesized arrest, conviction, and punishment without exception. When such deviations have been acknowledged at all, they have been called "discretion," "screening," or "minimizing penetration."

As used in this chapter, the term "diversion" refers to formally acknowledged and organized efforts to utilize alternatives to initial or continued processing into the justice system. To qualify as diversion, such efforts must be undertaken prior to adjudication and after a legally prescribed action has occurred.

In terms of process, diversion implies halting or suspending formal criminal or juvenile justice proceedings against a person who has violated a statute, in favor of processing through a noncriminal disposition or means. Diversion is differentiated from prevention in that the latter refers to efforts to avoid or prevent behavior in violation of statute, while diversion concerns efforts after a legally proscribed action has occurred. For example, programs of character building for youths represent prevention efforts.

Diversion is also differentiated from the concept of "minimizing penetration" in that the latter refers to efforts to utilize less drastic means or alternatives at any point throughout official criminal or juvenile justice processing, while diversion attempts to avoid or halt official processing altogether. Probation in lieu of institutionalization represents an example of minimizing penetration.

There are a few gray areas within this definition which require clarification. For example, programs aimed at increasing the use of bail or release on recognizance instead of pretrial detention are sometimes called diversion on the grounds that it involves minimizing penetration.

Similarly, activities such as plea bargaining and charge reductions have sometimes been referred to as diversion. Again, however, such efforts are not directed at halting all official processing and thus should not be characterized as diversion.

Some confusion may arise in discussions of diversion due to efforts to remove certain categories of behavior from the purview of the criminal law or the delinquency jurisdiction of the courts. For
example, where drunkenness is a criminal offense, programs that provide alternatives to criminal proc-
sses for drunken offenders in the community would not technically be diversion programs under the defini-
tion given in this chapter since criminal processing would not be an option. Similarly, this report rec-
ognizes that some programs that divert individuals who committed actions that would be criminal if committed by adults are not subject to the delinquency jurisdiction of the courts. Until that recommendation is im-
plemented, however, programs that avoid formal court processing for transients, "minors in need of supervision," etc., fit the definition of diversion.

Unless otherwise specified, discussion of "victimless crimes" or juvenile status offenses in this chapter will assume that such categories of behavior are legally prosecuted and that justice system processing may result if alternatives are not made available.

One last definition is needed. Throughout the remainder of this report on corrections, the term "criminal justice system" is used in the generic sense to include the juvenile justice system even though it does not technically involve a criminal process. Given the fact that diversion programs are usually directed toward either adults in the criminal justice system or juveniles in the juvenile justice system, the two will frequently be differentiated throughout this chapter.

THE ARGUMENT FOR DIVERSION

The significance of diversion is evidenced pri-
marily by the role it plays in keeping the criminal justice system from being overwhelmed by all sorts of minor offenses, thereby enabling resource allocation for those only in need of intervention. For various reasons, people refuse to report offenses; police refuse to make arrests; prosecutors refuse to prosecute; and courts refuse to convict. Yet if all law violations were processed officially as the arrest-conviction-imprisonment model calls for, the system obviously would collapse from its voluminous caseloads and from community opposition. Cost of resources needed to handle violations officially would be prohibitive financially and socially.

To test our contention, consider some national data for the year 1971. In that year, approximately 5,995,000 major felonies—murder, aggravated as-
sault, rape, robbery, burglary, grand larceny, and auto theft—were reported to the police. These re-
ports resulted in 1,707,600 arrests, with juvenile courts assuming jurisdiction over about 628,000 criminal cases. Ultimately, 14 percent of those cases processed in criminal court. Sixty percent of the cases processed resulted in conviction as originally charged, and 11 percent for a lesser charge.1

Of all those diverted from formal processing, the study estimates that more than 30 percent of all reported offenses fall into that class. Many of these convictions are based on evidence that was not sufficient to support such a conviction; in other instances, the use of evidence is illegal. For these reasons, the researchers estimated that many of the cases diverted could have resulted in acquittal if tried in court. The point is that diversion programs can be effective in keeping the juvenile justice system from being overwhelmed by noncriminal conduct. Indeed, the evidence suggests that effective diversion results in a lower volume of cases with similar results to those who are formally processed.2

In any case, diversion programs provide alternatives to the use of the criminal justice system. In the long run, fewer offenders are diverted from court processing than are actually involved in the system, thereby keeping the justice system focused on those cases that are more serious. Of course, there may be an objection based on the quality of case processing that is not sufficient to support a conviction. However, the best of current evidence points strongly in the opposite direction.

Morally threatening, some of the more serious cases processed in criminal courts are committed by repeat offenders. Recidivism rates ordinarily are highest among offenders charged with felonies. Even at the conclusion of their sentences, lower among parolees, and lowest among probationers.3 It therefore seems clear that prisoners are failing to achieve their correctional objectives. In spite of the vocal support given rehabilitation and reintegration of the offender into community life, the fact remains that many prisoners, adult and juvenile, live under conditions more debilitating than those existing on the streets.4

Since the civil law is designed to provide a system of justice that is fair and effective in addressing the needs of society, the welfare provisions contained in existing laws can be modified to meet the unique needs of alcoholics and other offenders. Thus far, however, the evidence suggests that both the juvenile and adult justice systems are so bad that even the best of current evidence points strongly in the opposite direction.

1 See National Council on Crime and Delinquency, Policing and Background Information (Hastings, N.J.: NCCD, 1972), p. 3; and California Assembly, Committee on Crimi-
nal Procedure, Dependent Children; and Other Delinquent Children (Sacramento, 1968).


3 California Department of Justice, Crime and Delinquency in California, 1974 (Sacramento: 1975), pp. 53, 44, 115. Referred to in this and subsequent references where appropriate.


6 National Council on Crime and Delinquency, Policing and Background Information (Hastings, N.J.: NCCD, 1972), p. 3; and California Assembly, Committee on Crimi-
nal Procedure, Dependent Children and Other Delinquent Children (Sacramento, 1968).

7See, for example, Walter Bailey, "Correctional Outcomes: An Evaluation of One Hundred Programs," The Journal of Criminal Law, Criminology, and Police Science, 78 (1976), 123-

6 Federal Bureau of Investigation, Crime in the United States: Uniform Crime Reports, 1971 (Washington: Gover-
nment Printing Office, 1971), pp. 33, 61, 115. Referred to in this and subsequent references where appropriate.
a recidivism rate of 37 percent, compared with 52 percent for a matched control group. Five years after release, however, the recidivism rates were 88 and 90 percent, respectively.

Neither do long sentences, with or without "treatment," necessarily protect society better than shorter ones. For example, offenders offered a specific goal of parole, with or without parole-like treatment, experience a recidivism rate of 37 percent, compared with 52 percent for a matched control group.

The Dilemma of the Treatment Model

Even with such growing evidence of the counterproductive effects of incarceration and other forms of correctional treatment, there has been substantial reluctance to adopt alternate methods of dealing with criminal and quasi-criminal behavior. This reluctance stems from the belief that the system is working as it should, that incarceration is sometimes a necessary evil, and that those who commit crimes are more to blame for their plight than the criminal justice system.

Many efforts to correct the deficiencies of the criminal justice system are seriously limited by the medical, psychological, and social problems these offenders bring to the system. Some offenders have criminal records dating back to their childhood, and institutionalization in D.C. correctional facilities was accompanied by a gamut of personal and psychological problems.

For a variety of reasons, many illegal acts that come to the attention of citizens are not reported to the police. A national victimization survey conducted on a sample of 10,000 households from July 1965 through June 1966 found that 2,116.6 offenses were reported to the police, while the survey found a much greater number of offenses.

A Positive Argument for Diversion

The positive argument for diversion is that it gives society the opportunity to consider the possibility of reallocating existing resources to programs that promise greater success in bringing about correctional reform and social restoration of offenders. Given this choice between expanding the capacities of police, courts, and institutions to the point where they could accommodate the present and projected rates of criminal activity and the opportunity to establish diversion programs with public funds, the economics of the matter clearly favor a social policy decision for diversion. For example, the Project Crossroads diversion program in the District of Columbia had a per capita program cost of approximately $6.00 per day. The per capita cost of institutionalization in D.C. correctional facilities was averaging close to $17.00 a day. Furthermore, the recidivism rate among Crossroads participants was 22 percent, as compared with 46 percent in a control group which did not receive project services.

Diversion is an opportunity. It is not a solution.** If it is to be a successful solution, diversion programs must be part of a comprehensive social policy approach to crime. To develop a system that utilizes diversion would require a social policy decision for diversion. For example, the Project Crossroads diversion program in the District of Columbia had a per capita program cost of approximately $6.00 per day. The per capita cost of institutionalization in D.C. correctional facilities was averaging close to $17.00 a day. Furthermore, the recidivism rate among Crossroads participants was 22 percent, as compared with 46 percent in a control group which did not receive project services.

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Community-Based Diversion Programs

For a variety of reasons, many illegal acts that come to the attention of citizens are not reported to the police. A national victimization survey conducted on a sample of 10,000 households from July 1965 through June 1966.** These studies attempt to estimate the number of unreported offenses by asking participants if they believe that persons who committed crimes were not reported to the police.

Two facts stand out in the comparison. The relative frequencies of specific serious crimes uncovered by the victimization surveys are comparable to those obtained by the FBI from police agencies. Offenses are ranked in an identical order. However, there found a much greater number of offenses than were reported by the police—2,116.6 offenses per 100,000 population as compared with 974.7 offenses per 100,000 population.

There can be little doubt that a large number of violations go free because people fail to report offenses.
by Los Angeles school children and coming to the authorities in 1966-67 involved cases of drugs, burglaries, and theft.

The reaction may be characterized simply as concern with their socialization, and since the main reason for failure to report 

One of the main reasons for failure to report offenses, according to the survey, is that many people believe the authorities are unwilling or un

dents are taking action of varying degrees of seriousness. While most schools probably do not think of themselves as operating diversion programs, they are doing just that when they deal with illegal behavior officially.

There are, in addition, other agencies or groups that are organizing diversion efforts as at least one of their stated objectives.

Comprehensive Youth Service Delivery System

An example of a major prevention-diversion effort is to be found in projects currently being funded by the Youth Development and Delinquency Prevention Administration of the U.S. Department of Health, Education, and Welfare. Called Comprehensive Youth Service Delivery Systems, pilot projects are being established in Florida, Oklahoma, and California to develop a network of youth services which will create the ties between service agencies and the police. They have as their objective a 2- to 3-percent diversion rate per year from the juvenile justice system as measured by reduced arrests and filings before the juvenile court.

The program specifically incorporates these basic ingredients: 1) diversion of youth from the juvenile justice system within a given target area by 2 to 3 percent per year; 2) development of an integrative, jointly funded youth service system containing private, public, and voluntary agencies; and diversion activities; 3) involvement of youth themselves in the planning, development, and execution of the programs and service delivery systems. As designed, the programs are intended to eliminate the need to label children as minor  delinquents.

The projects propose to provide a broad range of services, including family counseling, treatment of dependents, group counseling, and community service projects.

The Youth Service Bureau

Of all the recommendations made by the President's Commission in 1967, none was received with more hope for diverting children and youth from the juvenile justice system than the Youth Service Bureau. Yet, in 1972, a national study was able to identify only 150 bureaus spread throughout the United States and supported by only $25,000,000 of Federal funds. A Youth Service Bureau does not appear to be the Nation's most popularly supported diversion effort.

The Youth Service Bureau was intended to be a community agency to provide those necessary services to youth that would permit law enforcement and the courts to divert youthful offenders from the juvenile justice system. It was intended to involve the entire community, its agencies and resources in effective programs of crime prevention, diversion, rehabilitation, care, and control.

Today, the Youth Service Bureau appears to be financially uncertain, and those bureaus that are surviving tend to be related to established Federal, state, or municipal agencies. Those related to juvenile justice processing that are organizing diversion efforts as at least one of their stated objectives are becoming increasingly rare.

The national study reports that on the basis of a national 500-case sample, a majority (87 percent) of the youth who were provided services were between the ages of 12 and 18. Approximately 79 percent were of school age, and the predominant source of referral was self, friends, or family. Schools referred approximately 21 percent and police only 13 percent. Problems are the most frequently cited, incorrigibility, runaways, not getting along, and school problems accounted for 28 percent of the referrals.

Preliminary data indicate that Youth Service Bureaus are providing an alternative service for children in need of supervision. Whether or not they have been able to establish a new agency to serve children and youth effectively on a continuing basis is a question that only time will answer.

Table 3.1 Comparison of Victimization Reports and Police Data on the Amount of Crime.

<table>
<thead>
<tr>
<th>Offense</th>
<th>Rate per 100,000 Population Victimization Survey Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide</td>
<td>5.1</td>
</tr>
<tr>
<td>Forcible Rape</td>
<td>12.5</td>
</tr>
<tr>
<td>Robbery</td>
<td>94.0</td>
</tr>
<tr>
<td>Assault</td>
<td>218.3</td>
</tr>
<tr>
<td>Burglary, Grand Larceny, Auto</td>
<td>1,761.8</td>
</tr>
<tr>
<td>Theft</td>
<td>790.0</td>
</tr>
</tbody>
</table>


School Diversion Programs

One of the oldest community-based diversion models centers around the school. Since the school as a social institution is responsible for young people a large portion of the day and is highly concerned with their socialization, and since many behaviors that are categorized as delinquents are school-related (truancy, incorrigibility, vandalism), most schools maintain procedures for dealing with the majority of their behavior problems without recourse to legal authorities.

For example, 40 percent of the offenses committed by Los Angeles school children and coming to the authorities in 1966-67 involved cases of drug violations, assaults against school personnel, damage to school property, etc., were processed without referral to the police.

Schools utilize counseling, disciplinary actions, private conferences, special classes or special schools, referral to community social service agencies, and a whole range of other techniques in sorting to police help. While most schools probably do not think of themselves as operating diversion programs, they are doing just that when they deal with illegal behavior officially.

An example of a major prevention-diversion effort is to be found in projects currently being funded by the Youth Development and Delinquency Prevention Administration of the U.S. Department of Health, Education, and Welfare. Called Comprehensive Youth Service Delivery Systems, pilot projects are being established in Florida, Oklahoma, and California to develop a network of youth services which will create the ties between service agencies and the police.

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As designed, the programs are intended to eliminate the need to label children as minor delinquents. Instead of Court: Diversion in Juvenile Law Enforcement Processing (Washington: Center for Mental Health Studies for Studies of Crime and Delinquency, 1971).

Community Responsibility Programs

Community responsibility programs are increasing throughout the United States. Frequently located in predominantly low-income minority communities (particularly in California, Illinois, New York, and Puerto Rico), these programs are designed to assist youth involved in delinquent activities. The main focus of the programs is the involvement of the community and responsibility for their own children and youth. A panel of community members, both youth and adult, act as judges listening to cases of youthful offenders who have been referred by various agencies, most frequently by law enforcement agencies. Minors who have committed violations of the law appear before the citizen panel which determines the minor's responsibility. If it is determined that an alleged act did in fact occur which in some way injured another, the youth and the responsible adult are required to carry out some useful community work under supervision. He is also asked to undergo a program of counseling, care, and training.

Problems of this nature, greatly expanded through funding by the Office of Economic Opportunity, the Law Enforcement Assistance Administration, and the Department of Health, Education, and Welfare, are increasing the number of existing community and public agencies. The projects propose to provide a broad range of services, including family counseling, treatment of dependents, group counseling, and community service projects.

The national study reports that on the basis of a national 500-case sample, a majority (87 percent) of the youth who were provided services were between the ages of 12 and 18. Approximately 79 percent were of school age, and the predominant source of referral was self, friends, or family. Schools referred approximately 21 percent and police only 13 percent. Problems are the most frequently cited, incorrigibility, runaways, not getting along, and school problems accounted for 28 percent of the referrals.

Preliminary data indicate that Youth Service Bureaus are providing an alternative service for children in need of supervision. Whether or not they have been able to establish a new agency to serve children and youth effectively on a continuing basis is a question that only time will answer.

Police-Based Diversion Models

Police-based diversion programs may be administered internally or through use of referral relationships with other community agencies. Neither arrangement, however, has met with much use in the past. On a national basis, less than two percent of arrested juveniles are referred to other community agencies. In fact, probation agencies, which are expected to handle these cases, are less often called upon to do so. In numerous other cases, even fewer are served through police-run diversion programs.

The past police reluctance to engage in formal diversion efforts are numerous and understandable. Perhaps the most common reason relates to community and police perceptions of the police role. Where the role of police is defined primarily in terms of rigorous detection and apprehension of all violations of law, rather than such responsibilities as protecting people by roles involving responsibility, fairness, community interests, individual circumstances, and the like, it is not surprising that diversionary efforts are not made highly visible.

Sometimes, a choice not to process an offender officially even appears to be contrary to the law. For example, the Wisconsin statutes provide that a police officer "shall arrest . . . every person found in a state of illegal restraint or engaged in any disturbance of the peace or violating any law of the state or ordinance . . . ." Some places, such as the District of Columbia, make it a criminal offense for a police officer to fail to make an arrest. Hence, official policies are not always clearly defined.

These impediments to a police role in diversion are compounded by such real problems as: the conflicting demands on police manpower and resources posed by law enforcement and diversion objectives; the lack of police officers with training in social work; the need for joint and general awareness of cooperative relationships between police departments and community groups.

To state that police involvement in formalized diversion programs has been minimal is not to minimize the very considerable impact of police discretion not to arrest.

Studies show that informal procedures aimed at avoiding arrest are especially prevalent in rural areas, small cities with a large upperclass population, and large metropolitan communities where the police force has not been highly professionalized.14 Similar results are obtained in other studies.

In addition, some juvenile courts are excluding certain types of cases, especially those involving conduct disorder, runaways, uncontrollable, and other kinds of family problems. These cases are often not aggressively by official court intervention and probably can be resolved more effectively by social service agencies or counseling clinics. A program of this kind has recently been instituted in King County, Washington.15 County authorities are currently prepared to use court fines and other official sanctions unless they are necessary for community protection or offender control. Even the same objective applies to adult offenders. Even those cases that would be established by a trial, official sanctions are often avoided to preserve the offender's community ties, keep neighborhood peace, protect a wage earner's job, maintain family unity, or provide treatment without making the lawbreaker's record by a criminal conviction.

Again, the primary responsibility for initiating informal measures instead of official sanctions is delegated to the police.

For example, the police commonly use alternative to arrest, such as recommending a suspended offender, referring him to his family or other agencies, requiring that he make restitution to the victim or that he seek some kind of treatment. There are many situations in which it is clearly in the public interest to do so. This is normally true when the police are trying to resolve conflicts between husbands and wives, parents and children, customers, or management and labor. It is often the case when the police are questioning people, collecting information, engaging in surveillance, asking for assistance, or attempting to remove persons from the scene of a crime or an accident. In those circumstances, the police are called upon to play a more active role in regulating the behavior of the individual involved and the social agent. The more effective they are in those roles, the less often they need to rely on arrest, force, and other legal sanctions.

When an arrest is reported, the police need to decide if it warrants investigation. Likewise, it must be determined if the offender should be arrested. If his should be taken into custody, and if he should be arrested, how long is it the character of the official charges must be decided. On each of these issues the police have access to a variety of alternatives.

Many police officers have doubts about the effectiveness of prosecution and are reluctant to use an arrest unless they believe it necessary. Judgment concerning need or necessity of an arrest is influenced by numerous subjective factors. Probably one of the most important is the attitude or demeanor of the suspected offender, if the suspect is contributory, creative, and compliant, the likelihood of an arrest is lessened. But if he displays a brusque, belligerent attitude, the police officer's action is greatly increased. Other factors affecting discretionary decisions are the role played by the victim, the complainant, and any witnesses; the community's attitudes toward violations and reduction in the severity of the offense; and the policies of courts and other agencies.

Recently there has been an increase in the number of police agencies acknowledging the crucial role of individual police discretion, and some have begun to develop policies to guide and structure its use. A number of those programs have arrived at the point of adopting formal diversion programs.

Family Crisis Intervention Projects

There are indications that the police, by identifying critical situations at an early stage of development, can prevent the escalation of violence. A conspicuous example is the Family Crisis Intervention Project in New York City.12 Officers from a high-risk precinct are trained to work in teams to intervene in family disturbance calls attempting to resolve the conflict on the scene. If unsuccessful, they refer the antagonists to a community agency. The New York project has been successful in many other cities including Oakland, Denver, and Chicago.

In the New York experience, not one homicide occurred in 926 families handled by intervention teams. Nor was a single officer injured, even though the teams were exposed to an unusually large number of dangerous incidents. Families having had experience with the teams referred other families to the project, and many troubled individuals found help from the role of the police officer as a social agent. It is believed that police-community relations were improved as a result and that a number of incidents were averted that otherwise might have led to arrests.

The 601 Diversion Project

The County of Santa Clara, California, proposed a project for funding to the State Planning agency in July of 1971 in Pleasant Hill, California. Like other Youth Service Bureaus, the Pleasant Hill bureau is designed to divert young offenders and potential delinquents from the regular channels of juvenile corrections. In place of the traditional methods of dealing with juvenile lawbreakers, the youth service bureau offers a variety of programs, including family counseling and school visits by the bureau's staff. In addition to offering counseling, tutoring, job assistance or other professional help, the bureau has initiated a wide variety of delinquency-preventive programs, including special classes for girls exhibiting delinquent tendencies, classes in drug education, a speakers bureau, and police training for rape counselors.

The program is staffed by two civilian aids and three policemen. The initial emphasis is to curb truancy and the number of runaway teenagers. Guidelines for the police department have been prepared by the Santa Clara County Juvenile Probation Department, 1972, and funded by the California Council on Criminal Justice, 1972. The name of the project derives from Sec. 601 of the State Welfare and Institutions Code, which deals with juveniles with delinquent tendencies.
drafted which provide for the referral of all runaways. A youth may be sent to juvenile hall only when he presents a danger to himself and others.

In its first year of operation, 49 percent of the arrests at the Pleasant Hill police—about 394—were of juveniles. Of these, 80 percent were handled within the police department. The other 20 percent of the youths were sent to juvenile hall or cited to probation.

The Pleasant Hill Youth Services Bureau is being formed jointly by the Federal Government and the city. Sixty percent of the bureau's $85,000 annual budget comes from a Federal grant administered by the California Council on Criminal Justice. The remaining 40 percent has been allocated to the bureau by the Pleasant Hill city council.11

Ricinonod, California Police Dis­version Program

Another example of a police-based diversion program is occurring in Richmond, California. The Richmond Police Department's Juvenile Diversion Program, funded on a pilot basis by LEAA and subsequently aided by the California Youth Authority, is testing the feasibility of the police providing direct helping and counseling services to youth involved in predelinquent and certain delinquent activities. The officers, who have been trained in intervention, behavior management training for parents, counseling, tutoring services, and employment assistance. These services traditionally have been provided by other agencies such as probation staff, the school department, or paroling authorities. The intent is to provide direct services and eliminate the wasted hours, days, and weeks of time that sometimes expire before offenders referred for service actually receive it.

In this project it is the police who are on the cutting edge of the entire juvenile justice system and are in this sense the primary gatekeepers to that system. With adequate resources and properly trained officers who feel they are in the position to provide 24-hour services of a helping nature to youthful offenders who are at risk of coming into the formal juvenile justice system if care and service are not immediately provided.

Los Angeles County Diversion Program

Early in 1970, the Los Angeles County Diversion Program was established. The program was recommended by the Los Angeles County Department of Community Services and the Los Angeles County Sheriff's Department and is designed to divert juvenile offenders from the criminal justice system in accordance with various diversionary programs supported at local and national levels. Many arrests have been deferred to the appropriate agencies as indicated by the program's slogan: "Find the Cure Before the Crime." It is a program that includes preventive measures and educational and training efforts aimed at reducing juvenile delinquency. By providing services to youths at an early stage in their lives, the program attempts to prevent further involvement in the criminal justice system.

The program operates on three basic principles: (1) prevention, (2) intervention, and (3) community involvement. The prevention component involves identifying youth at risk for criminal behavior and providing them with services designed to prevent them from engaging in delinquent activities. The intervention component involves identifying youth who are already involved in delinquent activities and providing them with services designed to prevent them from continuing their involvement in the criminal justice system. The community involvement component involves involving the community in the prevention and intervention efforts of the program.

The program is structured to provide services to youth in the community, at home, and in the community. The program operates on a three-tiered system, with the lowest tier being the community-based program, the middle tier being the intervention program, and the highest tier being the court-based program. The community-based program is designed to provide services to youth in the community, at home, and in the community. The intervention program is designed to provide services to youth in the community, at home, and in the community. The court-based program is designed to provide services to youth in the community, at home, and in the community.

The program is funded by the Los Angeles County Department of Community Services and the Los Angeles County Sheriff's Department. The program is administered by the Los Angeles County Department of Community Services and the Los Angeles County Sheriff's Department. The program is evaluated annually by the Los Angeles County Department of Community Services and the Los Angeles County Sheriff's Department. The program is evaluated annually by the Los Angeles County Department of Community Services and the Los Angeles County Sheriff's Department. The program is evaluated annually by the Los Angeles County Department of Community Services and the Los Angeles County Sheriff's Department.
either directly by the court or by public or private agencies working in cooperation with the court. For example, Project Crossroads, to be described shortly, is handled administratively and is a diversion resource that accepted referrals from juvenile court intake and judges. In 1971, when the project's grant was terminated, the staff and program were incorporated in the local court system.

The purpose of the growing number of pretrial diversion programs is to provide the courts and individuals involved with a chance to minimize the exercise of coercive power and still have the opportunity to try to treat the behavior problem that was the basis for concern. They also fill the usual service gap between apprehension and trial. These programs have built-in safety mechanisms (i.e., they are based on conditional diversion) to increase the likelihood that state interests are not jeopardized.

Pretrial intervention projects basically operate in two ways. In a number of the projects, no formal charges are lodged. Instead, after an individual has been arrested, he is screened on entry for the particular criteria, the project staff and programs were incorporated in the local court system.

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The added services require more staff and better facilities, of course, but they promise greatly increasing use of pretrial intervention beyond the present level, which is approximately 10 percent of the cases on the arraignment calendar, according to the statistics from several cities. Such intervention requires skill and patience on the part of staff, since many clients are alienated, suspicious, unable to present themselves effectively and, initially anyway, a certain sort of social agreement that involves making a commitment on their part.

**Department of Labor Pretrial Intervention Projects**

Under the Manpower Development and Training Act, the Manpower Administration of the Department of Labor has funded some of the most notable pretrial intervention projects. These projects aim at helping first offenders a chance through their performance in special diversion programs, to get into a lifestyle of worthwhile employment and stability with the help of manpower services and trial although offenders who have been screened for an average of 18 months with the hope that local sources will pick up the funding once Federal funding stops. This was the case in the first two, Project Crossroads in Washington, D.C., and the Manhattan Court Employment Project in New York City. The latter project asked the Community Services Administration whether the program could include cities and counties as well as private nonprofit corporations.

Pretrial intervention involves both paid workers and community volunteers with responsibilities in one of the following areas: screening of potential participants, court services, and education. Nonprofessional staff members with background similar to those of the offenders are used in what have been traditionally professional occupations.

Program counselors screen all defendants prior to each day's arraignment. If an eligible defendant wants to participate in the program, he is to permit the prosecution to the defendant to participate in the project (usually for 90 days). The enrollment criteria vary. Different programs have considered such factors as sex, age, residence, employment status, present charge, previous criminal record, and others.

**New Haven Pretrial Diversion Program**

As interesting an example of a spin-off from the pilot projects funded by the Manpower Administration, the New Haven Pretrial Diversion Program in the Sixth Circuit Court in New Haven, the pretrial criminal process. Second, the program was developed by the New Haven Pretrial Services Council, a body established to bring together representatives of the criminal justice system and other interested agencies.

The ultimate goals of the program are to assist in reducing congestion in the Circuit Court System; avoid unnecessary prosecution, trial, and the devaluing of important records; and lower the recidivism rate in the defendant population.

**SPECIAL PROBLEM AREAS**

The preceding sections of this chapter have dealt with diversion programs or models in terms of the groups or agencies having primary responsibility for them (police, courts, or community). To develop a clear picture of the ways in which diversion programs may operate, it should be useful to focus on selected special problem areas to...
illustrate the variety of programs that are being implemented to address these problems. The following section focuses on programs that provide alternatives to criminal or delinquency processing for drunkenness, drug abuse, and mental illness.

Public Drunkenness

Public drunkenness accounts for more than 2 million arrests each year.\(^1\) The fact that most persons with rehabilitative drunkenness are bona-fide chronic offenders and indigent chronic offenders\(^2\) suggests that drunkenness and related offenses should be treated through social services rather than law enforcement agencies. But a shortage of money in the social services leaves the problem to the police, courts, and jails. The policies of local police departments determine who, if any, number of arrests, the criteria for arrest, and the manner of handling a drunkenness offender.

To reduce the number of drunkenness arrests, the President's Commission on Law Enforcement and Administration of Justice in 1967 recommended the creation of community detoxification centers operated under the auspices of local police departments.\(^3\) The proposed centers were to provide medical and social services for the rehabilitation of drunkenness offenders and reduce the involvement of the criminal justice system in the solution of social ills.

Experimental programs in three cities—St. Louis, Washington, D.C., and New York—present models for the diversion of public inebriates.

Detoxification Centers

St. Louis and the District of Columbia

St. Louis opened the first police-sponsored de-toxification program in 1966 for the diversion of public drunkenness offenders.\(^4\) The project was funded by the Office of Law Enforcement Assistance (now the Law Enforcement Assistance Administration) to provide medical and rehabilitative services for a projected 1600 cases. In 1967 the State of Missouri took over funding for the present facility in the St. Louis area.

Persons arrested on a drunkenness charge in St. Louis now have a choice between treatment at the center and criminal prosecution. For those who choose treatment, an arraignment and detoxification program is suspended pending completion of the 7-day program. At the center, patients are given food and medical care, with optional counseling and referral services.

The District of Columbia received Federal funds for a similar detoxification program shortly after the creation of the St. Louis center. In Washington, D.C., a 1-to-3-day program is available to "walk-in" and is mandatory for intoxicated persons picked up by the police.

After spending a day at the center, where medical attention and food are provided, some patients are released. Others stay for 3 days, and those patients in more serious condition are referred to the treatment unit of an alcoholism treatment hospital. The goal of the program is not to cure alcoholics but to divert nuisance cases from jail and court and, at the same time, to offer short-term care for recuperating inebriates. Before the detoxification centers opened, public inebriates in the District of Columbia generally spent 20 days in jail. Critics of the centers feel that a 30-day sentence at least gives an offender the opportunity to "dry out" and helps to keep the turnover problem from getting out of hand. However, the more cases make rehabilitation difficult, if not impossible.

St. Louis claims that its graduates have shown some improvement in health and drinking habits, but the short treatment period in both cities precludes complete withdrawal from alcohol. St. Louis spends $40.00 per day for 7 days compared to the District's $20.00 per patient day for a maximum of 3 days. The St. Louis center has been much more expensive to operate than the previous one; the District has reduced costs by over 40 percent.

The courts and jails have benefited from the detoxification programs, now that all public drunkenness offenders in D.C. and those who prefer treatment to arrest in St. Louis are routed through the centers. As a result, local police are not called out to serve warrants and are still responsible for keeping inebriates of the streets. Police dissatisfaction with the new procedure causes many inebriates to be ignored.

In addition to the lack of police support, both programs suffer from a lack of money. Overcrowding is a chronic problem in both centers, in effect social services and are in need of immediate expansion. A minimum of services is provided and individual programming is nonexistent.

Manhattan Bowery Project

The Manhattan Bowery Project in New York City is a detoxification center operated by the Vera Foundation of Justice in cooperation with public agencies. Created in 1967 and receiving money from Federal, State, and local sources, the program is now supported by the New York State Department of Mental Hygiene and the New York City Community Mental Health Board. Its stated purpose is to provide both emergency and long-term medical and social services to homeless alcoholics in the Bowery.\(^5\)

A rescue team consisting of a recovered alcoholic and a plainclothes police officer patrols the area offering transportation to the center to persons severely intoxicated or in need of medical aid. Agency and self-referrals are admitted, but 75 percent of the patients are recruited on the street. All cases are voluntary.

The program consists of 3 days of intensive care and treatment followed by a day or two in the aftercare unit. There is an emergency health clinic on the premises which serves anyone in need, including or not. The aftercare unit offers counseling and referral services and transportation to other agencies upon release.

About 67 percent of the inebriates approached on the street accepted and, upon release, about half of the patients accept referrals. The cost of treatment is about $38.00 per patient day, and the staff claims credit for overwhelming reduction in drunkenness arrests in the Bowery.

Conclusions

The response to the voluntary aspect of the Bowery and District of Columbia programs demonstrates that diversionary projects for public inebriates are feasible. Whether treatment should be offered is left to the discretion of the police to accept treatment, if only for free room and board. Opening the D.C. center to walk-ins has resulted in a patient accept population that is 50 percent self-referred.\(^6\)

With the virtual decriminalization of public drunkenness in St. Louis and Washington, the next logical step is to remove it completely from the realm of the criminal justice process, entrusting the treatment and care to social service agencies that can better address long-term needs of housing and employment. Prison does not rehabilitate drunkenness offenders and neither forces, short-term treatment to rehabilitate problem drinkers, an alternate lifestyle must be offered, and the problem

Drug Abuse

Narcotics offenses have become more and more prevalent in recent years, burdening the criminal justice system with cases that might better be treated medically. Drug offenders today come from middle-class suburban as well as urban core areas and thus create public interest in preventive and rehabilitative programs. Diverision into therapeutic programs offers drug offenders an alternative to criminal prosecution. It completely avoids legislative and judicial entanglements, imprisonment, and the controversy over legalization of the possession of some drugs, especially marijuana. Dealing with the social and medical aspects of drug abuse is a positive approach with potential benefits both for society and for the individual.

In establishing a plan for diversion, several questions must be resolved: when diversion is appropriate; whether treatment should be voluntary or imposed; whether there should be a specified length of treatment and whether it should be available to anyone, including non-offenders. For the success of any diversion scheme for narcotics offenders, eligibility requirements must be carefully defined. The population to be served must be a cohesive group with similar problems and treatment goals. The nature of the pending charge is also crucial: hard-core addicts should be treated separately from first offenders charged with possession. The goal of any diversion plan is to recrereit the offender in society and to spare the state the expense of prosecuting cases that are medical, rather than criminal, in nature.

Illinois Drug Abuse Program

The Illinois Dangerous Drug Abuse Act in 1967 provided a divestiture procedure for narcotics offenders, especially heroin addicts, and in 1968, the Illinois Drug Abuse Program (IDAP) was established. Funds were allocated by the State Department of Mental Health, the program provides for group therapy, methadone maintenance, and medical and social services in halfway houses and therapeutic communities. After 1968, Federal funds made available through the Narcotic Addict Rehabilita-
two multimodality residential centers, one in downtown Chicago and one outside the city. These centers cater to narcotic drug users, non-narcotic drug users, those who have been detoxified by methadone maintenance, and those now abstaining from drugs. Some of the staff are rehabilitated addicts.

The maximum referral period is 2 years for preadjudication status; treatment must be successfully completed at any time during the period. If an offender leaves the program or if the court determines charges as brought to court. If a person faithfully participates in the program for 2 years but cannot be certified cured by staff, the court exercises discretion in dropping the charges or resuming prosecution. The maximum term of treatment for persons assigned to the program as probationers is 5 years or the length of probation, whichever is less.

The program’s minimum goal is to turn out law-abiding citizens. Its maximum goal is to enable its patients to lead productive, drug-free lives. Its multimodality approach serves the patients’ diverse needs, and its flexibility allows for modification.

Cook County State’s Attorney’s Program

The Cook County State’s Attorney’s Program for the Prevention of Drug Abuse depends on judicial and prosecutorial discretion to divert criminal conspiracies, sale of specified drugs or sale of drugs to young persons, or possession of more than a certain quantity of specified drugs. Two or more previous convictions for violent crimes or a pending felony charge disqualify a person from treatment, as do two previous enrollment in any drug program within any consecutive 2-year period.

An IDAP representative screens arrestees for drug use. Potential candidates are interviewed and if judged fit to participate in the program, they are referred to NTA. The Federal definition of addiction: “habitual use . . . so as to endanger the public morals, health, safety, or welfare” and “loss of self-control with reference to the drug use.”

IDAP reserves the right to refuse any candidate, a safeguard against overcrowding its facilities. If IDAP refuses treatment, the court may make an arrest and/or the county may wait for 90 days to see if the defendant can resolve the problem on his own.

To treat offenders who are technically ineligible for treatment, IDAP has contractual agreements with government and private agencies. One such contract is with an unincorporated, non-profit corporation operating three therapeutic communities for first offenders charged with possession of marijuana and other drugs. IDAP operates

Daytop Village

In 1963 Daytop Village began a treatment program for convicted drug addicts on probation in the Second Judicial District of New York. Originally financed by a $300,000 research grant through the National Institute of Mental Health, Daytop Village is now a nonprofit, private organization, retaining a $3,000 annual eligibility certification from the New York State Narcotics Addiction Control Commission. It operates three residential communities in the New York City area with a combined capacity for 550 patients. The average annual intake for the years 1969 through 1971 was 200 addicts; the annual dropout rate was 28 percent.

The program is no longer restricted to probationers. There are no set eligibility requirements, but persons involved in violent crimes or the sale of narcotics or dangerous drugs are automatically excluded. Reduction of these charges, however, is common practice to allow for admission to the program. Judicial and prosecutorial discretion determine referrals after recommendation from the Daytop court liaison officer. There is no statutory provision for diversion, but about 25 to 33 percent of the patients are referred from court as probationers and parolees. Almost 75 percent of the patients have been arrested for drug offenses, and 50 percent convicted, but only 15 percent convicted of a drug offense.

The preadjudication diversion procedure is informal. The court liaison officer meets with individual candidates to evaluate their eligibility and willingness to be treated. If the person is approved for admission to the program, his case is adjourned for 2 months. Adjournment must be renewed every 2 months. If the person successfully completes his progress at Daytop, after 6 to 8 months of compliance with program requirements, his case is dropped.

Daytop programs include daily meetings at the Village, chores, seminars, classes, and counseling groups led by a staff of former addicts. Younger probationers are encouraged to evaluate their eligibility and willingness to be treated. If the person is approved for admission to the program, his case is adjourned for 2 months. Adjournment must be renewed every 2 months. If the person successfully completes his progress at Daytop, after 6 to 8 months of compliance with program requirements, his case is dropped.

Each subsequent treatment is evaluated on all defend­ants occupying Superior Court to identify heroin users. The court approves the administration of Daytop’s program. The next step is for the defendant to be referred to NTA’s Criminal Justice Intake Service on bail. Through examinations are performed, and a counselor refers each patient to the treatment facility nearest his home. The court does not pay for any treatment. The program’s drug problem and Daytop’s program. Although the number of cases diverted through Daytop has been small—less than 100 cases in 1969—it serves as a hopeful alternative to criminal processing of drug offenders.

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Six bureaus at NTA provide medical, management, youth, research, information, and special services. The Special Services Bureau supervises and coordinates counselling, criminal justice referrals, and patient referrals to other programs and agencies. Legal advice is available through Legal Services to Addicts, a division of NTA, and the Washington Lawyer's Committee for Civil Rights under Law. A central computerized data bank compiles information from all facilities for program planning and evaluation. A doctor's certificate or a court order is required for admission, a policeman's signature is only a formality. Every addict or prevent his return to drug-related crime, but it does offer an alternative for those who may desire rehabilitation.

**Mental Illness**

Cases involving mental illness are an appropriate field for diversion, but few statutes or consistent local policies exist to facilitate its development. A shortage of money in social services, red tape involved in commitment procedures, and general ignorance regarding mental disorders combine to place emergency care in the hands of the police. A doctor's certificate is required for commitment to a mental hospital, and in most states even emergency admissions require either a doctor's certificate or a court order or both. To expedite commitment, police officers are allowed to bring by the police. An admissions staff performs psychiatric examinations, and police officers file an application or petition for admission. Be- sides, mental hospitals lack the staff and facilities to handle emergencies. Mental hospitals lack the staff and facilities to handle emergencies.

Instant and mentally incompetent offenders can be excused from criminal liability or held for treatment as a result, in many jurisdictions police officers spend hours waiting for a psychiatrist to examine an offender. In states where laws do not provide for speedy admission to mental hospitals, cooperation between the police and receiving centers is necessary to reduce police involvement. For example, the Whelan, Ill. police department, in cooperation with the Chicago Center for the Mentally Ill. of the Illinois Department of Mental Health, operates a crisis intervention for the mentally ill. The National Institute of Mental Health has recently sponsored community health centers in urban areas and plans the opening of 2,000 centers by 1980, some with day-care programs, all with an interdepartmental atmosphere. Services will be free or priced according to a patient's ability to pay; but they are available services so that the mentally ill may receive treatment before crises arise.

**Community Mental Health Centers**

Because of their location in inner-city neighborhoods where few residents are familiar with mental health services and even fewer can afford private care, community mental health centers are ideal facilities for the treatment of the mentally ill. The National Institute of Mental Health has recently sponsored community health centers in urban areas and plans the opening of 2,000 centers by 1980, some with day-care programs, all with an interdepartmental atmosphere. Services will be free or priced according to a patient's ability to pay; but they are available services so that the mentally ill may receive treatment before crises arise.

Drug treatment programs have been springing up around the Nation to deal with the growing problem of drug abuse. One result of the widespread interest has been a duplication of services between State and local, public and private agencies. Coordination and cooperation between these services and enforcement agencies can greatly reduce waste and confusion and improve the potential capabilities of treatment programs. The President set an example in 1971 by creating a White House Special Action Office for Drug Abuse Prevention for the overall plan for 18 months, with only 1 percent satisfying all treatment goals. Twelve percent of those in treatment failed to meet one or more treatment goals, usually employment. Twenty-eight percent of the sample had been arrested within the study period. In the youth sample, 18 percent remained in the program for 1 year, and only 2 percent of addicts, success will not be immediate. NTA has extended its original city-wide treatment deadline of 3 years to 5 years and blames its failures on inadequate planning and management. Since 1971, efforts have been made to broaden and restructure existing services, with expansion of referral services and recruitment of a high percentage of staff as priorities.

Public endorsement is essential if NTA is to reach the entire population. Because of the cooperation and interaction of law enforcement and other agencies with NTA, drug treatment programs have not been a failure and criminal prosecution of addicts reduced.

**Conclusions**

**Drug treatment programs have been springing up around the Nation to deal with the growing problem of drug abuse.**
police contacts with the mentally ill. In addition it will offer to police officers a receiving facility for unwanted contacts without complicated and lengthy admissions procedures.

NIMH has heavily funded local public facilities and encouraged the development of comprehensive programs to serve the poor. Public awareness and support depend on local agencies. Hospitals that receive emergency cases brought by police officers must have a policy to handle the readmit tape in admissions. Public health and law enforcement officials must press to erase legal barriers to fast service for the needy. The public must learn that programs for the mentally ill exist, eliminating the need for police intervention.

Whatever arrangements are made to coordinate police and social service efforts, provisions must insure a clear and simple procedure for police to follow without the fear of liability. Vague regulations and unnecessary restrictions must be eliminated for the success of a diversion program.

STRATEGIES FOR CHANGE

Every day correctional agencies, legislators, the judiciary, and law enforcement have the option to modify procedures in the interest of doing a better job. Frequently, the implementation of new procedures requires no additional funding since they represent changes in policy, procedure, or law, which often have more to do with changing behavior and attitudes toward it than individual treatment per se.

Political-Legal Strategies

Probably one of the most potent strategies available for proponents of diversion programs is the political-legal approach. If in fact there are individuals within the justice system who need not be there, then one of the most obvious solutions is to change the law regarding the behavior that brings these individuals into the justice system. The State of Connecticut offers a specific example with its Paraprofessional Ordinance that permits law enforcement agents to deliver an intoxicated person (alcohol or drugs) to a treatment facility rather than a custodial facility. Unfortunately, however, the legislative mandate was not supported with resources for treatment centers or massive educational programs or administrative direction to insure that the law is being used properly. An excellent theoretical study for diversion was subverted since the idea could not be translated into a "real" program. The concept and practice are many of the new programs of law enforcement consciously violate traditional practice. An administrative decision is made to arrest an individual, and the case is subsequently resolved.

Decriminalization also could be applied to class crimes such as vagrancy and disorderly conduct. Definitions of these offenses are lacking in clarity, and the laws are applied in a capricious manner for purposes having little to do with the protection of society. The same thing is true of many juvenile offenses listed under ambiguous categories such as "unlawfully," "runaway," or "curfew violation." Indeed, it seems probable that indiscernible definitions of these kinds could be handled better without official court intervention by counseling and social and mental health agencies. The stigma of an official court hearing should probably be reserved for violations that are defined with regard to age, that is, for acts that would be crimes if committed by adults. It is unlikely that the rights of juveniles assured by decisions and regulations can be meaningful if the definitions of offense categories are unconstitutional and vague.

Legislative Authorization of Diversion Programs

Another important way that legislatures can extend and extend diversion is by authorization or legislation. Authorization of diversion programs introduces safeguards unlikely in informal diversion techniques. By increasing the visibility of diversion and specifying broad criteria of eligibility and procedure, protection against discriminatory or random application of discretion is introduced. In addition, formal programs may be more amenable to research and evaluation. Finally, legislatures can not only authorize diversion programs but also provide funding for staff and facilities to operate them.

A good example is a bill introduced in the 92d Congress to provide opportunities for diversion of Federal defendants. The legislation would have authorized automatic diversion of Federal first offenders who would have been found not guilty by reason of insanity. The divestment of Federal district courts. Although the bill did not come to a floor vote, it is thought that similar legislation will be introduced in 1973.

Administrative-Policy Strategies

Every organization and agency engages in activity that is governed by administrative practice and policy. Law is not the limiting constraint; tradition and practice are. Many of the new programs of law enforcement consciously violate traditional practice. An administrative decision is made to arrest an individual, and the case is subsequently resolved.

Procedures are changed, not law. Take for instance the chief of police in a large metropolitan area who has decided to use a "no arrest" policy. He has instructed his field force not to arrest persons selling flowers at the public freeway entrances, a misdemeanor in the State. By administrative order a decision is made "no arrest." Take for example another police chief who established a policy that juvenile behavior that would constitute misdemeanors for adults would be referred to the local Youth Service Agency. He made no exceptions; on the contrary, he demanded a lengthy written explanation by officers violating his new departmental policy.

A colleague in an adjoining city went even further. He declared the same policy and set a limit on the distance offenders could be transported to custody. Interested in improving the "street time" for his force, this chief set a five-mile limit on the distance officers could travel to deliver prisoners to custody, unless they presented a serious threat to property, other persons, or self. He, too, required written explanations for exceptions.

Probation department intake units frequently employ crisis intervention teams, volunteers, and administrative differentiation of exception procedures. All of these practices reflect administrative decision, policy, and program. They are new administrative ways of taking care of old justice system practices.

An interesting example of an administrative strategy, funded by the Youth Development and Delinquency Prevention Administration of the Department of Health, Education, and Welfare, is operating in St. Louis, Missouri. The juvenile court, in cooperation with the Research Analysis Corporation, has developed a program patterned after the European program of house arrest. Called the "House Detention" program, children who would otherwise be held in detention are offered help and control at home and school by paraprofessionals, serving some type of dispositional decision before the juvenile court. Whether or not the court acts is determined by the juveniles' behavior while in house detention.

This type of program is based on the theory that paraprofessionals and judges are often qualified to provide counseling and direction for cases that fall into the "middle range." These individuals are neither delinquents nor psychopathic offenders. They are neither failures in school nor rebels against society. They are neither at risk for further involvement nor are they desirable for treatment. They are "normal" people who have been sent to a "very old practice.

Because of the variety of diversionary methods, it is essential that the community obtain reliable information regarding the effectiveness of such programs. Information is needed regarding the impact on the justice system, the reliability of diversion, and the relative rate of success. This type of information is not available at different stages as compared with cases subjected to varying degrees of criminalization. Such information is not now available, nor will it be until records are kept on diversion as well as on cases processed officially.

When two or more control methods appear to be...
about equally effective, researchers need to decide between them. Research involves experimental design and random assignment of cases to alternative treatment or control methods, and it requires most of all that judgments of authorities be assessed in terms of their empirical consequences, not their intended effects.

In the absence of research and experimentation, the assessment of correctional policies is largely a matter of guesswork. But the evidence that does exist suggests that diversion may warrant consideration as the preferred method of control for a far greater number of offenders. Moreover, it appears that diversion plays a significant role in crime prevention and in maintaining the justice system so that it is not swamped by its own activity.

Diversion provides society with the opportunity to begin the reforming of the justice system, by redistributing resources to achieve justice and correctional goals—to develop truly effective prevention, justice, control, and social restoration programs.

Perhaps the single greatest contribution that diversion can make during the next decade is to make society more conscious and sensitive to the deficiencies of the justice system, and hence to force radical changes within the system so that appropriate offenders are successfully diverted from the system while others are provided with programs within the system that offer social restoration instead of criminal contamination.

OTHER REPORTS OF THE COMMISSION

In considering this chapter the reader is referred to other reports of the Commission which deal with diversion under varying definitions. In particular the reader should consider the chapter on diversion in the Courts report and the standard on diversion in the Police report. The Community Crime Prevention report discusses diversion in many of its chapters; those on drug abuse and youth service bureaus should be of particular interest to the reader.

Standard 3.1

Use of Diversion

Each local jurisdiction, in cooperation with related State agencies, should develop and implement by 1975 formally organized programs of diversion that can be applied in the criminal justice process from the time an illegal act occurs to adjudication.

1. The planning process and the identification of diversion services to be provided should follow generally and be associated with "total system planning" as outlined in Standard 9.1.

a. With planning data available, the responsible authorities at each step in the criminal justice process where diversion may occur should develop priorities, lines of responsibility, courses of procedure, and other policies to serve as guidelines to its use.

b. Mechanisms for review and evaluation of policies and practices should be established.

c. Criminal justice agencies should seek the cooperation and resources of other community agencies to which persons can be diverted for services relating to their problems and needs.

2. Each diversion program should operate under a set of written guidelines that insure periodic review of policies and decisions. The guidelines should specify:

a. The objectives of the program and the types of cases to which it is to apply.

b. The means to be used to evaluate the outcome of diversion decisions.

c. A requirement that the official making the diversion decision state in writing the basis for his determination denying or approving diversion in the case of each offender.

d. A requirement that the agency operating diversion programs maintain a current and complete listing of various resource dispositions available to diversion decisionmakers.

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

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

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

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

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

e. The offender does not present a substantial danger to others.
f. The offender voluntarily accepts the offered alternative to further justice system processing.

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

Commentary

Alternatives to criminalization should be developed for use from the time an illegal act occurs to adjudication. These procedures should be preferred over traditional punitive measures for those offenders who do not present a serious threat to others.

Division programs should be a part of the same planning process that is performed for the rest of the criminal justice process, and particularly corrections. The methodology is outlined in Standard 9.1, Total System Planning. Planning for diversion should include the procedures to be used and the points at which diversion may occur. As with other correctional programs, systematic review and evaluation of policies and procedures should be provided for. The community should be represented in the planning process, and the community resources that may be used in the program identified and enlisted.

A number of factors justify noncriminal treatment, counseling, or restitution programs. The existing system has failed to achieve reformation in any large number of cases; it is discriminatory in nature; and it is costly in relation to outcomes. Personal values, costs, and humanitarian interests also contribute to the arguments for diversion.

Most of the diversion processes operating today are informal and are not mandated by statute. On the contrary, they are the result of ambiguities in existing legislation as well as the broad administrative discretion of officials administering criminal justice. The discretionary decisions are influenced by a variety of factors, but of most importance is the scarcity of system resources. Diversion often occurs because of the pragmatic and pressing realization that there are not enough resources to handle the potential, if not actual, caseload.

It is impossible to specify all of the factors which might be desirable in determining whether or not diversion is a correct alternative. In general, however, there seem to be guiding principles which help determine the desirability of diversion to formal justice system processing. They relate to existing programs, visibility, stated goals, methods for measuring success, and finally, the willingness of specific communities to participate in the development of rational, community-based alternatives to justice system processing.

If diversion programs are to perform as they are intended, then the decisions of those referring to these programs must be subject to review and evaluation. In a similar vein, decisionmakers cannot make referrals outside their system unless they have necessary information about alternative programs and the authority to make decisions referring cases out of the system. Guidelines outline the information necessary to meet the requirements of both of these conditions.

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

References

Chapter 4

Pretrial Release and Detention

Among the problems plaguing the criminal justice process, few match the irrationality of decision-making, the waste of resources, and the unsystematic efforts at reform that characterize the pretrial period. Yet in the context of a report on corrections, questions may well be raised as to the relevance of a discussion of the pretrial stage of criminal procedure and administration.

The question is a fair one. By tradition, the detention of unconvicted persons has fallen outside the jurisdiction of corrections, in which sentenced misdemeanants and persons awaiting trial are housed. In the process, corrections has been gaining both a critical stake in maintaining, and a major opportunity for reforming, the pretrial criminal process. The profession that traditionally has concentrated its skills on the security, punishment, and correction of convicts has begun to enter a new field.

Corrections also has come to realize the importance of devising alternatives to the confinement of individuals. Much of this report deals with ways to avoid incarceration as a sanction for persons sentenced for criminal offenses. In most instances, the financial, human and social costs of detention far outweigh any benefit the public receives from total confinement. Corrections is now basing its plans on a wide variety of community-based programs offering minimum custody and maximum services, programs which are even more desirable and necessary for persons awaiting trial than for convicted offenders.

Evidence continues to mount that decisions made prior to trial will have a dramatic effect on sentencing and other decisions made subsequent to a conviction. Thus the corrections component has a real stake in the pretrial processes in light of its major responsibility—the correction of persons found guilty of crime. An early study of bail in the District of Columbia offered tentative conclusions. Of 258 defendants convicted, 83 had been admitted to bail before trial and 175 were detained prior to conviction.


### Table 4.1 Sentence, by Jail Status and Charge

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<thead>
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<th>Charge on Which Guilt Determined</th>
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<td>48</td>
</tr>
<tr>
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<td>59</td>
</tr>
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<td>78</td>
</tr>
<tr>
<td>Others</td>
<td>43</td>
<td>56</td>
</tr>
</tbody>
</table>

| Misdemeanors                      |                          |                        |
|                                   | 68 | 32 | 134 | 13 | 87 | 159 |
| Assault                          | 49 | 51 | 65 | 22 | 75 | 43 |
| Dangerous Weapons                | 72 | 28 | 193 | 14 | 86 | 357 |


1 Although all charges enter the court as felonies, the charges are often reduced and defendants plead guilty to misdemeanors.

### Corrections' Interest in Pretrial Detention

No other component of the criminal justice system is as logical a choice as corrections for dealing with persons who are detained awaiting trial. Law enforcement agencies are ill-equipped to do so. Their training stresses apprehension of those suspected of crime. It is difficult for police to respect the presumption of innocence when, by arrest, they have already made the decision of probable guilt. The way in which police administer local jails gives little evidence that they are either willing or able to operate pretrial release and detention programs effectively.

The courts should not be burdened with additional administrative responsibilities. While they have supervisory functions over the entire system, they should be primarily a reviewing agency for executive branch decisions.

This leaves the alternative of utilizing corrections or creating a new agency to administer pretrial programs. Corrections has much to offer if it is given the responsibility for the pretrial process is made clear.

The experience of correctional administrators as middlemen in dealing with imprisoned persons on one hand and with the legal system on the other, could become a powerful lever for pretrial change. Corrections daily witnesses inappropriate detention—the jailing together, through police and judicial decisions, of persons who are substantial threats to community safety and many who pose minimal risk or none at all. Corrections knows the tense and damaging atmosphere brought by the committing in a single security institution of accused and convicted persons, of petty offenders and hardened recidivists, and of the myriad pathologies that surface inside a local jail. It has become common knowledge that these institutions, which account for by far the most incarceration in the United States, are also the worst in physical facilities and programs.

In the past few years, corrections in some areas has moved toward taking over or consolidating the local detention facilities in which sentenced misdemeanants and persons awaiting trial are housed. In the process, corrections has been gaining both a critical stake in maintaining, and a major opportunity for reforming, the pretrial criminal process. The profession that traditionally has concentrated its skills on the security, punishment, and correction of convicts has begun to enter a new field.

Corrections also has come to realize the importance of devising alternatives to the confinement of individuals. Much of this report deals with ways to avoid incarceration as a sanction for persons sentenced for criminal offenses. In most instances, the financial, human and social costs of detention far outweigh any benefit the public receives from total confinement. Corrections is now basing its plans on a wide variety of community-based programs offering minimum custody and maximum services, programs which are even more desirable and necessary for persons awaiting trial than for convicted offenders.

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<tr>
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<td>48</td>
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<tr>
<td>Narcotics</td>
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| Misdemeanors                      |                          |                        |
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1 Although all charges enter the court as felonies, the charges are often reduced and defendants plead guilty to misdemeanors.
trial. Of the bailed defendants, 25 percent were released on probation after conviction while only 6 percent of those detained were released on probation. A 1963 study of New York practices indicated that detention before trial had an effect both on sentence and on conviction rates. Table 4.1 indicates the findings of the effect of pretrial detention on sentence for specific crimes. Table 4.2 indicates the New York figures regarding dispositions. It is true, however, that factors which may indicate that the person should be released awaiting trial are also relevant to sentence. It could be argued, therefore, that it is not surprising that persons released on bail fare better. This would mitigate the causal relationship between detention per se and sentence. However, other studies have sought to isolate detention as a factor, and both indicate that even where an individual has characteristics which should mitigate a sentence (i.e., in previous record, family stability, employment status), the fact of pretrial detention has an adverse effect. Table 4.3, from a study of arraignment proceedings in Manhattan's Magistrate's Felony Court between October 16, 1961 and September 1, 1962, indicates such an effect.¹

An additional study conducted by the Legal Aid Society of the City of New York for purposes of a suit challenging the constitutionality of the New York bail system used similar results when other factors were isolated.²

In addition to these tangible effects from pretrial detention it is not unreasonable to assume that the attitude of a person detained is markedly different from that of a person who was at liberty. The man who has met with the invidious conditions typical of jails is likely to have built up considerable animosity toward the criminal justice system and the society that perpetuates it. Correctional services are not easily applied or productive where such an attitude exists.

Three goals for pretrial reform can be isolated.

1. Detention and other restrictions on liberty should be minimized to an extent consistent with the public interest. As noted throughout this report, incarceration as a criminal sanction is widely overused. While confinement is necessary for the small percentage of offenders who are dangerous, it has all too often been considered the standard response to crime. In the pretrial process the detention of persons awaiting trial is far too frequent. In practice it is generally based on no real or imagined public interest requirement but on the financial resources of the accused.

2. The treatment of persons awaiting trial should be consistent with the presumption of innocence. But persons awaiting trial in most jurisdictions are considered to be in the same class as persons already convicted and sentenced. They are housed together in the same degrading and inhuman facilities, they are deprived of the basic amenities of life, and they are treated as though their guilt had already been established. This is self-fulfilling prophecy, as the deprivations make preparation for trial more difficult and enhance the risk of conviction and harsher punishment.

3. The time prior to trial should be a constructive period in the life of the accused rather than one of idleness. Many persons awaiting trial require or could utilize assistance that only the state can provide. They suffer from difficulties relating to alcohol, drugs, or physical or mental problems or defects. Frequently their confinement results from inability to cope with financial, employment, social, or family responsibilities. Yet few persons awaiting trial are accorded access to assistance. If detained, they are housed in local jails that typically have few resources, and there appears to be a feeling that programs for persons not yet convicted are neither authorized, desirable, nor deserving of high priority.

While corrections should have a major role in seeking attainment of these objectives for reform of the pretrial process, cooperation of law enforcement agents is also essential. Police work also have an opportunity through the use of noncustody techniques to divert minor offenders from any form of pretrial detention. The decision to detain or release an individual prior to trial will and should remain with the judiciary. The court's appreciation for and understanding of alternatives to detention will in large measure determine the success of programs for the pretrial process.

The political decision to construct new physical detention facilities for persons awaiting trial or to make elaborate and expensive alterations in existing facilities plays a critical role in reforming the pretrial process. There are substantial and increasing pressures for construction expenditures. Many jails have long outlived their usefulness. Courts are increasingly demanding that facilities be brought up to humane and decent standards. Federal funding is available for assistance in the construction process.

Thus it is a good time for construction of new jails, and yet it is a bad time. Expenditures for new detention facilities may commit a jurisdiction to the use of detention as a punishment as well as to the detaining persons awaiting trial even though alternatives to detention have not been fully explored and implemented. The nature and conditions of pretrial detention are being seriously questioned by courts, and constitutional standards when fully explored and implemented may make new detention facilities obsolete. Thus any jurisdiction that makes major expenditures for pretrial detention facilities does so at some risk.

This chapter focuses on recommendations for comprehensive review and reform of the entire pretrial process. Such reform must consider the problems of the person awaiting trial from many perspectives. It must deal with the decision to detain as well as the decision to build detention facilities. It must propose alternatives to detention as well as those alternatives to those detention facilities that are implemented prior to trial. The chapter does not undertake a detailed history or analysis of the bail system or the jail system in the United States. This has been care-

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**Table 4.2 Case Dispositions, by Jail Status and Charge**

<table>
<thead>
<tr>
<th>Charge</th>
<th>At Liberty Before Trial</th>
<th>Detained Before Trial</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percent Convicted</td>
<td>Percent Not Convicted</td>
</tr>
<tr>
<td>Assault</td>
<td>23</td>
<td>77</td>
</tr>
<tr>
<td>Grand Larceny</td>
<td>43</td>
<td>57</td>
</tr>
<tr>
<td>Robbery</td>
<td>51</td>
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<tr>
<td>Narcotics</td>
<td>52</td>
<td>48</td>
</tr>
<tr>
<td>Other</td>
<td>70</td>
<td>30</td>
</tr>
</tbody>
</table>

Source: "The Manhattan Bail Project," p. 84.

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**Table 4.3 Relationship Between Detention and Unfavorable Disposition When Number of Favorable Characteristics is Held Constant**

<table>
<thead>
<tr>
<th>Number of Favorable Characteristics</th>
<th>None</th>
<th>One</th>
<th>Two</th>
<th>Three</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jail</td>
<td>82%</td>
<td>92%</td>
<td>73%</td>
<td>57%</td>
</tr>
<tr>
<td>Bail</td>
<td>73%</td>
<td>84%</td>
<td>64%</td>
<td>55%</td>
</tr>
<tr>
<td>Disposition</td>
<td>72%</td>
<td>82%</td>
<td>73%</td>
<td>57%</td>
</tr>
</tbody>
</table>

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1. Sentence to prison. 2. Percent of those detained were released on probation.

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fully studied and organized by others. Alternatives to the bail and jail system have been proposed, implemented, evaluated, and found successful enough to justify that jurisdictions that use pretrial detention for wholesaling are practical without extended elaboration.

PROBLEMS IN PRETRIAL DETENTION

Pretrial detention today is a no-man's land in both the administration and the reform of the criminal justice system. It lies at the intersection of conflicting values and concerns—the right to bail, the presumptions of innocence, the safety of the community. The decisionmaking process is splintered among a wide array of individuals and institutions. The management of jails and the treatment of unconvicted prisoners are the responsibility of a sheriff or correctional warden. The composition of the pretrial detainee population, and the terms and timing of their release, flow from the decisions of the police, the judge, the bondsman, the prosecutor, and the defense lawyer. The laws and rules that determine the flexibility or rigidity of the pretrial process are made by legislators, courts, and professional bail bondsmen. The fragmentation of responsibilities contributing to pretrial detention makes the plight of pretrial defendants, who are potentially unconvicted prisoners, coordinated efforts to redress the balance are required.

The current picture of detention before trial is a mass of contradictions. In terms of the number of persons affected per year, pretrial custody accounts for more incarceration in the States than postconviction incarceration.1 In many jurisdictions, the rate of pretrial detention is rising at the same time that postconviction imprisonment is dropping. Despite the crisis, the public budget for law enforcement, "Bail As An Ancient Practice Re-examined," Yale Law Journal, 70 (1961), 966; Caleb Foote, "The Coming Conflict Between Cash In Bail and Pretrial Release," Review of Law and Policy, 113 (1963), 559; and Hermine H. Meyer, "Constitutionality of Pretrial Detention," George Washington Law Review, 26 (1958), 1139.


The 1970 National Jail Census (Washington: Law Enforcement Assistance Administration, 1971), p. 1 shows that half of the offenders convicted in man facturing and sales offenses, or the price of freedom too high. The pretrial process lacks the kind of candid judicial decision typically issued after conviction when sentencing judges make explicit whether a person is to be released or incarcerated. The constitutionality of this money-based alternative to decisionmaking has been cast in serious doubt by the Supreme Court's ruling in Tate v. Short, 401 U.S. 395 (1971), which invalidated postconviction imprisonment based on the inability to pay a fine; and by a district court decision it

Acker v. Purdy, 322 F. Supp. 38 (S.D. Fla. 1970), which wielded the use of master bail bond schedules for pretrial release. As the case law in postconviction imprisonment is producing forecasts of or recommendations for the abandonment of some maximum security institutions for convicted offenders.

There probably exist a high price in citizen disrespect for law. How else can a rational person view a system of justice that detains var narious groups of people awaiting trial on interrogation, punishment is producing forecasts of or recommendations for the abandonment of some maximum security institutions for convicted offenders.

The presumption of innocence prior to trial. The longstanding relevance of the prior criminal record in rules governing the setting of bail. The seriousness of the charge and weight of the evidence against the accused.

The record, from parole systems and other settings, in predicting human misbehavior.

The relative inertia—in expressing a community's concern over pretrial crime—between a system expressing that concern in the setting of monetary bail, and one acknowledging it openly by ordering detention.

Several factual and policy questions regarding the selection of subjects for preventive detention compound the difficulty of forecasting its appropriate legal role. Should detention be limited to alleged crimes of violence or be extended to persons charged with crimes against property? Will suspected drug addicts—who are said to compose a major portion of the detainee population in many jails, and whose detention is both pretrial and posttrial—ever be freed to in large sums in exchange for detention capacity without informed projections on questions like these.

The Commission has not taken a direct position on whether preventive detention (i.e., the detaining of persons found to be "dangerous") should be implemented. This chapter is based primarily on the traditional concept of pretrial detention as a temporary, not permanent, institution.

In this system the accused risks his own resources by paying 25 percent of the bail in order to escape charges have been adjudicated. Others oppose if as an ineffective protection against pretrial crime, since successful criminals can simply buy their freedom from bondsmen. The arguments for and against the practice are collected in two valuable compilations by Senator Ervin's Subcom inittee on Constitutional Rights of the Senate Committee on the Judiciary.

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Excessive Reliance on Money Bail

By perpetuating excessive reliance on money bail and professional bail bondsmen, the pretrial system continues to foster an abundance of poor defendants, who are economically disadvantaged. Others oppose if as an ineffective protection against pretrial crime, since successful criminals can simply buy their freedom from bondsmen. The arguments for and against the practice are collected in two valuable compilations by Senator Ervin's Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary.

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On detention. In most jurisdictions, implementation of preventive detention may diminish the need for preventive detention. The major change in the pretrial process. Defects in the present system may be eliminated. Development of voluntary treatment programs, supervised release, and partial confinement alternatives may diminish the need for preventive detention. The experience in the District of Columbia, which now has preventive detention, is inconclusive. Its legality remains in question.

Delayed Trials

The overcrowding of jails in urban settings is closely linked to the notorious inability of court systems to process criminal cases promptly. The elements of delay are numerous, among them incessant continuance, inefficient use of judicial personnel, long delays in trial calendars, and lengthy interludes between the finding of guilt and the imposition of sentence. Through increased resource commitments and modern management techniques, a substantial reduction in trial delay, in the average period of detention, and hence in the size of a detainee population, has been predicted. In addition, efficient court processing can reduce the risk that released persons will get in trouble in the interlude before trial. A number of studies have concluded that crime on bail, or the rearrest of pretrial releasees, is reduced substantially when trial follows shortly after arrest. As delays increase beyond 60 days, the rearrest rate rises sharply.

The pretrial period is a critical segment in the entire range of detention, and hence in the size of a detainee population. A number of studies have predicted a substantial reduction in trial delay, in the average period of detention, and hence in the size of a detainee population. After all, the pretrial period is a critical time in the life of a detainee. During this period, many persons are detained, and hence in the size of a detainee population, has been predicted.

Abridgment of Detainees' Rights

The rights of prisoners convicted of crime are the subject of a substantial range of standards promulgated by the United States. Federal and State constitutional trials can reduce the risk that released persons will get in trouble in the interlude before trial. A number of studies have concluded that crime on bail, or the rearrest of pretrial releasees, is reduced substantially when trial follows shortly after arrest. As delays increase beyond 60 days, the rearrest rate rises sharply.

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By the same twist of irony that finds pretrial releases alternatives struggling to catch up to the wide array of programs called corrections in the community, pretrial detainees have been fighting an uphill battle to catch up with the rest of the community.

rules, will be challenged in court and declared unconstitutional.

Today, the status of the person presumed innocent is generally worse than that of a sentenced person confined to a prison facility and far worse than that of a person confined to a jail held in jail after conviction for a serious offense. Thus a judicial decision requiring only that persons awaiting trial and pretrial detainees be given pretrial detention may result in a decision that of convicted felons would cause major changes in the construction and operation of jails. Even if such equality were achieved, it probably would not suffice much longer: "Pretrial detainees do not stand on the same footing as convicted inmates," according to Brennan v. Madigan, 424 U.S. 248 (1976).

This pretrial decision, by District Judge Alfonso J. Zirpoli, builds on recent Federal decisions in Ohio, Arkansas, and Rhode Island and suggests that many costly and sweeping changes in pretrial institutions will henceforth be required by the Constitution. Some of the principles embodied in the decision are as follows:

1. Excessions on the rights of a pretrial detainee, other than those arising from the need for custody (instead of bail) to insure his presence at trial, are unconstitutional. Except for the right to counsel and as he pleases, a pretrial detainee retains all of the rights of the bail, and his rights may not be ignored because it is expedient or economical to do so. In the view of the court, this decision may be unconstitutional. The reason for this is that its security hardware and architectural design, as well as restrictions embodied solely by its

2. At the conclusion of the Brennan case, Judge Zirpoli noted that with the growth of professionalism, the Board of Supervisors of Alameda County, California, 90 days from May 12, 1972, within which to submit "pretrial rules" for the treatment of pretrial detainees that meet constitutional standards. The decision noted that the decision thus remains to be determined in the months and years ahead. But it was clear that the decision thus remains to be determined in the months and years ahead. But it was clear that the decision thus remains to be determined in the months and years ahead.

3. The high cost of inner-city land, for example, is likely to drive up the cost of pretrial detention.

4. Another area in which many pretrial detainees in cities are worse off than convicted offenders is the indoor confinement. The high cost of indoor confinement, however, as the economies of skyscraper jails, and interests of security are among the reasons why many pretrial jails offer little or no opportunity for outdoor recreation. Several pretrial detention centers contain no information base available for distinguishing one detainee from another. The result is that young persons are detained with alcoholics, petty offenders with drug addicts, innocent persons with hardened criminals.

In addition, speedier trials can reduce the risk of pretrial detention. Even without new legislation, a number of the innovations discussed in this chapter can contribute notably toward expediting criminal trials and court management procedures. Because each administrator and jurist in the legislative arena, the speedy trial goal remains elusive.

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Unnecessary Use of Criminal Sanctions

Many persons detained both before and after conviction are those for whom routine application of the criminal process is wasteful. At least two classes of detainees meet this description.

First, pretrial jails in all parts of the country, hold, for a few days or for many months, heroin addicts, marijuana users, prostitutes, mentally ill persons, homeless men, runaway or neglected children, and others whose principal victims are themselves. In a large proportion of such persons, the pretrial detention is destined for a long cycle of release, arrest, and return, at a substantial cumulative cost to the public and with doubtless deleterious effects on his or her community. The more appropriate solution is hospitalization, detoxification, legalization, or alternative methods of social control, it is claimed, that secure昱and endless processing of such persons by criminal justice agencies neither curtails crime nor promotes justice. Instead, the problems of all involved—the jailer, the court, the accused, the lawyers, and the police—are compounded.

A second category of inappropriate detention, to some extent overlapping the first, consists of problems of poverty and unemployment. Persons with short prior criminal records (or none at all) who are accused of property crimes and clearly lack economic opportunity, often are susceptible if convicted, to probation, work release, a halfway house, or other community-based programs that address the need for job training, job finding, or stable employment. Yet these helpful dispositions all too frequently are preceded by pretrial jailing. The promise or delivery of assistance is not a salutary underpinning of the courtbound system has run its course and the person pleads guilty or is convicted.

Such a system is increasingly recognized as a senseless dilapidation of scarce criminal justice resources. Crime control suffers when the time of prosecutors and judges is consumed and many months are required for pretrial proceedings, including large numbers of persons destined to be removed entirely from the criminal process or with whose cases there is no disposition. The need for prosecution, trial, and formal sentence. On repeal of unnecessary criminal laws and development of procedures that permit the efficient construction and enforcement requirements can be routed toward effective crime reduction.

Haste to Build New Jails

Before embarking on costly changes, a rational system of justice should ask many preliminary questions. The large proportion of the original jail staff consists of persons hired primarily based on the premises that detention is a deterrent and that it is worth the cost. These studies of prisons and local jails demonstrate that in concept or practice there have been successes worth duplicating. At the same time, there is no indication that incarceration can be completely abolished. A search of intermediate solutions, combining the best of new programs and avoiding errors of the past, would seem a reasonable expectation from leaders of the jail management profession.

Important steps in the direction of linking new construction for detention with new programs for release are contained in the Omnibus Crime Control and Correction Act of 1968 and in the guidelines for its administration issued by the Bureau of Justice Assistance Administration and the National Clearinghouse for Correctional Programming and Architecture. Each urges that a plan for pretrial construction simultaneously increases the use of other community alternatives. The difficulty with these standards is that they are addressed basically to administrators (other than law enforcement personnel) who lack jurisdiction over, or political power to influence, other indispensable measures for a comprehensive criminal justice process. This subject is more fully discussed in Chapter 7, Local Adult Institutions.

Some Examples of Reform

The thrust of this chapter is for comprehensive reform of the pretrial process. And it is just such reform which is notable by its absence. Yet comprehensive reform cannot take place overnight. Many jurisdictions have begun programs which have alleviated the hardships of an exclusive money bail system for pretrial release. Such programs are specifically designed for the purposes of such person's financial resources are overused and that a person's financial resources ought not determine his status awaiting trial. Programs in this area, but in larger metropolitan areas, are of three basic types. In a few jurisdictions, police are encouraged to issue citations in lieu of making arrests, thus diminishing the amount of detention from the moment the accused comes into contact with the criminal justice system. In many more cities and counties, programs which allow selected defendants to be released merely on their own promise to appear for trial have proved successful. In a few locations, bail bondsmen are reimbursed for use of their surety, thus to deposit 10 percent of their bond with the court, most of which is returned when they appear for trial. Table 4.4 indicates the number of ROR (release on own recognizance) programs which were operational or planned in the United States as of October 30, 1970. Also indicated are the number of sentences and citations in lieu of arrest programs operational. Most programs are either city- or county-wide in scope. No attempt is made here to catalog or describe all of the various programs currently in operation. However, a few representative programs are described to give some indication of how such programs operate and the hope they provide for future more widespread reform.

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Table 4.4 Operational and Proposed ROR Programs and Summons-Citations in Lieu of Arrest.

<table>
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<tr>
<th>State</th>
<th>Number of Programs Planned</th>
<th>Number of Programs Operational</th>
<th>Number of Summons-Citations Planned</th>
<th>Number of Summons-Citations Operational</th>
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Source: Data from the Office of Economic Opportunity Pre-Trial Release Programs.

*Statewide program.*

York and the Sunnyvale (California) Citation Program operate in this manner. In the Sunnyvale program, almost 50 percent of those arrested are released by the station officer, and the "jump" rate (failure to appear) is approximately 7 percent. In the Manhattan project, 36,917 summonses were issued in the first 2 years in which the project was in operation citywide. Of these only 5.3 percent failed to appear on the return date of the summonses, and when those who failed to appear because of hospitalization or confinement by another agency are subtracted, the failure rate falls to 4.6 percent. It is estimated that in these 2 years the police department saved over 46,000 8-hour police tours valued in excess of $2.5 million.

**Release on own Recognizance (ROR) Programs**

1. Manhattan Bail Project. The Vera Institute ROR program in New York City pioneered this form of pretrial release. A 1964 report on the Vera program provided the following figures:

The results of the Vera Foundation's operation show that from October 16, 1964, through April 8, 1964, out of 13,000 total defendants, 3,000 fell into the excluded offense category, 10,000 were interviewed, 6,000 were recommended and 2,195 were paroled. Only 15 of these failed to show up in court, a default rate of less than 7/10 of 1 percent. Over the years, Vera's recommendation policy has become increasingly liberal. In the beginning, it urged release for only 28 percent of defendants interviewed; that figure has gradually increased to 65 percent. At the same time, the rate of judicial acceptance of recommendations has risen from 55 percent to 70 percent. Significantly, the District Attorney's office, which originally concurred in only about half of Vera's recommendations, today agrees with almost 80 percent. Since October 1963, an average of 63 defendants per week have been granted parole on Vera's recommendations.

2. Philadelphia Commonwealth and Municipal Court ROR Program. The Philadelphia program, modeled on the Manhattan Bail Project, provides for release on a promise to appear at trial of selected arrested persons whose ties to the community suggest that it is reasonable to expect them to appear when directed. The program is a device to eliminate the necessity for money bail and applies to all felonies and misdemeanors.

Arrested persons are interviewed at the police station by the staff of a pretrial services program, who verify and obtain information regarding the accused. The information sought includes residence, family ties, employment, and prior record. The interviewer submits a copy of his report to the court, the district attorney, the public defender, and the ROR program agency. A point system which places values on ties to the community is applied to each accused, and from that system a recommendation is made to the court as to whether the accused qualifies for ROR. The judge at arraignment can then either accept or reject the recommendation.

The ROR investigators verify more thoroughly the information concerning defendants who are detained after arraignment. Further interviews may also be conducted. Where warranted, the interviewer may recommend that a petition be filed on behalf of the defendant requesting the court either grant ROR or reduce bail. The pretrial services staff also follows up on persons released on ROR. Each released defendant is obligated to telephone to the ROR main office. ROR staff also contact defendants to remind them of their court date.

In the first year of the program ROR staff interviewed 36,252 arrested persons and initially recommended ROR for 17,175, or 47.4 percent. The court granted ROR to 13,041 of those recommended, or 46.8 percent, for such release and not otherwise discharged from custody.

During the same year, ROR defendants had a total of 24,790 court appearances scheduled, and only 7.4 percent failed to appear, of which 5.6 percent were willful failures.

3. San Francisco Bail Project. The ROR program in San Francisco is modeled after the Vera Institute program and the results have been similar. From August 1, 1964, to July 31, 1968, 6,377 persons were released on their promises to appear. Ninety percent returned for trial and only 1 percent evaded justice altogether.

**Release on 10-Percent Cash Bonds**

1. Illinois 10-Percent Cash Bond. The Illinois Legislature in 1963 adopted the first 10 percent cash bond program. Under normal bail procedures, where a bail bond was obtained from a private bail bondsman, the accused paid 10 percent to the bondsman, who then became financially responsible to the State for the accused's appearance at trial. If the accused failed to appear, the bail bonded.
the accused appeared, he did not recoup the
cated that bondsmen wrote 51,161 bonds for
they were entitled to receive fees of
1.667,458.
the cost of operating the program.
indicates that
6.3 percent were forfeited, while only 5.4
phia operates a 10-percent bond program
30
10
110
vesting the money generated, the program

10
The
10
51,161 bonds for
10
were entitled to receive fees of
1.667,458.
the cost of operating the program. This gives
the financial incentive to the accused rather than the
professional bondman.
In the year 1964 the Report of the Clerk of
the Circuit Court of Cook County, Criminal Division
indicates that 600 surety bonds were written while
685 10-percent bonds were accepted. Of the surety
bonds, 6.3 percent were forfeited, while only 5.4
percent of the 10-percent bonds were forfeited.2

2. Philadelphia 10-Percent Program. Philadelphia
operates a 10-percent bond program similar
in nature to that pioneered by Illinois. The program
began on February 23, 1972. The following figures
document its record from inception to May 31,
1972.2
Number of defendants held for bail
4,346
Number making bail and released
3,552
Number making bail by posting
10
Rate of those on bail who posted
10 percent
3,111
Rate of 10 percent court appearances
87.6%
Number failing to appear
3,028
Percent failing to appear
6.6%
Percent intentionally failing to appear
5.5%
Fugitive rate (those failing to appear
and not apprehended)
2.2%
The Philadelphia experience also indicates that
by retaining a 1-percent fee in all cases and all for-
feited 10-percent deposits, by collecting 10 percent
of the full bonds which are forfeited, and by in-
volving the money generated, the program produces
more than enough income to finance itself. Further-
more, it is estimated that defendants and their fam-
ilies will save at least $1,500,000 as a result of the
program each year.
The success of these and other bail reform pro-
grams throughout the country provide sufficient evi-
dence to support more widespread implementation
of such programs. The fact that such programs have
not only yielded favorable results from a cost per-
spective, but have also produced a far less onerous
situation in which each court and each
spends public funds
and at its
and at its
from

1. The extent of pretrial detention, including the
number of detainees, the number of man-days of
detention, and the range of detention by time periods.
2. The cost of pretrial release programs and
detention.
3. The disposition of persons awaiting trial, in-
cluding the number released on bail, released on non-
financial conditions, and detained.
4. The disposition of such persons after trial in-
cluding, for each form of pretrial release or deten-
tion, the number of persons who were convicted, who
were sentenced to the various available incarceration
alternatives, and whose cases were dismissed.
5. Effectiveness of pretrial conditions, including
the number of releases which (a) failed to appear,
(b) violated conditions of their release, (c) were
arrested during the period of their release, or (d) were
released during the period of their release. Each
condition of local detention facilities, including
the extent to which they meet the standards
recommended herein.
7. Conditions of treatment of and rules govern-
ing persons awaiting trial, including the extent to
which such treatment and rules meet the recom-
mandations in Standards 4.8 and 4.9.
8. The need for and availability of resources
that could be effectively utilized for persons with-
trailing trial, including the number of arrested persons
suffering from problems related to alcohol, narcotic
addiction, or physical or mental disease or defects,
and the extent to which community treatment pro-
grams are available.
9. The length of time required for bringing a
criminal case to trial and where such delay is found
to be excessive, the factors causing such delay.
The comprehensive plan for the pretrial process
should include the following:
1. Assessment of the status of programs and
facilities relating to pretrial release, (b) violated
violated conditions of their release, (c) were
arrested during the period of their release, or (d) were
released during the period of their release. Each
condition of local detention facilities, including
the extent to which they meet the standards
recommended herein.
7. Conditions of treatment of and rules govern-
ing persons awaiting trial, including the extent to
which such treatment and rules meet the recom-
mandations in Standards 4.8 and 4.9.
8. The need for and availability of resources
that could be effectively utilized for persons with-
trailing trial, including the number of arrested persons
suffering from problems related to alcohol, narcotic
addiction, or physical or mental disease or defects,
and the extent to which community treatment pro-
games are available.
9. The length of time required for bringing a
criminal case to trial and where such delay is found
to be excessive, the factors causing such delay.

STANDARDS FOR REFORM
Within the past decade, defects in pretrial justice
have been attacked from many sides, by many pro-
fessions, in many places. Through legislation, legis-
lation, and administrative action, strands of change
have begun to emerge. The categories include bail
reform, preventive detention statutes, pretrial di-
version programs, speedy trial rules, expansion of
detainee rights, and model codes. Yet no jurisdic-
tion in the United States is confronting these issues
in a comprehensive fashion. There are no models
of systematic planning for reform in the pretrial
handling of accused persons in general, or of pre-
trial detainees in particular. Instead, piecemeal
changes of uneven quality are being urged by spe-
"Charles Bowman, "The Illinois Ten Percent Bail Deposit
"Information provided by Pretrial Services Division, Phila-
delphia Common Pleas and Municipal Court.

Standard 4.1 Comprehensive Pretrial Process Planning

Each criminal justice jurisdiction immediately
should begin to develop a comprehensive plan for
improving the pretrial process. In the planning
process, the following information should be col-
clected:
1. The extent of pretrial detention, including the
number of detainees, the number of man-days of
detention, and the range of detention by time periods.
2. The cost of pretrial release programs and
detention.
3. The disposition of persons awaiting trial, in-
cluding the number released on bail, released on non-
financial conditions, and detained.
4. The disposition of such persons after trial in-
cluding, for each form of pretrial release or deten-
tion, the number of persons who were convicted, who
were sentenced to the various available incarceration
alternatives, and whose cases were dismissed.
5. Effectiveness of pretrial conditions, including
the number of releases which (a) failed to appear,
(b) violated conditions of their release, (c) were
arrested during the period of their release, or (d) were
released during the period of their release. Each
condition of local detention facilities, including
the extent to which they meet the standards
recommended herein.
7. Conditions of treatment of and rules govern-
cluding a means of utilizing additional resources on a temporary basis.

The comprehensive plan for the pretrial process should be conducted by a group representing all major components of the criminal justice system that operate in the pretrial area. Included should be representatives of the police, sheriffs, prosecution, public defender, private defense bar, judiciary, court management, probation, corrections, and the community.

Commentary

The person awaiting trial is subjected to the criminal justice system, and yet he is not legally a part of it. His innocence is presumed, but his freedom is restricted. In most jurisdictions, a police agency has control of his body; a judicial officer then a private bail bondsmans have control of his liberty; and the prosecuting and defense attorneys have control over how long this status will continue. In no other area of the criminal justice system do so many separate agencies have such diverse responsibility with so little beneficial effect. The necessity for comprehensive, broadly participatory planning is nowhere so critical as it is in the pretrial stage of a criminal prosecution.

For too long the pretrial process has consisted of either detention or release on money bail. An effective system of handling persons awaiting trial should include various forms of nonfinancial release programs, provision for services and treatment programs, and rules requiring the expediting of criminal trials. Many jurisdictions are contemplating large expenditures for physical detention facilities. Implementation of alternatives to both detention and money bail should make much of this expenditure unnecessary.

With detention the only existing alternative to release on money bail in many jurisdictions, there are mounting pressures for large expenditures to improve old detention facilities or construct new ones. The proliferation of responsibility in the pretrial process increases the likelihood that, without comprehensive planning, programs and facilities will be developed that will shortly become obsolete. The sheriff or other law enforcement agent responsible for detention knows only that his jail is overcrowded and that courts are increasingly finding conditions in local detention facilities short of constitutional requirements. His answer is to call for a new and expanded jail. His agency has little experience with forms of community supervision or other nonfinancial release alternatives. But use of such alternatives may make new physical facilities unnecessary.

Likewise, constitutional issues are surfacing that may dramatically alter the requirements for detention facilities for persons awaiting trial. Courts have held in some jurisdictions that persons awaiting trial cannot be confined with persons already convicted. The nature of confinement also may be subject to constitutional attack. Facilities for housing persons awaiting trial may need to be far less secure and far more humane.

Reform in the judicial process to speed trials may alleviate some of the overcrowded conditions in detention facilities. New attitudes toward detention are a means of assuring presence at trial likewise may decrease the detainee population.

Thus the pretrial process is a mix of interrelated factors that cannot be considered or dealt with separately. Comprehensive planning, with proper assessment of present techniques and coordinated implementation of new means of handling persons awaiting trial, is required if public interest is to be served.

The planning process should be undertaken by an agency representing all elements of the criminal justice system that presently deal with persons awaiting trial. Thus law enforcement, prosecution, courts, and corrections should be involved as well as defense attorneys and the community at large. Participation by all agencies involved will facilitate implementation of the plan in a coordinated manner.

In many jurisdictions such planning agencies already have been established pursuant to the Omnibus Crime Control and Safe Streets Act of 1968 which requires comprehensive planning at the State level for the entire criminal justice system. A broadly representative planning agency at the State level is required before States can receive Federal assistance. In many States, planning agencies will broad representation also have been established at regional or metropolitan level to assist the State agency in comprehensive planning. When local agencies exist, they would provide a natural focus for improving the pretrial process. Since the prescribed factors can vary widely within a given State (in terms of numbers of pretrial detention resources available, etc.), such planning should be accomplished at the local level wherever possible.

Related Standards

The following standards may be applicable in implementing Standard 4.1.

References

2. Moyer, Frederic D., et al. Guidelines for the Planning and Design of Regional and Commu-
Standard 4.2

Construction Policy for Pretrial Detention Facilities

Each criminal justice jurisdiction, State or local as appropriate, should immediately adopt a policy that no new physical facility for detaining persons awaiting trial should be constructed and no funds should be appropriated or made available for such construction until:

1. A comprehensive plan is developed in accordance with Standard 4.1.
2. Alternative means of handling persons awaiting trial as recommended in Standards 4.3 and 4.4 are implemented, adequately funded, and properly evaluated.
3. The constitutional requirements for a pretrial detention facility are fully examined and planned for.
4. The possibilities of regionalization of pretrial detention facilities are pursued.

Commentary

For reasons difficult to explain fully, construction of a facility to incarcerate people seems easier to accomplish than the implementation of programs to allow them to retain their liberty. While the maintenance of jails is generally more expensive and the initial costs high, too many jurisdictions continue to build buildings instead of helping people. Throughout this report it is recognized that confinement is not a successful or promising method of handling persons drawn into the criminal justice system; it is an admission of failure. The confinement of individuals, whether awaiting trial or after sentencing, should be imposed only where no other alternative is appropriate.

Nothing commits a jurisdiction to a course of action for a longer period of time than capital improvements. The magnitude of the initial investment requires that the facility be used. Jails are not multipurpose facilities. Once constructed, they insist that confinement therein will be a major response to accusation of or conviction for crime. In most jurisdictions, facilities now used for detaining persons awaiting trial are far below accepted standards of health and decency. This standard, in urging that construction be delayed pending intelligent planning, should not be construed as a recommendation that substandard facilities be perpetuated indefinitely. The standard is intended only to discourage the type of construction and improvements that may commit a jurisdiction for the indefinite future to perpetuating past detention practices. Construction represents a long-range commitment that should not be made until other alternatives are explored and pursued. The standard contemplates that new construction should be accomplished only after alternatives for handling persons awaiting trial are properly planned and implemented.

References


Related Standards

The following standards may be applicable in implementing Standard 4.2.

3.1 Use of Diversion.
4.1 Comprehensive Pretrial Process Planning.
4.3 Alternatives to Arrest.
4.4 Alternatives to Pretrial Detention.
4.8 Rights of Pretrial Detainees.
4.9 Programs for Pretrial Detainees.
9.1 Total System Planning.
11.1 Planning New Correctional Institutions.
11.2 Modification of Existing Institutions.
Standard 4.3

Alternatives to Arrest

Each criminal justice jurisdiction, State or local as appropriate, should immediately develop a policy, and seek enabling legislation where necessary, to encourage the use of citations in lieu of arrest and detention. This policy should provide:

1. Enumeration of minor offenses for which a police officer should be required to issue a citation in lieu of making an arrest or detaining the accused unless:
   a. The accused fails to identify himself or supply required information;
   b. The accused refuses to sign the citation;
   c. The officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to himself or others;
   d. Arrest and detention are necessary to encourage the issuance of summons in lieu of arrest warrants where an accused is not in police custody.
2. Discretionary authority for police officers to issue a citation in lieu of arrest in all cases where the officer has reason to believe that the accused will respond to the citation and does not represent a clear threat to himself or others.
3. A requirement that a police officer making an arrest rather than issuing a citation specify the reason for doing so in writing. Superior officers should be authorized to reevaluate a decision to arrest and to issue a citation at the police station at lieu of detention.
4. Criminal penalties for willful failure to respond to a citation.
5. Authority to make lawful search incident to an arrest where a citation is issued in lieu of arrest.
6. Similar steps should be taken to establish policy encouraging the issuance of summons in lieu of arrest warrants where an accused is not in police custody. This policy should provide:
   a. An enumeration of minor offenses for which a judicial officer should be required to issue a summons in lieu of an arrest warrant unless he finds:
      i. The accused has previously willfully refused to respond to a citation or has violated the conditions of a pretrial release program.
      ii. It appears the accused has previously failed to respond to a citation or has violated the conditions of any pretrial release program.

The standard recommends that 'legislation be enacted making the citation the primary form of initiating the criminal justice process. The increasing use of the automobile made the traditional arrest procedures impractical for traffic offenses. All agencies developed a procedure whereby the accused could be issued a citation, which in effect was a promise to appear at a certain time for formal proceedings. Unfortunately, use of the citation in lieu of physical arrest seldom was made applicable to other areas of misconduct and only gradually began to be utilized in juvenile cases and some cases of regulatory violations such as infractions of housing codes.

With the exploding populations and resulting problems in pretrial detention facilities, the possibility of utilizing citations for more serious cases was given greater consideration. In early 1964, the New York City Police Department in conjunction with the Vera Institute of Justice began the Manhattan Summons Project, an experiment to determine the feasibility of releasing persons charged with minor offenses. The ties of the accused to the community were the criterion used to determine whether a given defendant could be relied on to appear in court voluntarily. The success of the program influenced activities in other States. Four law enforcement agencies in California experimented with pretrial release on the basis of individual evaluation of the defendant's reliability, and 96 to 98 percent of those released voluntarily appeared for trial. A number of factors have mitigated against use of the citation in lieu of arrest. Primarily, except for provisions expressly limited to traffic violations, police have not been given specific legislative authority to adopt citation procedures. The lack of general authority to exercise this form of discretion seems to stem from a feeling that it is improper to delegate such powers to the patrol officer. And even where police have been granted authority to issue citations, experience has indicated they are reluctant to use it.

The standard recommends that legislation be enacted to indicate clearly that the public policy is to encourage use of the citation in lieu of arrest. The legislation should be enacted making the citation the primary form of initiating the criminal justice process at least for minor offenses, with physical arrest and detention authorized where specific facts indicate substantial risk of nonappearance.

Numerous factors may suggest in an individual case that the issuance of a citation is not appropriate. Where the accused is uncooperative and refuses to provide information that would justify issuance of a citation, the officer is unable to determine
In some cases, the physical detention of an accused is necessary for purposes of further investigation, such as appearance at an identification lineup, or additional questioning. Where such procedures are lawful and authorized, they should be used to justify formal issuance of a summons, rather than immediately on apprehension, the citation should state that the accused must appear at a designated time and place for a hearing, trial, or preliminary examination. Thus, where the accused cannot show any line-up, or additional questioning, where such procedures are not authorized to issue a summons, other than immediately on apprehension, the citation should state that the accused must appear at a designated time and place for a hearing, trial, or preliminary examination. warrants cannot be accomplished without the full cooperation of the appropriate law enforcement agencies. Police departments should issue through administrative rules and regulations that their officers understand the need for and use of citations and summonses. Likewise, procedures should be developed and to allow verification of facts presented to officers on the street and in providing facts to judicial officers at the time an arrest warrant is requested. In addition to the nature of the crime and the likelihood of guilt of the accused, such reports also should contain information necessary to determine whether the accused represents a substantial risk of flight.

Many law enforcement officers on the street have instant communication to national inventories of stolen automobiles and other crime information. Agencies that can provide their officers instantaneously with the license number of a car stolen across the country should be able to verify the address of a person living in the same community. To prevent a person from living in the same community. To extend the information necessary to determine the extent of ties the accused has with the community already is uncovered during routine police investigations.

References

Related Standards
The following standard may be applicable in implementing Standard 4.3.

4.4 Alternatives to Pretrial Detention.
Alternatives to Pretrial Detention

Each criminal justice jurisdiction, State or local as appropriate, should immediately seek enabling legislation and develop, authorize, and encourage the use of a variety of detention standards in preventing the liberty of persons awaiting trial. The use of these alternatives should be governed by the following:

1. In each criminal justice jurisdiction, State or local as appropriate, should immediately seek enabling legislation and develop, authorize, and encourage the use of a variety of detention standards in preventing the liberty of persons awaiting trial. The use of these alternatives should be governed by the following:

- Release on recognition without further conditions.
- Release on the execution of an unsecured appearance bond in an amount specified.
- Release into the care of a qualified person or organization reasonably capable of assisting the accused to appear at trial.
- Release to the supervision of a probation officer or some other public official.
- Release with imposition of restrictions on activities, associations, movements, and residence reasonably related to securing the appearance of the accused.
- Release on the basis of financial security to be provided by the accused.

2. Judicial officers in selecting the form of pretrial release should consider the nature and circumstances of the offense charged, the weight of the evidence against the accused, his ties to the community, his record of convictions, if any, to his record of appearance at court proceedings or flight to avoid prosecution.

3. No person should be allowed to act as surety for compensation.

4. With an understanding failure to appear before any court or judicial officer as required should be made a criminal offense.

Commentary

The traditional system of releasing persons awaiting trial is money bail. The evils, hardships, and inefficiencies of money bail have been thoroughly documented elsewhere. In theory, money bail is intended to insure the presence of the accused for trial. In practice, it makes release prior to trial depend not on the risk of nonappearance but on the financial resources of the accused.

The practice of compensated sureties—bail bondsmen—adds to the oppression of the system. The determination of whether a person is detained prior to trial rests with them, not with the courts. To the extent to which the accused is financially committed to appear is determined by the amount of collateral the bail bondsmen require for writing the bond, not how high the bail is set. Society has a rightful interest in insuring that persons accused of crimes are available for trial. The accused on the other hand is presumed innocent and should not be detained unless he represents a substantial risk of not appearing when required. In most instances, money bail is irrelevant in protecting or promoting either interest.

The existence of effective alternatives to money bail has been adequately demonstrated in experimental programs throughout the country. "Pilot" projects to "test" alternatives to money bail are no longer required. Numerous alternatives have been implemented, tested, and found effective. Implementation on a broad scale would greatly improve the criminal process prior to trial and eliminate unnecessary pretrial detention.

After 3 years of operation, the Vera Foundation's Manhattan Project reported that, of 10,000 defendants interviewed to establish their ties with the community, 4,000 were recommended for release merely on their promise to appear when and where required. Of the 4,000 persons, 2,195 were actually released and only 15 did not appear voluntarily at their trial. This is a default rate of 7/10 of 1 percent. As the recommendations for release on personal promise increased, judicial acceptance of the recommendations also increased to 50 percent of defendants charged with misdemeanors and experienced similarly favorable results. Numerous other cities have established release-on-recognition programs.

Congress enacted the Federal Bail Reform Act of 1966, which authorized the utilization of various alternatives to money bail. Similar legislation should be considered by all States.

Legislative authority for alternatives to money bail should be drafted to encourage the use of nonfinancial conditions and discourage the use of detention or money bail. The statute should require that the judicial officer impose the least onerous condition consistent with the risk of nonappearance represented by the individual accused. The statute recommends a list of alternatives in the order they should be considered.

In many instances, the personal promise of the accused to appear should be sufficient. This is particularly true where the accused has substantial ties with the community.

Where the judicial officer desires assurances in addition to a personal promise, an unsecured appearance bond should be required. Execution of such a bond without additional security would not discriminate against indigent defendants. An unsecured bond would not require immediate cash or other property but if violated would result in a civil judgment against the person in the amount of the bond. Such a condition would not require the intervention of a compensated surety.

Release without recognition and unsecured appearance bonds should be the appropriate release conditions in the majority of cases. Particularly for minor crimes where the sanction is slight and the public safety is not jeopardized, there is little reason to impose additional conditions on the accused. Where it is unlikely that detention will be used as a sanction after conviction, it is difficult to justify detention prior to trial. The disruption in a person's life during the period of his presumed innocence should not be greater than that likely to be suffered if convicted.

Where more serious offenses are involved, society may have greater interest in insuring that the person appears for trial. Additional conditions should be authorized where found to be necessary. Placing the accused under the care of a private citizen or organization may assist him in appearing for trial. Experience indicates that, particularly in large metropolitan areas, some persons accused of crime fail to appear owing to misunderstanding or forgetfulness. This may be especially true for persons who are not familiar with the American judicial language. A third person responsible for insuring that the person appears at trial should solve most such problems.

In some cases, more expert supervision may be thought necessary. Thus placing a person awaiting trial under the supervision of a probation officer or other public official should be authorized. Periodic reporting to such an officer would give additional assurance that the accused will appear for trial.

In a few cases, it may be necessary additionally to impose conditions that substantially interfere with the liberty of the accused but do not result in total detention. While a person is presumed innocent, society's interest in assuring his presence at trial may require that restrictions on activities, associations, movements, and residence be imposed. These should be utilized only where they are clearly related to the risk of nonappearance. The imposition may require an affirmative showing of such relationship in the record.
Likewise, partial confinement should be preferred over total detention. Programs comparable to work during his leisure hours. Agam, such restraint on legitimate purposes but be forced to risk his own resources by paying should be personal commitments of the accused and financial conditions are appropriate only where the accused has financial resources and the risk of loss represents a major incentive to appear at trial. These same individuals generally have ties to the community which also would make the risk of flight remote without financial commitments. However, where financial conditions are deemed important, they should be personal commitments of the accused and not of a third-party surety. Thus the accused should be forced to risk his own resources by paying 10 percent of the amount of bail in cash or placing his own property as security for his appearance. The compensated surety is unnecessary and undesirable. In no event should the amount of financial security imposed exceed the financial ability of the accused.

Legislation also should allow courts to be creative in the use of conditions if they are related to society's interest in having persons appear at trial and if they represent an alternative to detention. The physical custody of a person awaiting trial should be the last resort where no other means is available to obtain reasonable assurance of his appearance for trial. The standard also recommends that legislation totally prohibit a person acting as compensated surety for persons awaiting trial. Criminal law administration is public business and ought not to be delegated to private individuals where no safeguards protect the person involved. Private bondsmen have not been accountable to the public, nor have they felt obligated to pursue the public interest. The abolition of the bail bondsmen would improve the system of criminal justice.

References

5. Preventive Detention, Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary. 91 Cong., 1 sess., 1967.

Standard 4.5

Procedures Relating to Pretrial Release and Detention Decisions

Each criminal justice jurisdiction, State or local as appropriate, should immediately develop procedures governing pretrial release and detention decisions, as follows:

1. A person in the physical custody of a law enforcement agency on the basis of an arrest, with or without a warrant, should be taken before a judicial officer without unnecessary delay. In no case should the delay exceed 6 hours.
2. When a law enforcement agency decides to take a person accused of crime into custody, it should immediately notify the appropriate judicial officer or agency designated by him. An investigation should commence immediately to gather information relevant to the pretrial release or detention decision. The nature of the investigation should be flexible and generally exploratory in nature and should provide information about the accused including:
   a. Current employment status and employment history.
   b. Present residence and length of stay at such address.
   c. Extent and nature of family relationships.
   d. General reputation and character references.
   e. Present charges against the accused and penalties possible upon conviction.
   f. Likelihood of guilt or weight of evidence against the accused.
   g. Prior criminal record.
   h. Prior record of compliance with or violation of pretrial release conditions.
   i. Other facts relevant to the likelihood that he will appear for trial.
3. Pretrial detention or conditions substantially infringing on liberty should not be imposed on a person accused of crime unless:
   a. The accused is granted a hearing, as soon as possible, before a judicial officer and is accorded the right to be represented by counsel (appointed counsel if he is indigent), to present evidence on his own behalf, to subpoena witnesses, and to confront and cross-examine the witnesses against him.
   b. The judicial officer finds substantial evidence that confinement or restrictive conditions are necessary to insure the presence of the accused for trial.
   c. The judicial officer provides the defendant with a written statement of his findings of fact, the reasons for imposing detention or conditions, and the evidence relied upon.
4. Where a defendant is detained prior to trial or where conditions substantially infringing on his liberty are imposed, the defendant should be au-
thorized to seek periodic review of that decision by the judicial officer making the original decision. The defendant also should be authorized to seek appellate review of such a decision.

Whenever a defendant is released pending trial subject to conditions, his release should not be revoked unless:

a. A judicial officer finds after a hearing that there is substantial evidence of a violation of one of the conditions of his release or a court or grand jury has found probable cause to believe the defendant has committed a serious crime while on release.

b. The violation of conditions is of a nature that involves a risk of nonappearance or of criminal activity.

c. The defendant is granted notice of the alleged violation, access to official records regarding his case, the right to be represented by counsel (appointed counsel if he is indigent), to subpoena witnesses in his own behalf, and to confront and cross-examine witnesses against him.

d. The judicial officer provides the defendant a written statement of the findings of fact, the reasons for the revocation, and the evidence relied upon.

6. The defendant should be authorized to obtain judicial review of a decision revoking his release while awaiting trial.

7. The judicial officer or the reviewing court should be authorized to impose different or additional conditions in lieu of revoking the release and detaining the defendant.

Commentary

Throughout this report, a major thrust of the recommendations has been the development of procedural safeguards for correctional decisionmaking. The Commission believes that such safeguards not only protect the offender but also insure effective decisions based on accurate information. Such procedures are even more important in dealing with persons not yet convicted of crime.

The standard proposes use of substantially the same procedures in pretrial detention decisions as are recommended for many posttrial determinations. In many instances where the decision to detain or release prior to trial is a part of the arraignment or preliminary hearing, many of the procedural trappings will automatically be applicable. The right to retained or appointed counsel is firmly established for felony cases at all critical stages of the prosecution. And the U.S. Supreme Court recently has held, in Argersinger v. Hamlin, 407 U.S. 25 (1972), that counsel is required in any criminal case, including misdemeanors and other petty offenses, if postconviction detention is to be imposed.

The right to counsel before pretrial detention is ordered would seem to follow. As more alternatives to money bail are implemented, the factual basis for pretrial decisions becomes more critical and more complex. The person’s ties to the community and the risk of nonappearance pose factual questions. Procedural formalities become even more essential.

In line with the previous recommendation that the presumption against incarceration and in favor of community release proposed for those convicted of criminal activity be equally applicable to those not yet convicted, the standard requires the judicial officer to specify in writing his findings, reasons for decisions, and the evidence relied upon where he orders detention or substantial conditions. This will force the officer to consider the full ramifications of his decision and also provide a basis for judicial review.

Judicial review should be available where detention or substantial conditions are imposed. In the first instance, the judicial officer making the original decision should periodically review his own decision. Unlike the sentenced offender, the pretrial detainee does not have a parole board that can ameliorate a long prison sentence or consider postdecision developments. Appellate review of pretrial decisions also should be authorized.

It has previously been recommended that various alternatives to money bail be implemented in all jurisdictions. In many instances, this will be in the form of community release on certain conditions, such as periodically reporting to a probation officer or avoiding certain activities. In addition, implicit in every pretrial release is the condition that the person will not commit another criminal offense. The standard recommends that alternatives to detention should be authorized as sanctions for violation of these conditions. However, the possibility of revocation of release is provided for. The decision to revoke release during the pendency of pretrial procedures has a serious effect on the defendant. The added burdens of pretrial detention holds for one accused of crime are well documented. These are no less detrimental to his ties with the community and his preparation for trial if an initial release is revoked. A revocation decision may have a direct influence on the sentencing decision if he is convicted. Thus procedural safeguards are essential. The standard recommends procedures substantially similar to those required by the courts for revocation of parole.

(See Chapter 12.) It would appear that no less would suffice for decisions revolving pretrial release.

While the Commission has taken no position on the issue of whether detention on the basis of "dangerousness" ought to be authorized in the first instance, it does recognize that offenders who continue to commit serious offenses while on pretrial release represent an unacceptable risk to the public safety. The lack of standards to determine dangerousness or likelihood of future criminal conduct is not a compelling argument in the face of repeated crimes during the pretrial period. Once a person is released and commits a subsequent serious offense, his propensity for future criminal conduct has been well enough established to warrant more flexible detention criteria. The standard thus would allow, but not require, detention after there is a showing of probable cause that the offender has committed an offense while on pretrial release.

References


Related Standards

The following standards may be applicable in implementing Standard 4.5.

4.4 Alternatives to Pretrial Detention.
12.4 Revocation Hearings.
Standard 4.6

Organization of Pretrial Services

Each State should enact by 1975 legislation specifically establishing the administrative authority over and responsibility for persons awaiting trial. Such legislation should provide as follows:

1. The decision to detain a person prior to trial should be made by a judicial officer.

2. Information-gathering services for the judicial officer in making the decision should be provided in the first instance by the law enforcement agency and verified and supplemented by the agency that develops presentence reports.

3. Courts should be authorized to exercise continuing jurisdiction over persons awaiting trial in the same manner and to the same extent as recommended for persons serving sentences after conviction. See Standard 5.9.

4. By 1983, facilities, programs, and services for those awaiting trial should be administered by the State correctional agency under a unified correctional system.

Commentary

Persons awaiting trial historically have been the responsibility of no single agency. The sheriff or warden of the holding facility exercises physical control over them; the court controls their liberty. Neither has felt obliged to provide services. Correctional agencies considered their responsibility as involving only convicted persons. The result is that persons awaiting trial have been ignored.

The lack of clear-cut administrative responsibility and overlapping claims to jurisdiction have made reform in this area particularly difficult. On the other hand, present elements of the criminal justice system have the knowledge and capability to effectively handle persons awaiting trial if their responsibility to do so is made clear.

The Commission recommends that legislation be enacted specifying which agency has the responsibility for the various services that should be provided to persons awaiting trial. The specification should minimize the necessity for the creation of a new governmental organization to provide such services. Requiring existing agencies to provide services to persons awaiting trial will allow efficient utilization of investigative and treatment resources. Treatment services provided on a voluntary basis prior to trial can be coordinated with programs for sentenced offenders. Information gathered for purposes of release prior to trial can be used for sentencing purposes.

This coordination of functions should not authorize similar treatment for sentenced offenders and persons merely accused of crime. The pre-sumption of innocence and the necessity for a fair trial require that persons awaiting trial be treated differently. Some types of information on the personal background of the accused should not be developed prior to trial. (See Standard 5.15.)

Conditions for release that might legitimately be imposed on sentenced offenders should not be authorized for those awaiting trial. Thus in larger jurisdictions it may be advisable to establish separate divisions for providing services to persons awaiting trial. With proper administrative rules and planning, coordination of the resources of the criminal justice system is preferred to the diversification of separate agencies. Such coordination and unification, on balance, offer the best chance of reform of the pretrial process.

The standard recommends that the agency which conducts presentence investigations should be responsible for investigations to determine whether a person should be released pending trial. In other chapters this report recommends that consideration be given to separating investigatory from supervisory personnel in the probation system. Such separation would facilitate the development of investigative expertise that could be utilized in a system of pretrial release. In some localities special projects involving law students and other community volunteers have been developed to do investigations for purpose of pretrial release. Where successful, these should be continued under the administrative responsibility of the agency providing presentence investigations. It has been noted elsewhere that staff who conduct presentence investigations and make recommendations on sentencing must maintain the closest confidence of the sentencing court. For this reason, direct judicial supervision over this function may be desirable. The same holds true for pretrial investigations. As this chapter indicates, the decision to detain a person accused of crime is a judicial decision, and the recommendation of the investigatory agency may be critical.

Chapter 13 of this report recommends the unification of correctional programs and facilities. Standard 9.2 proposes eventual placement of jails and detention facilities under the administration of a State department of corrections. Local jails traditionally have been the responsibility of the sheriff or other law enforcement agency. Lack of expertise and of resources has made the local jail the most disgraceful feature of American corrections. And presumed innocent, are detained. Unification of these facilities into a State system of corrections provides the basis for substantial reform.

A system of pretrial detention also can benefit from the experience and expertise of correctional agencies. Improvement in institutional management and program implementation are essential to an effective pretrial detention system. Counseling and other programs should be available on a voluntary basis to pretrial detainees. A system of community-based resources for partial confinement and community supervision programs should be made available to persons not yet convicted of crime. State corrections departments in most States already have had experience in establishing and operating such programs. (See Chapter 9, Local Adult Institutions.)

Chapter 5 of this report recommends that courts exercise continuing jurisdiction over sentenced offenders, to insure that the purpose and nature of the sentencing order is carried out by correctional agencies. (See Standard 5.9.) The judicial order releasing or detaining a person accused of crime deserves similar supervision. Judicial officers should continue to evaluate the need for detention or other forms of control of persons not yet convicted. Such persons should be authorized to seek judicial review of the nature of such control during the pretrial process.

References


2. Illinois Uniform Code of Corrections Sec. 375-2 (Tentative final draft 1971). (Authorizes establishment of standards for and inspection of local detention facilities by the State department of corrections. A comparable provision was subsequently enacted in Illinois.)


4. "Proposed Speedy Trial Act," sec. 895, in Speedy Trial, Hearings before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee. 92 Cong., 1 sess. (1971) (Section authorizes judicial creation of a separate "pretrial services agency").

Related Standards

The following standards may be applicable in implementing Standard 4.6.

2.1 Access to Courts

4.4 Alternatives to Pretrial Detention

5.9 Continuing Jurisdiction of Sentencing Court
Judicial Visits to Institutions.
9.2 State Operations and Control of Local Institutions.

10.5 Probation in Release on Recognizance Programs.
16.4 Unifying Correctional Programs.

Standard 4.7

Persons Incompetent to Stand Trial

Each criminal justice jurisdiction, State or local as appropriate, should immediately develop procedures and seek enabling legislation, if needed, governing persons awaiting trial who are alleged to be or are adjudicated incompetent to stand trial as follows:

1. Persons awaiting trial for a criminal offense who are alleged to be incompetent to stand trial should be eligible for bail or other alternative forms of release to the same extent as other persons awaiting trial. Where the court orders an examination and diagnosis to determine competency, the court should impose on the person the least restrictive measures required to assure his presence for trial and for effective examination and diagnosis. Outpatient diagnosis should be given preference over inpatient diagnosis.

2. Persons awaiting trial for a criminal offense who have been adjudicated incompetent to stand trial should be eligible for bail or alternative forms of release to the same extent as other persons awaiting trial. Where the court orders treatment to return the person to competency, it should impose the least restrictive measures appropriate. Outpatient treatment should be given preference over inpatient treatment, and detention should be imposed only upon substantial evidence that:
   a. There is a reasonable probability that the person will regain competency within the time limits recommended herein and detention is required to assure his presence for trial; or
   b. There is a substantial probability that treatment will return the person to competency and such treatment can be administered effectively only if the person is detained.

3. Each jurisdiction should adopt, through legislation or court rule, provisions which:
   a. Require periodic review of cases of persons adjudged incompetent to stand trial.
   b. Set a maximum time limit for the treatment of incompetency. Such maximum limits should not exceed 2 years or the maximum prison sentence for the offense charged, whichever is shorter.
   c. Provide that when the time limit expires or when it is determined that restoration to competency is unlikely, the person should be released and the criminal charge dismissed.
   d. Provide that where it is believed that the person adjudicated incompetent is dangerous to himself or others and should be detained, civil commitment procedures should be instituted.

Commentary

As noted in the narrative to this chapter, the
person awaiting trial is caught uncomfortably between various elements of the criminal justice system. The person is someone who has not yet been charged, someone who has been charged, but incompetence is the factor that stands between various elements of the criminal justice system. The person's claim to due process is a matter of fact, not right, but the competent individual who is committed to a state of incompetency to stand trial, the person's claim to due process is a matter of right, not fact, but incompetence is the factor that stands between various elements of the criminal justice system.

The Court thus suggests that persons accused of crimes cannot be granted bail unless they are competent. It is not only the right of the defendant to be presumed innocent but incompetence is the factor that stands between various elements of the criminal justice system. Thus where incompetence is established, further inquiry should be undertaken to determine to what extent the defendant might be successful in the near future and whether such treatment requires confinement. Again the presumption should be against detention and in favor of less restrictive treatment.

A person may be incompetent to stand trial and still not be a danger to himself or others. Confinement under the government's control where the court believes the accused to be dangerous would appear to violate the equal protection rationale recognized by the Supreme Court in Jackson. All jurisdictions have provisions for the institutionalization of persons who are dangerous owing to mental illness. These procedures should be equally applicable to those accused. Different standards would clearly violate the dictates of Jackson. While it is recognized that civil commitment procedures are far more difficult, and is unfair to the accused person. Due process guarantees that the defendant will have an adequate defense. Rules should be as applicable to incompetents as it is to defendants. The decision of whether the defendant probably soon will be able to stand trial, his continued commitment must be justified by progress toward that goal.

The Court thus indicates that detention must be limited in time and justified on the basis of the state's interest in having an accused in court at all times. As indicated earlier in this section, the lapse of time and the able to stand trial. Detention beyond the needs of this interest can be justified by other state interests reflected in civil commitment procedures, but those procedures, not criminal procedures, should be utilized.

The basic thrust of the standard is to treat persons alleged to be incompetent to stand trial (or those procedures, not criminal procedures, should be utilized.

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9. Texas Code Crim. Proc. Ann. Sec. 46.02 (Supp. 1971) (Allowing defendant to require a provisional determination of incompetency which is binding on the State but not on the defendant.)

Related Standards
The following standards may be applicable in implementing Standard 4.7.

Standard 4.8
Rights of Pretrial Detainees

Each State, criminal justice jurisdiction, and facility for the detention of adults should immediately develop policies and procedures to insure that the rights of persons detained while awaiting trial are observed, as follows:

1. Persons detained awaiting trial should be entitled to the same rights as those persons admitted to bail or other form of pretrial release except where the nature of confinement requires modification.

2. Where modification of the rights of persons detained awaiting trial is required by the fact of confinement, such modification should be as limited as possible.

3. The duty of showing that custody requires modification of such rights should be upon the detention agency.

4. Persons detained awaiting trial should be accorded the same rights recommended for persons convicted of crime as set forth in Chapter 2 of this report. In addition, the following rules should govern detention of persons not yet convicted of a criminal offense:

   a. Treatment, the conditions of confinement, and the rules of conduct authorized for persons awaiting trial should be reasonably and necessarily related to the interest of the state in assuring the person's presence at trial. Any action or omission of governmental officers deriv-
brought by sentenced prisoners seeking release or have been required. Most lawsuits have been presumed to be innocent of the offense charged. In many jurisdictions his detention results from the fact that he is poor and thus unable to produce money bail. He has traditionally, however, been classified with sentenced prisoners housed in the same facility.

Chapter 2 has recognized the principle that a person sentenced for commission of a crime should retain all the rights of a free citizen except those necessarily limited because of confinement. A person not yet convicted would have an even stronger claim to retention of such rights. With implementation of the recommendations of Chapter 2, the classification of pretrial detainees and convicted offenders for similar treatment would not be so constitutionally suspect as it now is. Even so, the pretrial detainee may be entitled to additional or more far-reaching legal rights than a person convicted of an offense.

Persons awaiting trial should not be considered in a class with those serving a sentence. Proper classification would contemplate that persons detained awaiting trial should be treated more like those persons released on bail or other forms of pretrial release. Obviously, the fact of confinement will force some dissimilarities, but only those differences that confinement inherently requires should be allowed. And where it is asserted that confinement does require modification of such rights, the burden of justifying it should be on the detention agency. To be justified, the least restrictive means needed to accomplish the state interest should be imposed. The standard provides first that the rights of sentenced offenders outlined in Chapter 2 be fully applicable to persons detained awaiting trial. These rights are: full access to courts and legal services; protection against various forms of physical abuse and medical neglect; present and living conditions; procedural protections against arbitrary administrative action; and substantial rights of free speech and expression. In recent months courts have made various of these rights directly applicable to pretrial detainees.

The standard recognizes that additional protections should be granted to those awaiting trial. Detention before trial is based on the state's interest

in assuring the presence of the accused at trial. Where persons are already convicted of an offense, the state can with varying degrees of legitimacy argue that practices are motivated by concepts of punishment, retribution, deterrence, or rehabilitation. None of these rationales can be applied to justify treatment of a person not yet convicted of an offense.

The standard proposes two specific recommendations for the treatment of persons awaiting trial. First, they should not be confined with convicted offenders, and second, they should not be placed in isolation except in the most exceptional circumstances. Implementation of these recommendations may require a substantial outlay of public funds. Many jurisdictions today have only one detention facility for both pretrial detainees and sentenced offenders. As Standard 4.2 recommends, however, construction of pretrial detention facilities should be considered only after careful review and implementation of a wide variety of alternatives to detention. Chapter 2 recognizes in several instances that administrative cost and inconvenience, where substantial, may justify some modification in certain rights available to free citizens. For example, where the religious dictates of a sentenced offender require substantial expense over and above what is provided to other offenders, the standard would not require such expenditure.

In considering whether administrative cost and inconvenience should justify alterations or limitations on the rights of persons awaiting trial, the presumption of innocence dictates that different rules be applicable. Conviction for an offense against society may place some limits on the expenditure an offender can reasonably require. Society authorizes detention of presumably innocent persons solely to assure presence at trial. If the cost of authorizing such detention fully respective of the rights of pretrial detainees is prohibitive, the society should develop some alternative means of providing that assurance.

One of the reasons why pretrial detainees were not as active in seeking judicial redress for violations of their constitutional rights is that the period of pretrial detention often is too short to allow pursuit of judicial remedies. By the time the court could render a decision, the detention would be completed and the complainant would be either a sentenced offender or a free citizen. The device of a class action whereby the lawsuits can be brought on behalf of all members of a class—in this instance all persons detained awaiting trial—should be authorized for pretrial detainees to allow judicial determinations of the appropriate standards. Such action was authorized in Jones v. Wittenberg, 323 F. Supp. 93 (N.D. Ohio 1971). Class actions have been widely used in other areas where individuals would find litigation a burden.

References

4. Hamilton v. Love, 328 F. Supp. 1182 (E.D. Ark. 1971) (Conditions of pretrial detention should be superior to those for sentenced offenders and cannot be justified by rationale of punishment, retribution, deterrence, or rehabilitation.)

F. Supp. 93 (N.D. Ohio 1971). Class actions have been widely used in other areas where individuals would find litigation a burden.


Related Standards

The following standards may be applicable in implementing Standard 4.8.

2.1-2.18 Rights of Offenders.
5.10 Judicial Visits to Institutions.
9.7 Internal Policies (Local Adult Institutions).
16.2 Administrative Justice.
16.3 Code of Offenders' Rights.

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Standard 4.9

Programs for Pretrial Detainees

Each State, criminal justice jurisdiction, and agency responsible for the detention of persons awaiting trial immediately should develop and implement programs for these persons as follows:

1. Persons awaiting trial in detention should not be required to participate in any program of work, treatment, or rehabilitation. The following programs and services should be available on a voluntary basis for persons awaiting trial:
   a. Educational, vocational, and recreational programs.
   b. Treatment programs for problems associated with alcoholism, drug addiction, and mental or physical disease or defects.
   c. Counseling programs for problems arising from marital, employment, financial, or social responsibilities.

2. Participation in voluntary programs should be on a confidential basis, and the fact of participation or statements made during such participation should not be used at trial. Information on participation and progress in such programs should be available to the sentencing judge following conviction for the purpose of determining sentence.

Commentary

The person detained awaiting trial generally finds himself in a local jail—an institution noted for its lack of program resources. Yet the availability of such programs for voluntary participation by pretrial detainees may be of critical importance. Enforced idleness in detention facilities breeds hostility and contempt for the legal system that permits it. Persons detained awaiting trial are generally disadvantaged at sentencing and are more apt to be sentenced to confinement than are persons who were at liberty prior to trial. By providing affirmative programs or services to such persons, the likelihood of their obtaining release before trial or of obtaining probation if convicted should increase. If the person's offense arose out of marital difficulties, family counseling during the period prior to trial may be extremely important to his future reintegration into society.

Corrections has long considered its function to begin after conviction. In most States, State correctional departments do not have administrative authority over those awaiting trial. The Commission elsewhere has recommended that corrections be unified at the State level and that local jails be placed under State administration. This chapter recommends that pretrial detention facilities likewise be organized within the correctional system. Corrections resources and services, particularly if upgraded as recommended in this report, could be valuable additions to pretrial detention programs. What happens to an individual prior to trial may well affect his correctional improvement once convicted.

To encourage detainees to participate in programs of benefit to them, safeguards must be implemented insuring that such participation does not prejudice the ultimate determination of guilt or innocence. Thus the fact of participation or statements made during participation in such programs should not be admissible at the trial of the offense. However, progress in voluntary treatment programs prior to trial should be available to the judge for purposes of sentencing.

References

2. Brenneman v. Madigan, 11 Crim. L. Rep. 2248 (N.D. Cal. 1972) ("Merely because all such resources may be labeled 'rehabilitative' in other institutional contexts does not justify denying them to pretrial detainees.")

Related Standards

The following standards may be applicable in implementing Standard 4.9.

2.9 Rehabilitation (Rights of Offenders.)
6.3 Community Classification Teams.
9.8 Local Correctional Facility Programming.
15.5 Evaluating the Performance of the Correctional System.
16.4 Unifying Correctional Programs.
2. For defendants detained while awaiting trial, time limits of shorter duration than that provided by statute.

3. Time limits within which the various pretrial procedures must take place and a means for altering such limits in individual cases.

Commentary

No reform of the pretrial release and detention systems can be effective without expediting the trial of criminal cases. The person accused of a crime always will remain in an ambiguous position. The mere accusation of criminal conduct is enough to cause the accused to suffer humiliation, discrimination, and disruption of his life. His employment and family relationships often are threatened. In addition, the pressure and anxiety due to the pending trial and pretrial procedures can cause severe emotional strain. Recent disruptions in the Tomb is New York City and in the District of Columbia illustrate in part from delay in prosecuting criminal cases.

Society also has an interest in the expeditious handling of criminal cases. Any deterrence associated with enforcement of the criminal law is generally conceded to arise from swift and sure punishment rather than the intensity of the sanction. Likewise, the ability to effectively reconstruct events for the determination of guilt or innocence is severely hampered where there is lengthy delay between offense and trial. The victim is often less willing to cooperate. And where the accused is innocent, the guilty person is less easily identified and apprehended.

The delay in many courts is a product of three factors: (1) participant strategies, (2) lack of resources, and (3) court management techniques. All three factors must be addressed if criminal cases are to be efficiently and fairly tried.

Both prosecution and defense may have much to gain by delaying the trial of a case. If the accused is detained awaiting trial, delay creates increasing pressure for a plea of guilty. On the other hand, the chance of conviction should the case go to trial diminishes as time elapses. Thus trial strategies may seriously delay the proceedings.

In many jurisdictions, prosecution, defense, and judicial resources are woefully lacking in relation to the number of cases pending. The requirements for a fair trial assume that both sides will have adequate time to prepare their cases. Where the office of prosecutor is understaffed, such preparation is difficult. In some areas, the number of attorneys able or willing to handle the defense of criminal cases is limited. Where there is a public defender's office, it is usually as overburdened as the prosecution. In some instances, the number of judges is far less than needed. Delays caused by lack of resources can only be solved by the infusion of new funds.

It is widely recognized that courts also have neglected to improve the management of their caseload. The era of the judge who acts both in a judicial capacity and at the same time administers the court is coming to a close. Professional administrators increasingly are being hired to assist the courts in efficiently handling their workload. Such reforms will have benefit to both criminal and civil litigants.

The standard attempts to provide recommendations addressing each of the three factors contributing to delay of criminal cases. It is first recommended that the legislature enact time limits within which criminal trials must begin. The legislature also should specify reasons that would justify an extension of the time limits imposed. There are several justifications for the postponement of a criminal case that carry out sound public policy. Legislation enunciating such justification in detail would assist in assuring that delays caused by participant strategies do not deprive the defendant of his right to a fair and speedy trial or society of its right to an effective determination of guilt or innocence.

In enacting such legislation, the legislature should be aware that infeasible rules cannot be drafted. The varying complexities and issues of criminal cases demand some discretionary authority for the courts. Commitment of the judiciary to expediting criminal cases is essential to the success of any reform. However, the legislature should provide the initial guidance.

On the other hand, it is unrealistic to assume that legislatures will impose arbitrary time limits that are impossible to comply with. The limit established will have to relate to the resources available. Such resources and caseloads vary from jurisdiction to jurisdiction. The Commission therefore recommends that within 5 years each jurisdiction provide sufficient funds to enable a 60-day limit for felonies and a 30-day limit for misdemeanors, with recognition of justifiable extensions, are feasible.

The imposition of time limits for prosecution and trial of criminal cases is not a new concept. Several States have enacted such provisions. For example, California requires trial within 60 days after an indictment (Cal. Penal Code Sec. 1382). Several States have separate limits for the filing of an indictment and the beginning of the trial. For example,
Iowa Code Ann. Sec. 795.1, 795.2 allows 15 days for indictment, 60 days for trial.

The standard recommends that courts adopt rules designed to expedite criminal trials that are more specific than those enacted into statutory law. Each judicial district within a particular State can tailor the limits for trial according to the availability of resources and the caseload of that particular district. Time limits likewise can be established for presentation of motions, hearings on incompetency, and other pretrial proceedings that often delay the actual trial itself. Development of procedures such as the pretrial conference extensively utilized in civil cases would facilitate as well as expedite the trials.

The standard does not attempt to provide detailed recommendations on improving judicial management techniques, since another Commission report covers the courts. However, it is suggested that priority be given to all criminal cases and that special attention be accorded cases where the person is detained awaiting trial or is believed to represent a danger to himself or the community. One solution to the problem of the allegedly dangerous person accused of crime is to expedite the trial of his offense and thereby limit his opportunity for further criminal activity.

References

3. Speedy Trial, Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary. 92 Congress, 1 Session, 1971. See also citations listed therein.

Related Standards

The following standards may be applicable in implementing Standard 4.15.

4.4 Alternatives to Pretrial Detention.
5.1-5.19 Sentencing.

Chapter 5

Sentencing

In a very real sense, a major part of this report on corrections deals with the imposition and execution of sentences. Approximately 90 percent of those convicted of felonies and probably a larger proportion of misdemeanants plead guilty either on their own initiative or as the result of plea negotiations. Thus for only a few offenders does the criminal justice system concern itself with formal procedures to determine guilt. For all offenders, sentencing is a crucial concern.

Under the formal model of the criminal justice process, the sentencing court makes the critical decision on sentencing criminal offenders. In practice, a wide variety of other officers, institutions, and forces impinge upon or influence the sentencing judge's discretion. The police decision to arrest can have sentencing ramifications. Strategies to divert offenders from the formal criminal process preclude direct judicial participation.

It is being recognized increasingly that the decision to detain an offender prior to trial may have a direct influence on the nature and extent of the sentence eventually imposed. As noted in Chapter 4, pretrial detention appears to be closely correlated not only with confinement as the eventual disposition but also with the length of incarceration imposed by the court.

The prosecutor often has a direct impact on the sentencing decision. His determination of the charge and other commitments arising out of plea negotiations will limit or influence the sentencing judge's discretion. Where legislation provides for mandatory sentences, the role of the prosecutor in determining sentence is magnified.

Under sentencing structures in which the court imposes an indeterminate sentence, correctional administrators often determine, to a greater extent than the court, the actual sentence to be served. When a court imposes a sentence of confinement, the parole board will decide the length of time actually served in confinement. Once parole is granted, the board's policy regarding revocations and recommitments for violation will determine whether the offender remains in the community. The role of the parole authority is considered more fully in Chapter 12.

This report, in several chapters, urges elimination of a number of interferences with the model of a judicially imposed sentence. When implemented, these reforms will place greater emphasis on and attach greater significance to the role of the sentencing court. Thus many standards proposed in this chapter must be considered with reference to other standards in this report.

Even with the many improvements and restrictions on the exercise of judicial sentencing discretion, the courts now make, and will continue to make,
critical decisions regarding criminal offenders. For the most part, the courts will determine whether an offender is confined or supervised in the community. Of all the possible sentencing variations, this is the most decisive. Further, for a good number of offenders, courts determine the maximum length of time during which the state may exercise control.

These decisions are extremely difficult. They require one to choose between competing general principles that serve as bases for sentencing—deterrence, reintegration, retribution—and, once the general principle is selected, to apply the proper sentence to implement that principle in each specific case. This requires, on the basis of the information now generally available, more imagination and intuition than skill.

CURRENT STATUS OF SENTENCING

In view of the crucial and complex nature of sentencing decisions, the current state of that process in this country is nothing less than appalling. In the vast majority of jurisdictions, the decisions are made by one man, whose discretion is virtually unchecked or unguided by criteria, procedural requirements, or the possibility of review.

A sentence can be meted out without any information before the judge except the offender's name and the crime of which he is guilty. Occasionally, the information base for sentencing decisions consists largely of hearsay and unreliable testimony. Some evidence used may have been seized in violation of constitutional or statutory prescribed standards. Resources for obtaining reliable additional information may not be available. Furthermore, the reliability and accuracy of the available information often goes unchallenged. The judge is not required to indicate either the information he is considering or the reasons for the sentence. The evidence need not be shown or described to the defendant or his counsel. It is subject neither to cross-examination or rebuttal. In too many cases, the sentence is placed within the maximum allowable under the law, it is not directly reviewable by another court or the agency even if it is based on misinformation, bias, prejudice, or ignorance.

The law governing selection of the appropriate sentencing alternative is chaotic in some States. In others, the judge has full discretion as to the nature and extent of the sentence to be imposed. He may choose from numerous options ranging from suspended sentences to incarceration for life without probation or parole. With little guidance from the legislature or little training in sentencing techniques, the judge must select the proper sentence on the basis of his personal view of the purposes of the criminal law and the effect of a particular sentence on a particular offender.

The legislative branch bears a large responsibility for the lack of uniformity among sentencing judges. The process is anything but rational. The Constitution has little relevance to sentencing decisions. The cur rent state of that process in this country is nothing less than appalling.

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The law governing selection of the appropriate sentencing alternative is chaotic in some States. In others, the judge has full discretion as to the nature and extent of the sentence to be imposed. He may choose from numerous options ranging from suspended sentences to incarceration for life without probation or parole. With little guidance from the legislature or little training in sentencing techniques, the judge must select the proper sentence on the basis of his personal view of the purposes of the criminal law and the effect of a particular sentence on a particular offender.

The legislative branch bears a large responsibility for the lack of uniformity among sentencing judges. The process is anything but rational. The Constitution has little relevance to sentencing decisions. The current state of that process in this country is nothing less than appalling.
Incapacitation, or retribution.慢ionsught to be imposed for the purposes of deterrence, the more fraught and dependent he becomes, making his reintegration into society more difficult. The recommendations of the Commission seek to allow discretion to operate where it bears a reasonable relation to legitimate goals of the system but to limit and check discretionary decisions in order to avoid arbitrary and counterproductive actions.慢ion 5.1 provides information on felony offenders released from State correctional institutions in 1970, derived from National Prisoner Statistics: State Prisoners, Admissions and Releases, 1970, published by the Federal Bureau of Prisons. The publication is based on voluntary reports by State correctional agencies, and on those States which have reported fully to the Bureau are included in the table. Since many factors help to determine both the length of sentence imposed and the amount of time actually served, comparisons between States can be highly misleading. For example, since the figures deal only with offenders sentenced to confinement, a State which has an active probation system and confines only the most recalcitrant offenders could be expected to show longer sentences than a State which has only a few community-based programs and imprisons almost all convicted offenders.

With these caveats in mind, it is possible to state with some assurance from the table that in many States a substantial proportion of offenders released in 1970 had been sentenced to prison terms of 5 years or more. Some States have relatively large prison populations, and therefore their data are more significant than those of smaller States. While punishment may deter white-collar crime, it may have little effect on crimes of passion. It is easier to deter acts committed by persons who have been sentenced to long terms in prison than it is to deter those committed by persons who have been sentenced to short terms. The entire tenor of this report is that incapacitation is not an effective answer for most criminal offenders. It is ineffective in reducing criminal behavior nor efficient in the utilization of scarce resources.

The effectiveness of sentences is thus irreversibly tied to the day-to-day operation of the criminal law. The standards seek to ventilate the nature of the problem and the proposed solutions and make them matters of public action and concern. Basic
DISPARITY OF SENTENCES

To deal with the problem of sentencing disparity, the issue first must be defined. As used here, a simple difference in sentence meted out to two offenders convicted of the same crime is not disparity. It is only when the difference is not justified, in terms of the records of the offenders involved, that the difference becomes disparity.

The very issue of individualization of sentences, sought for more than 20 years, leads to this dilemma, and it is not easy to convince an offender who has received a harsher sentence, perhaps justifiably, that his record is significantly different from that of the inmate who was treated "easier." The difference is important, though, because if the inmate perceives justifiable individualization as arbitrary difference, his chances of reformation are thereby reduced.

Moreover, it cannot be denied that there are widespread and unjustifiable differences in sentences meted out by different judges on every level. Within or between jurisdictions, among courts with essentially the same sentencing powers, the discrepancy between sentences imposed for the same crime is extensive.

Disparity arises from several causes. The most notable of these is legislative inaction or inattention to sentencing statutes. Consider the inequities revealed in the following account:

In Colorado, for example, a recent legislatively sponsored inquiry revealed the following rather shocking provisions: one convicted of first degree murder must serve 16 years before he is eligible for parole; one convicted of a lesser degree of murder may be forced to serve 13 years or more. Destruction of a house by fire is punishable by a maximum of 20 years; destruction of the same house with explosives carries a 10-year maximum. [In formal] burning of an empty isolated dwelling may lead to a 20-year sentence while the burning of a church or school carries only a 16-year maximum. The Model Penal Code inquiry into burglary statutes revealed that in California a boy who broke into a passenger car to steal the contents of the glove compartment subjected himself to a maximum of 15 years if he stole the entire car, he could only be sentenced to 10.

Such discrepancies arise from the failure of the legislature to review or reexamine the criminal code before passing a new statute, usually enacted in response to some specific instance of misbehavior.

Fortunately many States, stimulated in part by the Model Penal Code and the Model Sentencing Act, are undertaking massive revisions of their criminal codes which should contribute to a more rational and equitable sentencing process.

A second cause of disparity is the lack of communication among judges concerning the goals and desiderata of sentencing. It is not uncommon for judges sitting in different courthouses to hand out alarmingly different sentences in what appear to be very similar situations. These differences, of course, account for much of the "judge shopping" which is an everyday occurrence in courthouses across the country. Some of this disparity, attributable to its philosophical outlook of the sentencing judge, can not be dispelled. But at the least some dialogue should be initiated between judges within the same jurisdiction to address some of the variables and factors contributing to certain of the more harmful discrepancies in the sentencing process.

A third cause of disparity is the lack of communication between sentencing courts and the correctional system, and the insularity engendered thereby. During the first few years after the advent of parole, when State statutes generally provided for parole eligibility after an offender had served his minimum sentence, judges, wary and distrustful of the entire process, would set the minimum sentence excessively high (e.g., imposing a sentence of 9 1/2 to 10 years), thereby effectively precluding the granting of parole. That distrust persists in some areas today.

Much effort is also expended in guessing—and outguessing—developments in the correctional system. Where there is little official communication between the sentencing courts and the parole board, for example, each must guess what motivates the other to act. The parole board may regard as too lenient, another as very harsh, and evaluate minimum or maxima fixed by these judges accordingly. Such assessments often are made without any real knowledge of the actual factors normally considered by the judge in making the sentencing decision. This, in turn, can lead to misunderstanding, with the offender as the victim of its ignorance perpetuated by this anomalous situation.

A fourth reason for disparate sentences, and for sentencing dispositions that often prove unrealistic, is that most judges are unfamiliar with the institutions to which they sentence offenders. Because judges do not visit such institutions and get little information from prisoners, they know very little about institutional conditions. Fortunately, the increase in prisoners' rights suits, the mounting pressure and publicity concerning the need for prison reform, championed by the President, the Attorney General, and the Chief Justice of the United States, and more recent increases in the number of visits to such institutions by the judiciary, are removing this cause of disparity.

A fifth reason for disparity appears to be lack of information about available sentencing alternatives. A survey of Federal court judges made shortly after the passage of laws authorizing the use of new alternatives revealed that many were not familiar with these new options. As familiarity increased, so did use, and disparity between dispositions by judges who had been cognizant of these possibilities and those who had not decreased sharply.

The standards set forth in this chapter are directed toward bringing about more rationality in the sentencing process and are related to the problems of disparity. The more appropriate a sentence is for an offender, the more likely it is to be consistent with sentences for similar offenders under similar circumstances. Particularly important for solving the disparity problem is the standard recommending the development of criteria for sentencing decisions and the articulation of the rationale for particular sentencing decisions by trial courts. This ventilation of the sentencing decision not only provides a check on the judge's own decisionmaking process but also serves as a basis on which review can be undertaken. Standards recommending that sentencing judges visit correctional facilities and programs and that they exercise continuing jurisdiction over sentenced offenders will lessen disparate sentences.

Even with implementation of the substantive recommendations, disparate sentences will continue as long as courts base dispositions on inadequate or inaccurate information. Even if all judges of a particular jurisdiction were of one mind regarding the importance of particular factors to the sentencing decision, offenders similarly situated still would not receive similar sentences as long as procedures for evaluating offenders authorized the use of unreliable information. Procedural reform in the sentencing process thus is related directly not only to fairness but to sentencing effectiveness and equality.

The standards that follow are divided into those that address the substance of sentencing and those that would regulate sentencing procedures. Standards requiring legislation should be implemented by 1978, unless otherwise stated, while those not requiring legislation should be implemented immediately.
Standard 5.1

The Sentencing Agency

States should enact by 1975 legislation abolishing jury sentencing in all cases and authorizing the trial judge to bear full responsibility for sentence imposition within the guidelines established by the legislature.

Commentary

Although 13 States still allow jury sentencing in noncapital cases, the practice has been condemned by every serious study and analysis of sentencing in the last half-century. Jury sentencing is arbitrary, nonprofessional, and based more often on emotions arising from the offense or the offender than on needs of the offender or available resources of the correctional system. Sentencing by jury leads to grossly disparate sentences without effective means of control and leaves little latitude for development of sentencing policies.

The jury often is protected from information that may be relevant to a sentencing decision but is inadmissible as prejudicial to the question of guilt or innocence. There are grounds too for suspecting that, where the jury participates in sentencing decisions, doubts about the guilt of the accused are resolved by a light sentence, seriously undermining any rule that requires showing of guilt beyond a reasonable doubt to convict.

In the vast majority of jurisdictions, most formal sentencing decisions are made by the trial judge. It is unlikely that this tradition will be abandoned, but it is not without its difficulties. Judges are appointed or elected on considerations generally unrelated to their abilities to sentence criminal offenders. Most are lawyers with little training in the behavioral sciences. Few have had much experience with the administration of criminal justice.

Many standards developed in this chapter are designed to provide judges with the resources, information, and experience to make more effective sentencing decisions. With proper recognition of the limitations of judicial sentencing as well as its strengths, the tradition of sentencing by the trial judge can be retained without serious disadvantage.

There have been suggestions that the single sentencing judge should be replaced with a specialized tribunal of more than one person to determine sentences. It is argued that these tribunals could bring various disciplines and perspectives to bear on the problems of sentencing. Likewise expertise could be built up in a specialized tribunal to minimize sentencing disparity.

The Commission recognizes the force of these arguments in the context of past practices. Within this chapter, several techniques are recommended to alleviate some difficulties associated with sentencing by trial judges. Through expanded use of presentence investigations and services that should be available to sentencing courts, sentencing can utilize teachings of various disciplines. Sentencing councils and sentencing institutes will have the effect of bringing differing judicial perspectives to questions of sentencing. Appellate review of sentences and the development of criteria for selection of the appropriate sentencing alternatives should minimize sentence disparities. With adoption of these reforms, the tradition of the single sentencing judge should be retained.

References


Related Standards

The following standards may be applicable in implementing Standard 5.1.

6.3 Community Classification Teams.
16.7 Sentencing Legislation.
16.8 Sentencing Alternatives.
16.12 Commitment Legislation.
Standard 5.2

Sentencing the Nondangerous Offender

State penal code revisions should include a provision that the maximum sentence for any offender not specifically found to represent a substantial danger to others should not exceed 5 years for felonies other than murder. No minimum sentence should be authorized by the legislature.

The sentencing court should be authorized to impose a maximum sentence less than that provided by statute.

Criteria should be established for sentencing offenders. Such criteria should include:

1. A requirement that the least drastic sentencing alternative be imposed that is consistent with public safety.
2. The court should impose the first of the following alternatives that will reasonably protect the public safety:
   a. Unconditional release.
   b. Conditional release.
   c. A fine.
   d. Release under supervision in the community.
   e. Sentence to a halfway house or other residential facility located in the community.
   f. Sentence to partial confinement with liberty to work or participate in training or education during all but leisure time.
   g. Total confinement in a correctional facility.

2. A provision against the use of confinement as an appropriate disposition unless affirmative justification is shown on the record. Factors that would justify confinement may include:
   a. There is undue risk that the offender will commit another crime not confined.
   b. The offender is in need of correctional services that can be provided effectively only in an institutional setting, and such services are reasonably available.
   c. Any other alternative will deprive the seriousness of the offense.

3. Weighting of the following in favor of withholding a disposition of incarceration:
   a. The offender's criminal conduct neither caused nor actually threatened serious harm.
   b. The offender did not contemplate or intend that his criminal conduct would cause or threaten serious harm.
   c. The offender acted under strong provocation.
   d. There were substantial grounds tending to excuse or justify the offender's criminal conduct, though failing to establish defense.
   e. The offender had led a law-abiding life for a substantial period of time before commission of the present crime.
   f. The offender is likely to respond affirmatively to probationary or other community supervision.
   g. The victim of the crime induced or facilitated its commission.
   h. The offender has made or will make restitution or reparation to the victim of his crime for the damage or injury which was sustained.
   i. The offender's conduct was the result of circumstances unlikely to recur.
   j. The character, history, and attitudes of the offender indicate that he is unlikely to commit another crime.
   k. Imposition of the offender would entail undue hardship to dependents.
   l. The offender is elderly or in poor health.
   m. The correctional programs within the institutions to which the offender would be sent are inappropriate to his particular needs or would not likely be of benefit to him.

Commentary

It is well-documented and almost universally recognized that the sentences imposed in the United States are the highest in the Western world. This results from a number of factors including the high maximum sentences authorized by statutory provisions. To be assured that the very dangerous offender is incapacitated, legislatures in effect have increased the possible maximum sentence for all offenders. This Draconian approach often results in imposing for a high maximum sentence on persons for whom it is patently excessive. The wide flexibility exacerbates the disparities in sentences that seriously handicap correctional programs.

The President's Commission on Law Enforcement and Administration of Justice (the Crime Commission) reported in 1967 that more than one-half of all persons confined in State prisons in 1960 had been sentenced to maximum terms of at least 10 years. But of those released in that year the average length of time actually served in confinement was less than 2 years, and only 8.7 percent had actually served 5 years or more.

Lowering the authorized maximum term will not unduly restrict the court's discretion as it affects the length of time actually served in prisons. It will, however, reduce the excessively long sentences served by some offenders for whom such sentences are inappropriate. It also will diminish disparate treatment of similarly situated offenders.

The standards retain the concept that for specific offenders who are considered dangerous, a more extended term of imprisonment should be authorized.
tence may have drastically different effects on the offender in one State than in another.

This report recognizes throughout the need for development of local devices to control, review, and structure correctional decisionmaking power. The need is equally applicable to the sentencing decision. The major reason for this chapter's focus on alternatives is that sentences that could not be altered—would leave little room for correctional administrators or parole boards to release the offender when it appears to them that he is capable of returning to society. As a result, offenders would serve longer sentences than necessary—a situation to be avoided wherever possible.

This acceptance of the indeterminate sentence should be considered with reference to the recommen-dations of the hypothetical judges in broad discretion without unduly restricting the benefits of individualized sentencing techniques. Thus standards that authorize appellate review of sentences to minimize disparities, suggest more wide-scale and effective use of statutory criteria for decisionmaking, grant defendants greater participation in decisions that affect their sentences, and generally reduce authorized maximums would tend to alleviate many difficulties presently experienced with indeterminate sentencing by retaining the flexibility to individualize sentences.

In considering sentencing alternatives, two further issues involve the sentencing court's authority to set (1) a maximum term less than the statutory-approved maximum and (2) a minimum term to his parole eligibility. The standard authorizes the former but not the latter.

On the surface the question of judicial control over the sentence maximum appears to center on Minimizing the risk that in broad discretion without unduly restricting the benefits of individualized sentencing techniques. Thus standards that authorize appellate review of sentences to minimize disparities, suggest more wide-scale and effective use of statutory criteria for decisionmaking, grant defendants greater participation in decisions that affect their sentences, and generally reduce authorized maximums would tend to alleviate many difficulties presently experienced with indeterminate sentencing by retaining the flexibility to individualize sentences.

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One of the major factors of a judicial minimum is that, in the rare case in which an offender is an obvious threat to the community, the community will be protected if the court provides a period of time in which the offender may not be released on parole. It is understandable that some judges would find this a court-approved appropriate sentence for the public safety would not be adequately protected.

The standard provides criteria for making the maximum term conflicts with the view that only as much confinement as is absolutely necessary should be imposed. Judicial control over the minimum is a non

It is becoming increasingly clear that the confinemen- of most criminal offenders on the facts that pre

sent circumstances, offers little benefit to the offender or the public. This report has recommended elsewhere that incarceration be considered an alternate to be used only when no other disposition would protect the public. The length of confinement is determined by the conditions of the sentence. The three basic sentence that could not be altered—would leave little room for correctional administrators or parole boards to release the offender when it appears to them that he is capable of returning to society. As a result, offenders would serve longer sentences than necessary—a situation to be avoided wherever possible.

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5.3 Sentencing to Extended Terms

State penal code revisions should contain separate provision for sentencing offenders when, in the interest of public protection, it is considered necessary to incapacitate them for substantial periods of time. The following provisions should be included:

1. Authority for the judicial imposition of an extended term of confinement of not more than 25 years, except for murder, when the court finds the incarceration of the defendant for a term longer than 5 years is required for the protection of the public and that the defendant is (a) a persistent felony offender, (b) a professional criminal, or (c) a dangerous offender.

2. Definition of a persistent felony offender as a person over 21 years of age who stands convicted of a felony for the third time. At least one of the prior felonies should have been committed within the 5 years preceding the commission of the offense for which the offender is being sentenced. At least two of the three felonies should be offenses involving the infliction, or attempted or threatened infliction, of serious bodily harm on another.

3. Definition of a professional criminal as a person over 21 years of age, who stands convicted of a felony that was committed as part of a continuing illegal business in which he acted in concert with other persons and occupied a position of management, or was an executor of violence. An offender should not be found to be a professional criminal unless the circumstances of the offense for which he stands convicted show that he has knowingly devoted himself to criminal activity as a major source of his livelihood or unless it appears that he has substantial income or resources that do not appear to be from a source other than criminal activity.

4. Definition of a dangerous offender as a person over 21 years of age whose criminal conduct is found by the court to be characterized by: (a) a pattern of repetitive behavior which poses a serious threat to the safety of others, (b) a pattern of persistent aggressive behavior with heedless indifference to the consequences, or (c) a particularly heinous offense involving the threat or infliction of serious bodily injury.

5. Authority for the court to impose a minimum sentence to be served prior to eligibility for parole. The minimum sentence should be limited to those situations in which the community requires reassurance as to the continued confinement of the offender. It should not exceed one-third of the maximum sentence imposed or more than three years.

6. Authority for the sentencing court to permit the parole of an offender sentenced to a minimum term prior to service of that minimum upon request of the board of parole.

7. Authority for the sentencing court in lieu
should base its finding on material in the presentence report, which should reflect a pattern of behavior indicating a threat that the offender may or may not present to the public safety. Virtually every State has a "habitual offender" law. Appellate courts have special sympathy for cases dealing with sexual offenders or "sexual psychopaths." The goals of these statutes are similar and raise similar problems. They provide for extended incarceration for defendants who fit within one of the three categories of offenders to which the standard is applicable: persistent offender, professional criminal, and dangerous offender. The "habitual offender" definition should replace the broad, all-encompassing, and often abused "habitual offender" provisions existing in many States. The defendant must have been convicted of three felonies. One of the prior felonies must have been committed within 5 years of the third conviction. This is to avoid instances where two felony convictions separated by 10, 15, or 20 years from the third result in extended confinement. There is also a finding in relation to indicate that the offender is really dangerous. The persistent offender problem centers not so much on the number of offenses as on the pattern of continued criminal behavior with no indication of reform. Likewise, it is required that two of the three convictions be for offenses involving serious bodily harm, either actual or contemplated. The interest of society in lengthy incapacitation of those who persist in acts dangerous to life or limb is clear. However, it is less clear why an extended term should be imposed for bad-check passing or like felonies not involving personal safety of others. On balance, the general 5-year maximum authorized by Standard 5.2 would appear sufficient.

The definition of professional criminal is directed toward persistent nonviolent criminal. The nature of the activity suggests that normal approaches to criminal sentencing are inappropriate. The professional criminal is not susceptible to correctional programming. His activity is based on the calculations appropriate to a business enterprise. The lengthy incapacitation of such offenders not only is justified but it is perhaps the only appropriate sanction.

The definition of dangerous offender is an attempt to avoid persuade the court that the offender is actually abnormal. This is based on adoption some changes in the current law. Thus, for example, Congress, in the Organized Crime Control Act of 1968, has adopted a very similar concept to the concept of the residential offenders. The concept of the residential offenders is, as an unusually shorter sentence for the nondangerous offender. The concept of providing separate approaches for dangerous offenders is not new. It has been proposed by the Model Sentencing Act, the Model Penal Code, and the study draft for the revision of the Federal criminal laws. The present concept is patterned after the latter, with the exception that for a finding of dangerousness a psychiatric report is required. If the offender is "mentally abnormal" would not be required. The exception reflects the position that psychiatric labeling is not enlightening or conclusively reliable as to the potential or actual dangerousness of individuals. The court extended maximum term, the imposition of a judicial minimum. While mandatory legislative minimums are not recommended because of their inflexibility, in rare instances a court may find desirable to impose a minimum sentence to preclude early parole. When the advisory committee which studied sentencing for the American Bar Association split on the issue of judicial control of the minimum sentence, the majority recognized that in some instances a court might need re assurance as to the incapacitation of a particularly dangerous offender. The standard authorizes such imposition for that purpose, with the restriction that the minimum may not exceed 3 years or one-third of the maximum imposed.

To avoid the rigidity of the minimum sentence, the standard would allow the court to authorize parole for the offender prior to expiration of his minimum sentence if requested to do so by the parole authority. The standard also provides that in lieu of such judicial imposition of a minimum sentence, the court be authorized to recommend to the board of parole at time of sentencing that parole be denied for a given period of time. This would allow the court to express community's feelings without making the sentence unduly rigid.

References

Related Standards
The following standards may be applicable in implementing Standard 5.3.

5.2 Sentence the Nondangerous Offender.
16.7 Sentencing Legislation.
16.8 Sentencing Alternatives.
16.10 Presentence Reports.
16.12 Commitment Legislation.
Standard 5.4

Probation

Each sentencing court immediately should revise its policies, procedures, and practices concerning probation, and where necessary, enabling legislation should be enacted, as follows:

1. A sentence to probation should be for a specific term not exceeding the maximum sentence authorized by law, except that probation for misdemeanants may be for a period not exceeding one year.

2. The court should be authorized to impose such conditions as are necessary to provide a benefit to the offender and protection to the public safety. The court also should be authorized to modify or enlarge the conditions of probation at any time prior to expiration or termination of sentence. The conditions imposed in an individual case should be tailored to meet the needs of the defendant and society, and mechanical imposition of uniform conditions on all defendants should be avoided.

3. The offender should be provided with a written statement of the conditions imposed and should be granted an explanation of such conditions. The offender should also be authorized on his own initiative to petition the sentencing judge for a modification of the conditions imposed.

4. Procedures should be adopted authorizing the probation officer to order the revocation of a sentence of probation for violation of specific conditions imposed, such procedures to include:

a. Authorization for the prompt confinement of probationers who exhibit behavior that is a serious threat to themselves or others and for allowing probationers suspected of violations of a less serious nature to remain in the community until further proceedings are completed.

b. A requirement that for those probationers who are arrested for violation of probation, a preliminary hearing be held promptly by a neutral official other than his probation officer to determine whether there is probable cause to believe the probationer violated his probation. At this hearing the probationer should be accorded the following rights:

1. To be given notice of the hearing and of the alleged violations.

2. To be heard and to present evidence.

3. To confront and cross-examine adverse witnesses unless there is substantive evidence that the witness will be placed in danger of serious harm by so testifying.

4. To be represented by counsel and to have counsel appointed for him if he is indigent.

5. To have the decisionmaker state his reasons for his decision and the evidence relied on.

6. Authorization of informal alternatives to formal revocation proceedings for handling alleged violations of conditions of probation. Such alternatives to revocation should include:

1. A formal or informal conference with the probationer to emphasize the necessity of compliance with the conditions.

2. A formal or informal warning that further violations could result in revocation.

7. A requirement that, unless waived by the probationer after due notification of his rights, a hearing be held on all alleged violations of probation whenever such revocation is a possibility to determine whether there is substantive evidence to indicate a violation has occurred and if such a violation has occurred, the appropriate disposition.

8. A requirement that at the probation revocation hearing the probationer should have notice of the alleged violation, access to official records regarding his case, the right to be represented by counsel including the right to appointed counsel if he is indigent, the right to subpoena witnesses in his own behalf, and the right to confront and cross-examine witnesses against him.

9. A requirement that before probation is revoked the court make written findings of fact based upon substantive evidence of a violation of a condition of probation.

10. Authorization for the court, upon finding a violation of conditions of probation, to continue the existing sentence with or without modification, to enlarge the conditions, or to impose any other sentence that is necessary and to make such modifications as are necessary work for the probationer and make it possible for him to adjust to the free community and supervising that is indigent and convicted of that crime. At this time criteria and procedures governing initial sentencing decisions should govern resentencing decisions.

Commentary

The thrust of this report is that probation will become the standard sentence in criminal cases. Confinement will be retained chiefly for those offenders who cannot safely be returned to the community. Probation, with its emphasis on assisting the offender to adjust to the free community and supervising that process, offers greater hope for success and less chance for human misery. But probation, to meet the challenge ahead, must be carefully and fairly administered.

Probation is a sentence in itself. In the past in most jurisdictions, probation was imposed only after the court suspended the execution or imposition of sentence to confinement. It was an act of leniency moderating the harshness of confinement.

It should now be recognized as a major sentencing alternative in its own right. It should be governed by the maximum terms established by the criminal code. If the offense in question provides for a 5-year maximum for confinement, the same maximum should be applicable to probation. In misdemeanors, however, the maximum term generally is set so low that probation supervision would be meaningless. Thus the standard would authorize probation up to one year as a sanction for misdemeanors. As sentences of confinement can be terminated through the parole system, the court similarly should be authorized to discharge the offender from probation at any time the court determines the supervision of the probation officer is no longer necessary.

The conditions imposed are a critical factor in probation. In too many cases courts mechanically adopt standard conditions for all probationers. Conditions should be tailored to fit the needs of the offender and society, and no condition should be imposed unless necessary for these purposes. Statutes should give the court great latitude in imposing sentence, particularly where juveniles are concerned. For most teenagers, jails are too severe and fines are usually paid by parents. Other forms of retribution have much more meaning: e.g., washing school buses, cleaning up parks, or serving as attendant in a hospital emergency room. Conditions that are unrelated to any useful purpose serve mainly to provoke the probationer and make unnecessary work for the probation officer. Courts should be empowered to modify conditions as they...
The American Law Institute's Model Penal Code and the study draft of a new Federal criminal code prepared by the National Commission on Reform of Federal Criminal Laws contain lists of generally appropriate probation conditions which should be authorized for imposition in a particular case.

The probationer should at all times be in a position to comply with the conditions of probation. This requires that he be provided with precise explanations of the conditions imposed and that he have the continuing opportunity to request further clarification from the sentencing court. The probationer likewise should be authorized without the permission of the probation officer to request the court to modify the conditions. This authority is consistent with the view that the court should exercise continuing jurisdiction over all correctional programs.

Where an offender violates the established conditions, his probation may be revoked. However, implicit in the grant of probation on conditions is the assurance that unless a violation occurs, the probation will continue. Thus procedural safeguards to assure that an alleged violation did in fact occur are critically important. The Supreme Court has recognized in two important cases that the Constitution requires some minimal procedural safeguards. In *Mempa v. Rhay,* 389 U.S. 128 (1967), the Court decided that the right to counsel extended to probation revocation. In a more recent case, *Morissette v. Brewer,* 408 U.S. 471 (1972), the Court outlined in detail the procedural aspects constitutionally required for parole revocation. The revocation of parole and probation are similar in nature and the standard adapts the procedures required in the one case to the other.

There are two critical decision points incident to probation revocation: the decision to arrest and the revocation hearing. The arrest disrupts the probationer's ties to the community and may determine in large measure his ability to remain on probation after further proceedings are concluded. Authority should exist to allow the probationer to continue in the community until a final determination has been made regarding whether he did in fact violate a condition and if he did, whether confinement is the appropriate disposition. Where there is a serious threat to the public safety, detention may be unavoidable. However, if the probationer is detained awaiting his revocation hearing, a preliminary hearing should be held to determine whether probable cause exists to believe he violated a condition. This preliminary hearing, with the attributes listed in the standard, is constitutionally required in parole revocation by the *Morissette* decision. The Court in *Morissette* did not determine the question of whether counsel was required, but the Commission believes that counsel should be afforded at the hearing to protect the probationer's interests.

The standard also indicates the rights to be granted the probationer at his hearing before the sentencing court to determine whether his probation should be revoked. Here again the procedural safeguards recommended are constitutionally required. Where revocation is not contemplated, as in the case of violation of minor conditions, some informal procedures should be authorized to allow the judge to meet with the probationer informally and reemphasize the importance of the conditions imposed. If the probationer is found to have violated his probation, the court should be able to consider the sentencing alternatives that were available at the original sentencing. In resentencing the offender, all of the procedural safeguards and devices should be applicable. Sentencing councils, for example, may be utilized in determining issues of resentencing probation violators.

The standard further recommends that if probation is revoked, the time spent under supervision prior to the violation should be credited against the sentence. This is consistent with the recommendation that probation be considered a sentence rather than a form of leniency. The fact that confinement remains as the enforcement technique for assuring compliance with probation conditions does not justify the imposition of state control over the defendant for a longer period of time than the legislatively imposed maximum. For example, a defendant found guilty of an offense with a 5-year maximum is placed on probation for 3 years. At the end of 2 years he violates a probation condition and is sentenced to confinement. Without the appropriate credit, the court could sentence him to 5 full years of incarceration. Thus the individual who is granted probation—presumably because he was the better risk—would be subjected potentially to more state control than the person sentenced immediately to confinement.

Revocation of probation for the commission of a new offense or offenses often is used in lieu of formal trial procedures. The Commission believes that this is a misuse of revocation procedure. The offender should be charged formally and tried for new criminal violations. If the offender is found guilty, the court may use the criteria and procedures governing initial sentencing decisions in determining his resentencing decision, including those contained in Standard 5.6, Multiple Sentences. If the offender is found not guilty, the charges should not be used as a basis for revocation.

**References**

**Related Standards**

The following standards may be applicable in implementing Standard 5.4.
1. 2.10 Retention and Restoration of Rights.
2. 2.11 Rules of Conduct.
3. 10.2 Services to Probationers.
4. 16.11 Probation Legislation.
Fines

In enacting penal code revisions, State legislatures should determine the categories of offenses for which a fine is an appropriate sanction and provide a maximum fine for each category.

Criteria for the imposition of a fine also should be enacted, to include the following:

1. A fine should be imposed where it appears to be a deterrent against the type of offense involved by an appropriate correctional technique for an individual offender. Fines should not be imposed for the purpose of obtaining revenue for the government.

2. A fine should be imposed only if there is a reasonable chance that the offender will be able to pay without undue hardship for himself or his dependents.

3. A fine should be imposed only where the imprisonment of the defendant is impractical and where a fine is appropriate to assure a reasonably even impact of the fine on defendants of various means.

4. Authority for the imprisonment of a person who intentionally refuses to pay a fine or who fails to make a good-faith effort to obtain funds necessary for payment. Imprisonment solely for inability to pay a fine should not be authorized.

Legislation authorizing fines against corporations should include the following special provisions:

1. Authority for the court to base fines on sales, profits, or net annual income of a corporation when appropriate to assure a reasonably even impact of the fine on defendants of various means.

2. Authority for the court to proceed against specified corporate officers or against the assets of the corporation where a fine is not paid.

Commentary

The fine is as traditional a criminal sanction as imprisonment and, when mechanically applied, as counterproductive. The law of fines is as inconsistent and chaotic as that establishing prison sentences. Little guidance is given to the courts for the imposition of fines; in most jurisdictions, jail stands as the only means of collection.

Little is known about the impact of fines. However, a sanction based on the financial means of the defendant can have disparate and destructive results, particularly for the poor. In many jurisdictions, the fine is a revenue device unrelated in practice to concepts of corrections or crime reduction.

If the fine is to be an effective tool in dealing with criminal offenders, it must be employed cautiously and intelligently.

The threat of the standard is to provide for fines the same standards as imposed for imprisonment—legislative criteria with appropriate restraints on judicial discretion. The standard lists factors that should be considered in imposing a fine.

The fine, like any other sanction, should be related to the offense and the individual offender. It should be viewed as a correctional tool and applied only where it is likely to have some beneficial effect. Imposition of fines purely for the production of revenue has little to recommend it when the goal of the criminal justice system—reduction of crime—is considered.

A fine will have little beneficial effect if it is levied on an individual who does not have the ability to pay. A large proportion of offenders confined in local jails are there for nonpayment of fines. A sentence impossible to fulfill serves neither society nor the offender. Mechanically applied, it serves merely to single out the poor for incarceration.

It is similarly inappropriate for the state to compete with the victim of an offense for the resources of the defendant. If the defendant is willing or ordered by the court to provide restitution or reparation to the victims of the offense, no additional fine should be imposed unless the defendant can meet both obligations.

The standard governmental response to nonpayment of fines is imprisonment. The Supreme Court in Ture v. Missouri, 401 U.S. 395 (1971), has recognized that this process unjustly discriminates against the poor. Likewise, it is an inefficient way to collect a debt, because imprisonment of the offender makes it impossible for him to earn the wherewithal to pay. Private creditors learned long ago that imprisonment for debt was unproductive.

Legislation should be enacted authorizing the states to utilize the same means as private creditors to recover an unpaid fine. This would include such remedies as garnishment, attachment, and other collection measures. The fine should become a lien on the property of the offender subject to normal foreclosure procedures. Imprisonment should be reserved only for those offenders who intentionally refuse to pay a fine or fail to exercise good faith in obtaining money with which to pay it. Courts should be specifically granted the power to impose fines to be paid in installments and to modify or revoke a fine when conditions indicate that the offender for justifiable reasons cannot meet the obligation.

Restricting the availability of the fine and the measures authorized to collect it creates the risk that the ultimate result will be imposition of incarceration on indigent offenders in lieu of imposing what the court believes to be an uncollectible fine. This may occur because all too often courts that generally utilize fines have no other alternative than imprisonment. Probation services and other community-based programs are generally not available to misdemeanor courts. The standard rejects incarceration where its imposition is based solely on the person's wealth. Imprisonment should be imposed where imprisonment serves a sentencing objective and then only when no other alternative is appropriate. A person's wealth should be an impermissible factor in sentencing.

Special provisions may be considered for the imposition of fines against corporations. The fine is perhaps more appropriate against corporations than individuals because the economic sanction relates to the purpose of most business organizations. However, for the fine to have any impact it must be substantial enough to discourage the conduct deemed criminal. Fines related not to the offense but to sales, profits, or net annual income of the corporation may be appropriate, and legislation should authorize the sentencing court to consider these factors.

Collection measures for fines levied against corporations should include the ability to enforce the fine against the corporation's officers or assets. States should undertake studies and experimentation in the use of fines, to determine their actual effectiveness in persuading offenders to avoid future misconduct. With selected individuals the use of fines may be more effective in this respect than other sentencing alternatives.

References


3. National Commission on Reform of Federal...
Related Standards
The following standards may be applicable in implementing Standard 5.5.

16.7 Sentencing Legislation.
16.8 Sentencing Alternatives.

Standard 5.6
Multiple Sentences

State legislatures should authorize sentencing courts to make disposition of offenders convicted of multiple offenses, as follows:

1. Under normal circumstances, when an offender is convicted of multiple offenses separately punishable, or when an offender is convicted of an offense while under sentence on a previous conviction, the court should be authorized to impose concurrent sentences.

2. Where the court finds on substantial evidence that the public safety requires a longer sentence, the court should be authorized to impose consecutive sentences. However, a consecutive sentence should not be imposed if the result would be a maximum sentence more than double the maximum sentence authorized for the most serious of the offenses involved.

3. The sentencing court should have authority to allow a defendant to plead guilty to any other offenses he has committed within the State, after the concurrence of the prosecutor and after determination that the plea is voluntarily made. The court should take each of these offenses into account in setting the sentence. Thereafter, the defendant should not be held further accountable for the crimes to which he has pleaded guilty.

4. The sentencing court should be authorized to impose a sentence that would run concurrently with out-of-State sentences, even though the time will be served in an out-of-State institution. When advised of either pending charges or outstanding detainers against the defendant in other jurisdictions, the court should be given by interstate agreements the authority to allow the defendant to plead to those charges and to be sentenced, as provided for in the case of intrastate criminal activity.

Commentary

A perplexing problem, in terms of both substantive criminal law and sentencing policy, has been presented by the "multiple" offender. Several situations, each distinct, but each raising the same basic point, can be hypothesized:

1. The offender commits one criminal "act," but it causes two injuries, such as detonation of a bomb that causes both personal and property damage.

2. The offender commits the same offense several times, as when a bank teller embezzles a large sum of money over a period of time.

3. The offender commits several separate acts, all within the same "transaction," as (a) entering a bank with the intent to steal, (b) stealing, and (c) escaping in a (d) stolen car (e) across State lines.
4. The offender commits one "act," punishable by two or more jurisdictions, as when a defendant robs a federally insured bank, which is both a Federal and a State crime.

5. The offender commits different crimes, at different times, in different jurisdictions.

The problem of the multiple offender is complicated by a number of factors and legal doctrines that come into play when an offender is charged with more than one offense within the same jurisdiction. The prosecuting attorney may wish to consolidate all related offenses into one action to make efficient use of prosecution and judicial resources. The defendant, on the other hand, may believe himself to be prejudiced by having too many offenses consolidated in the same trial, reasoning that the jury may believe that, with so many charges, one or more has to be true.

However, the opposite attitudes may prevail. The prosecutor may wish to sever the trial of related offenses in order to have more than one chance of conviction, or because, although prepared for one offense, he lacks evidence for support of the other. In addition, the prosecution may seek to obtain consecutive sentences with more than one trial to increase the punishment. The defendant may wish to consolidate all offenses to avoid having to suffer through more than one trial or in the belief that he will receive a lesser sentence if all offenses are tried together.

More offenses that cross jurisdictional lines are even more complex. When two jurisdictions are involved, there generally are two prosecutors and two courts that must decide the extent to which offenses can be consolidated. And where two separate States are involved, resolution of the issue may depend on the availability of interstate agreements authorizing consolidation. The allocation of the expense of the trial and eventual correctional program also are factors that make interjurisdictional consolidation of offenses difficult.

Whatever justification there may be for severing various offenses for separate trial, from the correctional standpoint the consolidation of trials would result in more appropriate sentences. An offender standing trial for additional offenses is not likely to be receptive to correctional programs. Also a plan for reintegrating the offender into the community is not practicable if he faces further confinement in another jurisdiction or further trial on pending charges.

One result of multiple trials is the potential for consecutive sentences. An offender sentenced to one term of years subsequently is sentenced to another term to be served after completion of the first.

There is little justification for this result other than to extend the period of confinement. Such an extension, if based solely on the fact that more than one offense was committed, regardless of the nature of the particular offender or the requirements of public safety, amounts to the imposition of sanctions purely for punishment purposes.

In addition, the ability to impose consecutive sentences often is subject to the charging discretion of the prosecutor, or even legal distinctions as to whether various offenses are in essence merely one offense. The definition to determine this question is not free from doubt. Thus, in Gore v. United States, 357 U.S. 396 (1958) the Supreme Court found that the government could prosecute for three separate and distinct offenses arising out of one sale of heroin: (1) the sale of the drugs not "in pursuance of a written order;" (2) the sale of drugs not "in the original stamped package;" and (3) the sale of drugs with the knowledge that they had been unlawfully imported.

Multiple prosecutions are further complicated by concepts of double jeopardy. (See two 1970 decisions—Ash v. Swenson, 397 U.S. 436, and Waller v. Florida, 397 U.S. 387.) The standard does not seek to solve the difficult problems involved with the joinder and severance of various offenses as it relates to factors other than sentencing. However, it is recommended that, regardless of whether various offenses are tried together or separately, consecutive sentences not be imposed in most instances and that provisions should be available to consolidate all offenses for purposes of imposing sentence.

The presumption should be in favor of concurrent sentences for multiple offenses. This report has recognized the need for extended terms for certain dangerous offenders in Standard 5.3. Sentences beyond the maximum of 5 years normally should be imposed only where the recommendations and specific findings of Standard 5.3 are met.

It is recognized that authorization of consecutive sentences provides another means for extending the recommended 5-year maximum. Like the American Bar Association which similarly wrestled with the problem, the Commission concludes that "the offender who has rendered himself subject to multiple sentences on identical criminal offenses is at the same time at risk to the safety of the public (as the dangerous offender)." (Standards Relating to Sentencing Alternatives, p. 177.) Consecutive sentences should, however, be limited to a maximum sentence of no more than double the sentence for the maximum for the most serious offense. Under the recommendations of Standard 5.3, this would preclude consecutive sentences resulting in a maximum of more than 10 years.

Extended terms up to 25 years could, of course, be imposed under the recommendations of Standard 5.3 and as much as 50 years for this type of offender under the present standard. This standard would allow the court to sentence the offender on all charges pending or for crimes yet undetected by authorities within the State to which he wishes to plead guilty. The provision does not require, as a prerequisite to this "taking account," that the court either notify, or receive information from, the prosecutor or other interested officials in the other intrastate jurisdictions in which charges may be pending. Although this undoubtedly would be prudent and sound judgment, no requirement is made because of possible bureaucratic delays unrelated to the need for sentencing the offender. If the crimes have been committed within the State, one court will be as capable as any other of imposing the appropriate sentence. If guilt is admitted to crimes involving the kinds of conduct indicated that the offender is "dangerous," the court should delay its decision until a full presence-report, including information on those crimes, is prepared and entered.

An example of a consolidation procedure is Federal Rule of Criminal Procedure 20(a), which provides that:

"A defendant arrested or held in a district other than that in which the indictment or information is pending against him may state in writing that he wishes to plead guilty or held in a district other than that in which the indictment or information is pending, and to consent to the disposition of the case in the district in which he was arrested or held."

Although the wording of the rule does not require it, the provision has been uniformly interpreted to allow a district court to consolidate any number of offenses pending in different Federal jurisdictions and sentence for all of them at once. The rule, however, does not allow a Federal court to consolidate State and Federal offenses. At the very most, a Federal court has the authority to make a Federal sentence run concurrently with a previously imposed State sentence, and a State judge has a concurrent power. This, however, still requires the time and effort of two judges and is relatively inefficient.

The standard also attempts to deal with interstate multiple offenses in the same manner as intrastate offenses. There are substantial differences, however, that will require interstate compacts and agreements. Pending development and implementation of those agreements, courts should be authorized to seek the consent of prosecutors of other States with pending charges or outstanding detainers to sentence the offender and give him the same immunity from further prosecution on those charges that he receives within the State.

References

Related Standards
The following standards may be applicable in implementing Standard 5.6.

5.3 Sentencing to Extended Terms.
16.7 Sentencing Legislation.
16.8 Sentencing Alternatives.
Standard 5.7

Effect of Guilty Plea in Sentencing

Sentencing courts immediately should adopt a policy that the court in imposing sentence should not consider, as a mitigating factor, that the defendant pleaded guilty or, as an aggravating factor, that the defendant sought the protections of right to trial assured him by the Constitution.

This policy should not prevent the court, on substantial evidence, from considering the defendant’s contrition, his cooperation with authorities, or his consideration for the victims of his criminal activity, whether demonstrated through a desire to afford restitution or to prevent uneasy public scrutiny and embarrassment to them. The fact that a defendant has pleaded guilty, however, should be considered in no way probative of any of these elements.

Commentary

If a guilty plea were an indication of true contrition, showing some movement toward acceptance of responsibility for the criminal act and some repentance for its perpetration, there would probably be little question as to whether a sentencing court should consider the plea in setting sentence. The mere fact of the pleas itself would justify inferences about rehabilitation prospects. Several practicalities, however, make this assumed connection between plea and contrition exceedingly tenuous.

The first of these factors is that many pleas are the result of the well-established and bitterly contested practice of plea bargaining. In such a setting, the plea has virtually no external symbolism at all. It may indicate an admission of guilt but not repentance or regret. The second factor is that guilty pleas, even when not the result of a bargain between prosecutor and defendant, may be the result of an assumption by the defendant that the judge will be more lenient. If a judge expressly acknowledges that any person who does not plead guilty to the charges placed against him. To rely on the coercive effects of such factors and then reward those who succumb is demeaning to the criminal justice process.

References


Related Standards

The following standards may be applicable in implementing Standard 5.7.

5.11 Sentencing Equality.
5.12 Sentencing Institutes.
5.13 Sentencing Councils.
5.17 Sentencing Hearing—Rights of Defendant.
5.18 Sentencing Hearing—Role of Counsel.
5.19 Imposition of Sentence.
Standard 5.8

Credit for Time Served

Sentencing courts immediately should adopt a policy of giving credit to defendants against their maximum terms and against their minimum terms, if any, for time spent in custody and “good time” earned under the following circumstances:

1. Time spent in custody arising out of the charge or conduct on which such charge is based prior to arrival at the institution to which the defendant is committed for service of confinement and time spent in custody following trial, prior to sentencing, pending appeal, and prior to transportation to the correctional authority.

2. Where an offender is serving multiple sentences, the time spent in custody awaiting the retrial should be credited against any sentence imposed following the retrial.

3. Where an offender successfully challenges his conviction and is retried and resented, the time spent in custody awaiting trial, conviction and time spent in custody awaiting the retrial should be credited against the sentence imposed following the retrial.

The court should assume the responsibility for assuring that the record reveals the amount of credit to be granted against the remaining sentence.

Commentary

This standard provides recommendations on the extent to which time spent in custody in various circumstances should be credited against a sentence in confinement. The issue arises in several different contexts, each with its own rationale and justification. The correctional authorities should assume the responsibility of granting all credit due an offender at the earliest possible time and of notifying the offender that such credit has been granted.

Credit as recommended in this standard should be automatic and a matter of right and not subject to the discretion of the sentencing court or the correctional authorities. The granting of credit should not depend on such factors as the offense committed or the number or prior convictions.

Time spent under supervision (in pretrial intervention projects, release on recognizance and bail programs, informal probation, etc.) prior to trial should be considered by the court in imposing sentence. The court should be authorized to grant the offender credit in an amount to be determined in the discretion of the court, depending on the length and intensity of such supervision.

There are numerous other instances in which credit for time served should be granted. For example, an offender may be serving concurrent sentences of 5 years for two offenses—armed robbery and burglary. If after serving 2 years, he challenges the burglary conviction and is successful, those years should be credited against the armed robbery sentence. Where concurrent sentences are imposed, the need for credit is even more obvious.

If the sentence for armed robbery was to be served after the sentence for burglary, it could be argued that the offender still had 5 years of confinement remaining. Credit for the time served under an invalid sentence should be granted against other sentences validly imposed.

The standard also provides that where an offender successfully challenges his conviction, is retried and resented, he should receive credit for time spent under the invalid conviction. The Supreme Court has held in North Carolina v. Pearce, 395 U.S. 711 (1969), that credit in this situation is constitutionally required.

References

Standard 5.9

Continuing Jurisdiction of Sentencing Court

Legislatures by 1975 should authorize sentencing courts to exercise continuing jurisdiction over sentenced offenders to insure that the correctional program is consistent with the purpose for which the sentence was imposed. Courts should retain jurisdiction also to determine whether an offender is subjected to conditions, requirements, or authority that are unconstitutional, undesirable, or not rationally related to the purpose of the sentence, when an offender raises these issues.

Sentencing courts should be authorized to reduce a sentence or modify its terms whenever the court finds, after appropriate proceedings in open court, that new factors discovered since the initial sentencing hearing dictate such modification or reduction or that the purpose of the original sentence is not being fulfilled.

Procedures should be established allowing the offender or the correctional agency to initiate proceedings to request the court to exercise the jurisdiction recommended in this standard.

Commentary

The sentence imposed by the court is binding on two parties, the offender and the correctional agency. The offender is required to serve the sentence imposed. The correctional agency should be required to execute the sentence the sentencing court envisioned. The inherent power of a court continually to supervise its own orders should apply to the sentencing decision. Either party should be entitled to return to the court when the other party violates the order. This would allow the offender to return to the court if proper treatment and rehabilitation programs contemplated by the sentence were not made available. Courts have not exercised this power.

This standard establishes the concept that the court should have continuing jurisdiction after the sentence has been determined and imposed. In so doing, it rejects the teachings of early judicial precedent that the judiciary should keep hands off correctional institutions. The hands-off doctrine never was sound and has been consistently rejected by many courts during the last 5 years. This standard substitutes the view that the sentence is analogous to decrees in equity cases, subject to further judicial scrutiny if the conditions of the decree are breached.

Based upon reverence for federalism and separation of power, the hands-off concept permeated litigation during the 1950's and early 1960's. It was further exacerbated by the courts' belief that no effective judicial remedy was available by which complaints of prisoners concerning their in-
correction could be heard. Today, however, those tenets no longer are viable. A series of Supreme Court cases, first in other areas and then in the field of correctional law, concluded the issue, and both Federal and State courts now are examining prison conditions in light of constitutional standards.

Many aspects of corrections, however, still are deemed beyond the scope of judicial review, including, for example, decisions as to the substance of institutional punishment, parole release, and others. Courts hesitate, moreover, to review simple negligence in medical service and tort cases. This standard would reverse that position, by the simple recognition that a sentence to incarceration implicitly carries with it stipulations that the inmate will receive decent medical treatment, fair nutrition, and equitable handling of his complaints and grievances; that, in other words, he will be treated as a human being with human and constitutional rights. Unfortunately, this is not always the case in contemporary penal institutions. An analogous area in the law is the theory of "guardianship" in cases involving children. Although adult in the eyes of the law, prisoners are, in many senses, subject to the kind of control that parents and others exercise over children and for that reason are in need of a higher level of judicial supervision. Furthermore, just as the courts of domestic relations consider the "best interests of the child," sentencing courts under the "best interests of the offender." This parallel situation suggests strongly that there is a parallel judicial power.

The concept of judicial review of prison and parole decisions is not in any way derogatory of the professionalism of correctional personnel. Rather, as Judge David Bazelon of the U.S. Court of Appeals for the District of Columbia explained, in allowing judicial review of similar determinations by medical personnel in treating mentally ill persons:

Not only the principle of judicial review, but the whole scheme of American government, reflects an institutional mistrust of any such unchecked and unbalanced power over essential liberties. That mistrust does not depend on an assumption that prison officers are insincere or incompetent. It is not doctors' nature, but human nature, which brings from the prospect and the fact of supervision . . . .” Judicial review is only a safety catch against the possibility of the best of men, as not all of its services is to spur them to doubled efforts on their own performance and provide them with a checklist by which they may readily as to Conigliaro v. Harris, 493 F.2d 617, 621 (D.C. Cir. 1969).

If the court is properly to exercise continuing jurisdiction over the sentenced offender, it must be authorized to modify or set aside a sentence. The Commission is aware of the possibility of abuse of this power. As the American Bar Association recognized, a court should impose a long sentence for public purposes one day and then quietly reduce it the next. Thus provisions granting the authority to reduce or modify a sentence should be carefully drafted to require either (1) a showing of new facts that affect the original sentence, or (2) conditions that are unrelated to or inconsistent with the purpose of the original sentence. These findings should be made in open court and on the initiative of either the offender or the correctional agency. Other standards requiring that the court indicate is writing at the time of sentencing the purpose of a sentence would assist the court in further proceedings.

References


Related Standards

The following standards may be applicable in implementing Standard 5.9.

16.3 Code of Offenders’ Rights.
16.7 Sentencing Legislation.
16.12 Commitment Legislation.

Commentary

Half a century ago, George Bernard Shaw remarked in his preface to Sidney and Beatrice Webb’s English Prisons under Local Government:

"...that prisons are horribly cruel and destructive places, and that no creature fit to live should be sent there, they only remark calmly that prisons are not meant to be destroyed: which is no doubt the consideration that reconciled Pontius Pilate to the practice of crucifixion."

While this situation has changed somewhat in 50 years, there are still many judges who have not visited the penal institutions to which they sentence offenders. This standard seeks to correct the situation by requiring such visitations at least once—at the start of each judge’s tenure.

The desirability of visitations is undeniable. The only issue is whether such visitations should be made mandatory, upon whom, and (particularly in large States with many different institutions) to which institutions the judge should be directed. The standard adopts the view that some personal familiarity with the physical institutions themselves is essential. For this reason, Standard 5.12 requires that sentencing institutes be convened in penal institutions, to allow persons connected with the criminal justice system to observe and live in, if only for a few days, the institution to which men are forwarded from the other parts of the system. The same reasoning compels the adoption of mandatory visitation.

Hopefully, the State administration will be able to coordinate visits to the "nonlocal" institutions, bringing together all new judges at least regionally.
If not statewide, and giving them a tour of the major facilities in the State. The judges should not be given "show" tours but should be able to determine on their own the impact of sentencing and imprisonment on individuals, without limitations placed upon their doing so for so-called security reasons. Firsthand knowledge of institutions and the atmosphere they convey should be a prerequisite to sentencing power.

References

Related Standards
The following standards may be applicable in implementing Standard 5.10.
2.1-2.18 Rights of Offenders.
9.10 Local Facility Evaluation and Planning.
16.7 Sentencing Legislation.

Standard 5.11
Sentencing Equality

The following procedures should be implemented by 1975 by court rule or legislation to promote equality in sentencing:
1. Use of sentencing councils for individual sentences. (See Standard 5.13.)
2. Periodic sentencing institutes for all sentencing and appellate judges. (See Standard 5.12.)
3. Continuing sentencing court jurisdiction over the offender until the sentence is completed. (See Standard 5.9.)
4. Appellate review of sentencing decisions.

As an alternative to review of sentences through normal appellate procedures, a jurisdiction may wish to establish a sentencing appeals board whose role function would be to review criminal sentences. If such a board is established it should consist of not less than three nor more than seven members who would serve staggered 6-year terms. Appointment should be made through a procedure that assures competence and protects against political pressures and patronage. The recommendations set forth below, applicable to appellate review of sentences by courts, should be applicable to a sentencing appeals board.

Procedures for implementing the review of sentences on appeal should contain the following precepts:

1. Appeal of a sentence should be a matter of right.
2. Appeal of a sentence of longer than 5 years under an extended-term provision should be automatic.
3. A statement of issues for which review is available should be made public. The issues should include:
a. Whether the sentence imposed is consistent with statutory criteria.
b. Whether the sentence is unjustifiably disparate in comparison with cases of similar nature.
c. Whether the sentence is excessive or inappropriate.
d. Whether the manner in which the sentence is imposed is consistent with statutory and constitutional requirements.

Commentary
After determination of guilt or innocence, an issue stipulated in more than 90 percent of criminal cases, the most important decision for the offender and the public is the sentence. In the past, when sentencing alternatives were limited, the major con-
cern was whether the maximum term imposed was excessive. With development of a variety of sentencing alternatives, selection of the type of sen-
tencing also has become critical.

As the sentencing decision becomes more complex, the likelihood of disparate sentences increases. An offender who believes he has been sentenced unfairly in relation to other offenders will not be receptive to reformational efforts on his behalf. Ar-
bbitrary sentencing decisions, based on irrelevant factors, also are counterproductive to the entire cor-
rectional process.

A number of techniques have been developed and utilized to reduce disparate and irrational sen-
tencing. In some multijudge jurisdictions, sentencing judges meet in sentencing councils and discuss the sentences of individual offenders. The discussion acts as a check on the attitudes and practices of the single sentencing judge.

In other jurisdictions, sentencing judges periodically conduct sentencing institutes to consider broad principles and approaches to sentencing. These provide useful training, particularly for new sentencing judges.

Both sentencing councils and sentencing institutes should be supported and authorized by legislation, but either can be conducted without specific statu-
bor principles and approaches to sentencing.

sentencing judges.

The fact that the trial judge has participated in the trial of a defendant is critical. The appellate

courts have moved with great caution in many jurisdictions, sentencing judges periodically conduct sentencing institutes to consider broad principles and approaches to sentencing.

These provide useful training, particularly for new sentencing judges.

Both sentencing councils and sentencing institutes should be supported and authorized by legislation, but either can be conducted without specific statu-
ory authority.

Courts have been reluctant to consider the sen-
tencing or its effect on the offender once it is im-
pacted. Many appellate courts refuse to construe
general appellate jurisdiction over criminal convictions as including the power to review the sen-
tence imposed. Others oppose the review of the appropriateness of the sentence on appeal.

The arguments against appellate review of sen-
tencing are not persuasive. Arguments based on the

fact that the trial judge has participated in the trial
and has more than the "cold record" before him are

equally applicable to all appellate decisions. Sentencing is no different in this respect than the

question of guilt.

Many are fearful that the exercise of the appellate power as to the appropriateness of the sentence
would lead to a large number of frivolous appeals. However, the successful reversal of an inappro-
priate or grossly excessive sentence is hardly frivolous in terms of correctional policy, the offender's interests. Also, if offenders do not appeal on the sentence, they are likely to appeal on more substantive grounds.

There is no convincing evidence that the judicial system could not survive general appellate review of sentences. Establishment of a special board to review sentencing decisions is one alternative that could be utilized if the courts became unable to handle the workload.

The third argument against the review of sen-
tencing is that there are no standards upon which

such a review can be based. The Commission recom-

mends elsewhere the enactment of statutory criteria for sentencing that are patterned after the Model Penal

Code, and the articulation of more precise sentencing cri-
teria by the courts. The Commission also recom-
mends that sentencing decisions be supported by written statements indicating the rationale of the
decision. All of these devices will provide a suitable foundation from which a reviewing agency can de-
termine the appropriateness of the sentence imposed.

The American Bar Association in its recent study

of appellate review found that in 21 States an ap-

pealable court had, at one time or another, reviewed

the merits of a sentence but "review is realistically

available in every serious case" in only 15 States. Even where specific statutory authority exists, the courts have moved with great caution. In many in-
stances, it is suspected that appellate court deci-
dions based on other grounds were highly influenced by the apparent inappropriateness of the sentencing decision.

Affirmative reasons support appellate review as well. Appellate review would require articulation of reasons for sentencing decisions and ultimately would result in the growth of a body of law about sen-
tencing principles to guide judges throughout the State. Furthermore, appellate review may be con-
stitutionally required. Several Supreme Court cases

have reversed the imposition of sentences that were "disproportionate" to the offense. While they are unclear, these decisions could form the basis of a constitutional requirement that every sentence be reviewed to determine whether it is consonant with the peculiar facts of the offense for which the defen-
dant has been sentenced.

Whether or not the appellate court should be al-
lowed to increase sentence is one of the most con-
troversial issues surrounding appellate review. In

England, the courts had the power to increase sen-
tencing upon appeal for more than 50 years, but such

authorization was repealed in 1967. In the United

States, some States, including Connecticut, Maine,

and Maryland, allow the appellate court to increase sentence in terms of correctional policy, and Iowa does not.

The American Bar Association House of Delegates

rejected by a vote of 95 to 75 the recommendation

of a special committee that the power to in-
crease should not be authorized.

Where the power to increase does exist, it is so-
dominated. No system without the authority to in-
crease the sentence has moved to adopt such

power. However, the Commission has chosen not
to take a position on this issue.

A controversial issue in establishing the appara-
tus for appellate review is to determine whether
the function should be handled by an existing
tribunal or a newly established nonjudicial
body. Connecticut, Maine, Maryland, and Massa-
ehusetts placed the power into the hands of a spe-
cially created "court," staffed primarily by trial
judges; the remaining States simply added to the
powers of the already existing appellate courts. The
American Bar Association preferred the latter
scheme, arguing that division of issues between a
"legal question" tribunal and a "sentencing" tribu-
nal might create serious jurisdictional conflicts, and that distances would be prohibitive if there were only one tribunal within a jurisdiction (citing par-
ticularly the Federal system).

While this viewpoint has validity, there are ad-

vantages in experience and uniformity in having

one board of fixed membership determine all sen-
tencing appeals within the State of jurisdiction. Ap-

peal of persons from a wide variety of disci-

plines well may increase sentencing effectiveness.

Experimentation with this concept should be under-
taken as an alternative to normal appellate channels.

Related Standards

The following standards may be applicable in
implementing Standard 5.1.

5.9 Continuing Jurisdiction of Sentencing Court.
5.12 Sentencing Institutes.
5.13 Sentencing Councils.
16.7 Sentencing Legislation.
16.8 Sentencing Alternatives.

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5.9 Continuing Jurisdiction of Sentencing Court.
5.12 Sentencing Institutes.
5.13 Sentencing Councils.
16.7 Sentencing Legislation.
16.8 Sentencing Alternatives.
Standard 5.12

Sentencing Institutes

Court systems immediately should adopt the practice of conducting sentencing institutes to provide judges with the background of information they need to fulfill their sentencing responsibilities knowledgeably. The practice should be governed by these considerations:

1. Each State should provide for a biennial sentencing institute, which all sentencing judges should be eligible to attend without cost or expense.

2. Each judge who has been appointed or elected since the last convening should be required to attend the institute in order to acquaint himself further with sentencing alternatives available.

3. The institute should concern itself with all aspects of sentencing, among which should be establishment of more detailed sentencing criteria, alternatives to incarceration, and reexamination of sentencing procedures.

4. Defense counsel, prosecutors, police, correctional administrators, and interested members of the bar and other professions should be encouraged to attend. A stipend for at least some persons, including students, should be established.

5. To the extent possible, sentencing institutes should be held in a maximum or medium security penal institution in the State.

Commentary

Since enabling legislation was passed by Congress in 1958, numerous sentencing institutes have been held for the Federal judiciary, and the pattern has been copied by several States. These institutes have been quite successful and can make a meaningful contribution to the improvement of judicial decisions and the effectiveness of the correctional system.

The institutes are intended primarily to acquaint judges with sentencing alternatives available to them. However, the meetings should be open to other criminal justice personnel, particularly prosecutors and police. Much is misunderstood about sentencing, the opportunities it presents, and its limitations. Police and prosecutors often do not appreciate the difficult dilemmas, competing principles, and limited options facing the sentencing court. They too could benefit from such institutes.

Persons representing professions and fields touched by the correctional system, including social workers, psychologists, and psychiatrists, should also participate to enhance communication among all concerned with corrections and convicted offenders.

To be truly effective, the institutes should be statewide. In some States, however, this may be very difficult or impossible, particularly when a large number of persons may attend. Consideration should be given, therefore, to localized (e.g., 15-county) institutes, although these should be discouraged if a statewide meeting is feasible. On the other hand, several surrounding States may hold a joint institute. While there will be some differences in outlook and perhaps in statutory constructions in sentencing provisions, an interstate meeting will allow those differences to be tested in open discussion.

The agenda of such institutes should include discussions of the purposes of sentencing and how these purposes might best be served; the kinds of dispositions for various types of offenders; alternative dispositions that should be available to the courts; resources that the courts may use in obtaining additional information needed to make appropriate dispositions; the relative effectiveness of alternative types of corrections programs; procedures for minimizing pretrial detention; evaluation of corrections programs observed through judicial visits; recommendations for penal code revisions; rights of offenders throughout the correctional process; comparative sentencing practice in the United States; and many related issues. Nationally recognized experts in fields of knowledge related to sentencing and corrections may be invited to attend institutes as resource persons.

References


Related Standards

The following standards may be applicable in implementing Standard 5.12.

5.10 Judicial Visits to Institutions.

5.11 Sentencing Equality.

16.7 Sentencing Legislation.

16.8 Sentencing Alternatives.
Standard 5.13

Sentencing Councils

Judges in courts with more than one judge immediately should adopt a policy of meeting regularly in sentencing councils to discuss individuals awaiting sentence, in order to assist the trial judge in arriving at an appropriate sentence. Sentencing councils should operate as follows:

1. The sentencing judge should retain the ultimate responsibility for selection of sentence, with the other members of the council acting in an advisory capacity.
2. Prior to the meeting of the council, all members should be provided with presentence reports and other documentary information about the defendant.
3. The council should meet after the sentencing hearing conducted by the sentencing judge but prior to the imposition of sentence.
4. Each member of the council should develop prior to the meeting a recommended sentence for each case with the factors he considers critical.
5. The council should discuss in detail those cases about which there is a substantial diversity of opinion among council members.
6. The council through its discussions should develop sentencing criteria.
7. The council should keep records of its agreements and disagreements and the effect of other judges' recommendations on the sentencing judge's final decision.

Commentary

The United States alone among Western countries places the sentencing decision in the hands of one person, the trial judge. The Commission has recommended that this tradition be retained, believing that other reforms when implemented will insure less disparate sentences and more structured sentencing decisions.

There are, in addition, means of providing sentencing judges with the opportunity to benefit from group judgments on sentencing matters. The sentencing institutes recommended in Standard 5.12 will insure discussion of general sentencing problems among many sentencing judges. The present standard recommends that more courts utilize the technique of sentencing councils to bring group judgments to bear on individual sentencing decisions.

Sentencing councils were developed originally in the U.S. District Court for the Eastern District of Michigan. The judges of that court meet regularly in panels of three to discuss pending sentenced decisions. The sentencing judge retains all responsibility for the ultimate sentencing decision, his two colleagues acting in advisory capacity. Experience in the Eastern District and elsewhere indicate that two major benefits are derived from the use of councils. First, sentences tend to be less disparate among participating judges. Second, the discussion of individual cases results in the development and articulation of sentencing criteria and standards as each judge is forced to relate his reasons for selection of a particular sentence.

This standard proposes that, wherever feasible, courts utilize sentencing councils. In single-judge jurisdictions, council participation on all sentencing decisions on a regular basis may be burdensome. However, even here, difficult cases may justify the inconvenience of nearby judges traveling to convene a council. Care should be taken not to delay unduly the imposition of sentence, particularly where the accused is detained. Thus courts must balance the benefits of the council against the burdens and the potential delay in the proceeding.

The council will not be effective unless all participants are provided with all available information on the offender, including a copy of the presentence report. The standard recommends that the council not be convened until after the sentencing hearing. Where a transcript of that hearing is available, it should be distributed. However, imposition of sentences should not be unreasonably delayed while awaiting the typing of a transcript.

The council should be continuously aware of its dual function—advising on individual cases and developing sentencing criteria. Participants should attempt to articulate in detail the reasons for their recommendation in a particular case. Informal records of the discussions and conclusions would be useful.

Once detailed criteria are developed and agreed upon, the council meetings should be shorter. Discussions of any length would be necessary only in unusually complex cases where the criteria developed are not directly applicable.

References


Related Standards

The following standards may be applicable in implementing Standard 5.13.

5.2 Sentencing the Nondangerous Offender.
5.3 Sentencing to Extended Terms.
5.4 Probation.
5.5 Fines.
5.6 Multiple Sentences.
16.7 Multiple Sentences.
16.8 Sentencing Alternatives.
Standard 5.14
Requirements for Presentence Report and Content Specification

Sentencing courts immediately should develop standards for determining when a presentence report should be required and the kind and quantity of information needed to insure more equitable and correctionally appropriate dispositions. The guidelines should reflect the following:

1. A presentence report should be presented to the court in every case where there is a potential sentencing disposition involving incarceration and in all cases involving felonies or minors.

2. Gradations of presentence reports should be developed between a full report and a short-form report for screening offenders to determine whether more information is desirable or for use when a full report is unnecessary.

3. A full presentence report should be prepared where the court determines it to be necessary, and without exception in every case where incarceration for more than 5 years is a possible disposition. A short-form report should be prepared for all other cases.

4. In the event that an offender is sentenced, either initially or on revocation of a less confining sentence, to either community supervision or total incarceration, the presentence report should be made a part of his official file.

5. The full presentence report should contain a complete file on the offender—his background, his prospects of reform, and details of the crime for which he has been convicted. Specifically, the full report should contain at least the following items:

   a. Complete description of the situation surrounding the criminal activity with which the offender has been charged, including a full synopsis of the trial transcript, if any; the offender’s version of the criminal act; and his explanation for the act.

   b. The offender’s educational background.

   c. The offender’s employment background, including any military record, his present employment status, and capabilities.

   d. The offender’s social history, including family relationships, marital status, interests, and activities.

   e. Residence history of the offender.

   f. The offender’s medical history and, if desirable, a psychological or psychiatric report.

   g. Information about environments to which the offender might return or to which he could be sent should a sentence of nonincarceration or community supervision be imposed.

   h. Information about any resources available to assist the offender, such as treatment centers, residential facilities, vocational training services, special educational facilities, rehabilitative programs of various institutions, and similar programs.

   i. Views of the person preparing the report as to the offender’s motivations and ambitions, and an assessment of the offender’s explanations for his criminal activity.

   j. A full description of defendant’s criminal record, including his version of the offenses, and his explanations for them.

   k. A recommendation as to disposition.

6. The short-form report should contain the information required in sections 5 a, b, c, d, e, h, i, and k.

7. All information in the presentence report should be factual and verified to the extent possible by the preparer of the report. On examination at the sentencing hearing, the preparer of the report, if challenged on the issue of verification, should bear the burden of explaining why it was impossible to verify the challenged information. Failure to do so should result in the refusal of the court to consider the information.

Commentary

Presentence reports are precisely what the name implies: reports written prior to sentence to inform the judge of what may be pertinent facts concerning the offender, his past, and his potential for the future. The purpose is to provide a range of evaluative and descriptive information and considerations the judge could not possibly obtain in mere courtroom exposure to the offender. Such information is essential if the decision is to be a knowledge­able one.

Some State statutes specifically require presentence reports for certain classes of convicted defendants, such as felons, but most do not. In the latter jurisdictions, the percentage of courts and of judges within those courts using such reports varies greatly. Federal courts appear to be the most consistent users, with presentence reports being prepared in almost 90 percent of the cases.

The importance of the presentence report to informed decisionmaking in sentencing led the creators of the Model Penal Code to require such reports in most instances. The American Bar Association disagreed, however, pointing out that there were some instances in which it would provide no useful information beyond that already available to the court.

The standard accommodates both views. In simple cases, extensive presentence reports are a waste of resources. The standard thus provides that short-form reports should be prepared in most instances, with the court authorized to insist on a long report where it deems this necessary.

Requirement of the standard for a full presentence report when the possible sentence exceeds 5 years is consistent with the provisions of the Model Sentencing Act and the Model Penal Code. It seems reasonable to require that the court be fully informed in such instances.

The kind and quality of information to be included in a presentence report will vary with its use and the nature of the decisions depending upon it. Most authorities, however, agree on the basic content requirements. The requirements for both the full presentence investigation and the simpler short-form report are put forth in the standard.

The standard strongly urges verification, wherever possible, of information contained in a presentence report. The need for verification cannot be denied. The law books are bulging with cases in which a factually erroneous presentence report has led to imposition of a harsher sentence than otherwise would have been handed down.

References


Related Standards

The following standards may be applicable in implementing Standard 5.14.

5.2 Sentencing the Nondangerous Offender.

5.3 Sentencing to Extended Terms.

5.19 Imposition of Sentence.

16.10 Presentence Reports.
Standard 5.15

Preparation of Presentence Report Prior to Adjudication

Sentencing courts immediately should develop guidelines as to the preparation of presentence reports prior to adjudication, in order to prevent possible prejudice to the defendant's case and to avoid undue incarceration prior to sentencing. The guidelines should reflect the following:

1. No presentence report should be prepared until the defendant has been adjudicated guilty of the charged offense unless:
   a. The defendant, on advice of counsel, has consented to allow the investigation to proceed before adjudication; and
   b. The defendant presently is incarcerated pending trial; and
   c. Adequate precautions are taken to assure that nothing disclosed by the presentence investigation comes to the attention of the prosecution, the court, or the jury prior to adjudication.

2. Upon a showing that the report has been available to the judge prior to adjudication of guilt, there should be a presumption of prejudice, which the State may rebut at the sentence hearing.

Commentary

Preparation of a presentence report is time-consuming and may require several weeks of investigation, information-gathering, and analysis. During this period, the defendant may be held in detention waiting for completion of a report that may suggest probation. To avoid this, probation offices often conduct investigations prior to the determination of guilt, always with the consent of the defendant. The practice, of course, raises fears that the court may see the report before guilt is determined and be influenced by the information it contains. Rule 32 of the Federal Rules of Criminal Procedure specifically provides that the trial judge shall not be given the presentence report prior to the time the jury returns with its verdict.

This standard accepts the practice of preadjudication investigation but rejects a recent position of the Supreme Court that the burden should fall to the defendant to demonstrate prejudice if the report has or might have been read by the adjudicating judge prior to the determination of guilt. The Commission's position seems appropriate because: (1) the defendant does not really have the knowledge necessary to demonstrate prejudice; and (2) its practice of reading these reports prior to guilt adjudication is apparently so widespread that steps must be taken to stop it, since the danger of prejudice, particularly to undereducated and disadvantaged defendants, is rather obvious.

References


Related Standards

The following standards may be applicable in implementing Standard 5.15.
5.16 Disclosure of Presentence Report.
5.17 Sentencing Hearing—Rights of Defendant.
16.10 Presentence Reports.
Standard 5.16

Disclosure of Presentence Report

Sentencing courts immediately should adopt a procedure to inform the defendant of the basis for his sentence and afford him the opportunity to challenge it.

1. The presentence report and all similar documents should be available to defense counsel and the prosecution.

2. The presentence report should be made available to both parties within a reasonable time, fixed by the court, prior to the date set for the sentencing hearing. After receipt of the report, the defense counsel may request:
   a. A presentence conference, to be held within the time remaining before the sentencing hearing.
   b. A continuance of one week, to allow him further time to review the report and prepare for its rebuttal. Either request may be made orally, with notice to the prosecutor. The request for a continuance should be granted only:
      (1) If defense counsel can demonstrate surprise at information in the report; and
      (2) If the defendant presently is incarcerated, he consents to the request.

Commentary

Whether the contents of presentence reports should be revealed to defendant or his counsel has been a continuing subject of debate by judges and criminologists for more than a quarter of a century. Those opposing disclosure point to the possible "drying up" of sources from whom confidential information supposedly is obtained; the possible "dragging out" of sentencing with an "acrimonious, often pointless," adversary proceeding; the undermining of the relationship between defendant and his ultimate probation officer, if the officer originally recommends some incarceration; and possible psychological damage to the defendant.

Those favoring disclosure respond by saying that there is no "drying up" in those districts where disclosure now is made; that the spectacle of a court relaying on "hidden information" that turns out to be erroneous, as in Townsend v. Burke, 334 U.S. 736 (1948), cannot be tolerated; that the main source for the information are the defendant himself and the "public records"; and that there is need for insurance that the report correctly interprets the information gathered.

All three recent studies of sentencing have dealt with the issue. The Model Sentencing Act does not make disclosure mandatory in the ordinary case, but it is mandatory where the sentence is for more than 5 years for the so-called "dangerous" offender. The Model Penal Code provides that the court "shall advise the defendant or his counsel of the factual contents and the conclusions of any investigation." The American Bar Association's Standards Relating to Sentencing Alternatives and Procedures (Sec. 4.4) suggests that the report should be available for inspection by the defendant or his attorney but allows exclusion of some parts of the report "which are not relevant to a proper sentence . . . diagnostic opinion which might seriously disrupt a program of rehabilitation, or sources of information which has been obtained on a promise of confidentiality."

Courts are similarly divided, although most seem to agree that disclosure is not constitutionally required. Some States statutorily require disclosure, but the vast majority leave disclosure entirely within the judge's discretion. The current practice among such courts is mixed.

This standard, consistent with the view that the sentencing procedure should be a major step toward reintegrating the offender into society, adopts the position of requiring full disclosure, without exceptions as to confidentiality. Several reasons prompt this decision.

First, if the offender is to be convinced that his reintegration into society is desirable, he must be convinced that the society has treated him fairly. If he is sentenced on information he has not seen or had any chance to deal with and rebut, he cannot believe that he has been treated with impartiality and justice.

Second, the argument that sources may "dry up" is unconvincing. Two thoughts compel this conclusion: (1) those jurisdictions which have required disclosure have not experienced this phenomenon; and (2) more importantly, if this same evidence were given as testimony at trial, there would be no protection or confidentiality. Concepts of fair trial require that all such information be brought forward in open court and subjected to cross-examination and scrutiny. There is no reason to require less in the sentencing procedure, where the offender's liberty is at stake.

A third fear of those opposing disclosure is that certain information may be damaging to the overall relationship between offender and probation officer. Two observations seem appropriate here:

1. If complete candor is required for such a relationship, avoidance of disclosure surely begins the relationship on the wrong foot.

2. The less drastic alternative, recommended in the chapter on probation, is to separate the function of presentence report preparation and the supervision and treatment role of the probation officer.

This standard also discusses the timing of disclosure, recommending that defense counsel be afforded a reasonable time in which to verify the facts and garner his materials. If the report contains material unknown to the counsel, he may request a continuance of a week, unless his client presently is incarcerated and does not agree to the continuance.

The purpose of disclosure is to allow the defense counsel to prepare rebuttal. If, however, there is no major disagreement over the salient facts in the report, it may be wise to provide, as does the ABA provision from which this standard is drawn, for a presentence conference. Similar conferences have been used in Alabama, for example, with beneficial effect. These conferences, however, should be held at the discretion of the court; their primary purpose should be to save time.

If defense counsel requests a presentence conference, it should be granted if there appears to be a substantial possibility of obtaining stipulations as to most facts concerning the defendant and the report; otherwise, the request should be denied. A record of the resolution of any issue at such a conference should be preserved for inclusion in the record of the sentencing proceeding.

References
Sentencing Hearing—Rights of Defendant

Sentencing courts should adopt immediately the practice of holding a hearing prior to imposition of sentence and should develop guidelines for such hearings reflecting the following:

1. At the hearing the defendant should have these rights:
   a. To be represented by counsel or an appointed counsel.
   b. To present evidence on his own behalf.
   c. To subpoena witnesses.
   d. To call or cross-examine the person who prepared the presentence report and any other person whose information, contained in the presentence report, may be highly damaging to the defendant.
   e. To present arguments as to sentencing alternatives.

2. Guidelines should be provided as to the evidence that may be considered by the sentencing court for purposes of determining sentence as follows:
   a. The exclausory rules of evidence applicable to criminal trials should not be applied to the sentencing hearing, and all evidence should be received subject to the exclusion of irrelevant, immaterial, or unduly repetitious evidence. However, sentencing decisions should be based on competent and reliable evidence.

   Where a person providing evidence of factual information is reasonably available, he should be required to testify orally in order to allow cross-examination rather than being allowed to submit his testimony in writing.

   b. Evidence obtained in violation of the defendant's constitutional rights should not be considered or heard in the sentencing hearing and should not be referred to in the presentence report.

   c. If the court finds, after considering the presentence report and whatever information is presented at the sentence hearing, that there is a need for further study and observation of the defendant before he is sentenced, it may take necessary steps to obtain that information. This includes hiring of local physicians, psychiatrists, or other professionals; committing the defendant for no more than 30 days to a state or regional diagnostic center; and ordering a more complete investigation of the defendant's background, social history, etc.

Commentary

This standard would give the defendant those rights the Supreme Court has considered "fundamental" whenever "grievous loss" might be inflicted upon a person by a governmental agency. Some of those rights—such as hearing and counsel—already have been recognized in the sentencing arena. Others have not yet been accorded constitutional status.

The right to present witnesses on one's own behalf seems to be such an essential ingredient of fairness that it scarcely needs justification. Although there is no clear holding from the court that allocation is constitutionally required, the Federal Rules of Criminal Procedure require it, and so do most, if not all, States. The ability to present witnesses is simply an extension of that right.

The right to rebut, however, goes beyond the right of allocation. The casebooks are replete with instances in which information in presentence reports has been erroneous, but the defendant has had no opportunity to challenge or rebuff the material in it. The key case is Townsend v. Burke, 334 U.S. 736 (1944), in which the Court held that it was a violation of due process for the sentencing court to rely on erroneous information in sentencing a defendant who was without counsel. The opinion was vague, and it was not clear whether the absence of counsel was a determining factor in the Court's decision. However, at that time appointed counsel was not required in such felony cases. Furthermore, the Court declared that:

"in this case, counsel might not have changed the sentence, but he could have taken steps to see that the conviction and sentence were based on misinformation or misreading of court records, a requirement of fair play which absence of counsel withheld from this prisoner."

It is difficult to see how counsel could have taken such action without information before him upon which to determine that the judge was misinformed; thus, the Townsend decision strongly implied that the right to present evidence at a sentencing procedure and perhaps even to subpoena witnesses. The latter ability would appear to be necessary if the hearing is to be fair and comprehensive.

Examples of erroneous or questionable material contained in a presentence report are numerous. One of the most notable in this regard is United States v. Weston, 448 F.2d 626 (9th Cir. 1971), in which the defendant was convicted of receiving, concealing, and facilitating the transportation of heroin. Prior to reading the presentence report, the trial judge announced his inclination to impose the minimum permissible sentence. Yet the defendant ultimately received the maximum sentence—four times greater than the minimum. The change in attitude was prompted by a statement in the report that the Federal Bureau of Investigation felt that "she has never used [heroin] but has been the chief supplier to the Western Washington [State] area." Although the trial judge advised defense counsel of the basic content of this information, the report itself was not disclosed.

On appeal, the Ninth Circuit reversed, and remanded, stating that:

1. The government had the burden of proving this allegation.
2. The entire presentence report should be disclosed; and
3. The correct information in the report in no way substantiated the allegation.

The sentencing hearing is not to be considered a trial, and purposeful delaying tactics should not be tolerated by the trial judge. The sentencing hearing should allow sufficient opportunity for the defendant to know the allegations and information raised against him and to have an equitable chance to respond.

The constitutional requirements governing the procedures at sentencing hearings stem from Williams v. New York, 337 U.S. 241 (1949), in which the Supreme Court validated the use of hearsay evidence contained in a presentence report and information received out of court and thus not subject to challenge by the defendant. The Williams case was a particularly difficult decision since it involved a sentence of death by the judge who ignored the jury's recommendation for life imprisonment. Since Williams, the Court has imposed a requirement that such a defendant be represented by counsel during sentencing proceedings.

The standard goes beyond the Williams decision. It is not, however, an attempt to prophesy what future courts may determine due process requires but rather to resolve issues related to effective sentencing. It is true that the sentencing process involves fine and delicate judgments about an offender; courts often are apprised of information directed toward sentence that would be inadmissible in the same trial.

The standard does not recommend that all of the exclusory evidence rules regulating the flow of testimony in the criminal trial be made applicable to sentencing proceedings. However, the decisions regarding the imposition of sentences are not unlike the type of judgments made by executive administrative agencies both at the Federal and State level. They are based on opinion, judgments, expertise, and factual information. The Federal Administrative Procedure Act, which governs hearings of Federal administrative agencies, authorizes all evidence to be admitted other than what is irrelevant, immaterial, or unduly repetitious. The standard recommends the same for sentencing.
In addition, the structure of sentencing envisioned in these standards, with statutory criteria and their attendant findings of fact and articulated reasons for the imposition of a particular sentence, dictates that judicial decisions be based on competent and reliable factual bases. Thus, while almost any information is admissible in the sentencing proceeding, the eventual decision should have an adequate factual foundation.

One aspect of the Williams case runs contrary to many of the standards recommended in this chapter. In that case, the defendant was not allowed to confront and cross-examine the probation officer who filed the presentence report. There was no evidence that he was unavailable to testify. If sentencing decisions are to be based on reliable information and are to be seen from the offender's perspective as fairly arrived at, the offender should be entitled to challenge information used to his detriment, including cross-examination where that is reasonable. The standard recommends that, although hearsay information may be admitted, where the person providing the information is reasonably unavailable, he should testify personally in open court. The Supreme Court recently held in Morissette v. Brewer, 408 U.S. 471 (1972), that a parolee is entitled to confront and cross-examine witnesses against him when his parole is revoked. This decision and those requiring counsel at sentencing hearings may forecast a constitutional requirement of this magnitude.

The standard also deals explicitly and directly with an issue which has arisen lately in several court decisions. In Schipani v. United States, 315 F. Supp. 253 (E.D. N.Y., affd., 435 F. 2d 26 (2d Cir. 1970), a Federal court held that evidence seized in violation of a defendant's fourth amendment rights nevertheless could be admitted as evidence against him in the sentencing procedure. The court gave several reasons for its holding, but the prime thought was that deterrence of unconstitutional police conduct—which the court saw as the prime purpose of the fourth amendment—had been served by the first exclusion of the evidence from the defendant's trial and that forbidding its use a second time would not further deter police misconduct.

There is some reason to doubt the validity of the court's reasoning even if one assumes that the purpose of the fourth amendment is, in fact, to deter police malfeasance. But the premise is wrong. The fourth amendment protects individuals from invasions of their privacy and courts from being tainted by the use of unconstitutionally obtained evidence. The integrity of the judiciary is compromised when it bases its decisions on materials found in violation of the Constitution.

The final provision of the standard allows the court to use any existing resources to obtain further information about the defendant. The provision is patterned after the ABA recommendation, which in turn is based upon the provisions of several State and the Federal courts. Use of a period during which the defendant can be observed by trained professionals who can better assess his capabilities and suggest a program of social reintegration is a salutary measure, which again focuses on the individualization of the sentence. The standard recognizes that some courts will not have resources available to perform these services, and therefore allows the court to appoint local professionals to conduct such information-gathering as they can.

References


Related Standards

The following standards may be applicable in implementing Standard 5.17.

5.16 Disclosure of Presentence Report.
5.18 Sentencing Hearing—Role of Counsel.

Sentencing Hearing—Role of Counsel

Sentencing courts immediately should develop and implement guidelines as to the role of defense counsel and prosecution in achieving sentencing objectives.

1. It should be the duty of both the prosecutor and defense counsel to:
   a. Avoid any undue publicity about the defendant's background.
   b. Challenge and correct, at the hearing, any inaccuracies contained in the presentence report.
   c. Inform the court of any plea discussion which resulted in the defendant's guilty plea.
   d. Verify, to the extent possible, any information in the presentence report.

2. The prosecutor may make recommendations with respect to sentence. He should disclose to defense counsel any information he has that is favorable or unfavorable to the defendant and is not contained in the presentence report.

3. It should be the duty of the defense counsel to protect the best interest of his client. He should consider not only the immediate but also the long-range interest in avoiding further incidents with its criminal justice system. He should, to this end:
   a. Challenge, and contradict to the extent possible, any material in the presentence report or elsewhere that is detrimental to his client.

b. Familiarize himself with sentencing alternatives and community services available to his client and, to the extent consistent with his position as an officer of the court and a servant of society, recommend that sentence which most accurately meets the needs of his client and enhances his liberty.

Commentary

As already has been noted, most defendants plead guilty. Thus the sentencing decision becomes the critical proceeding for these offenders. Yet many, if not most, defense counsel, whether appointed or retained, appear to consider their job "finished" when the guilty verdict is rendered. From that point on, a case ceases to be an action at law and becomes a social problem, the belief being that a "social problem is not fit grist for the lawyer's mill."

In Menom v. Rhay, 389 U.S. 128 (1967), the Supreme Court recognized the role of counsel in sentencing, even where the judge had no real authority to do anything other than sentence the defendant to 10 years and make a recommendation as to his possible parole date. Nevertheless, the Court required counsel to be present at that hearing, and to "marshal the facts" and otherwise "aid and
assist" the defendant. If counsel is constitutionally required at such a hearing, where even marshaling the facts cannot prevent imposition of a prefixed sentence, then surely he has a significant role to play in the hearing suggested in these standards. The gathering and use of facts is a lawyer's specialty; in presenting alternatives to incarceration, defense counsel rarely will have an equal.

The dilemma lies in determining what is in "the best interests" of the client. Here the counsel must weigh the short-term interest of the defendant against the possible long-term benefit. While a sentence of nonincarceration obviously will be the short-term desire of the client, the defense counsel who becomes familiar with the lack of alternatives in the community, for example, may feel compelled to suggest a sentence that is more confining but is likely in the long run to help his client to avoid further difficulties with the law.

The key point, however, is that defense counsel's job does not end with the pronouncement of guilt. Rather, it begins here in the majority of cases. The concept that sentencing is a social issue to which lawyers cannot or should not make a contribution is a myth of another day.

The other provisions of this standard are relatively noncontroversial. The prosecutor and defense counsel owe a duty both to the court and to the defendant to be cautious in their remarks to the press that might prejudice the defendant's sentencing possibilities. The ABA's similar standard (Standards Relating to Sentencing Alternatives and Procedures) says that "the prosecutor, no less than the judge, has the duty to resist clamor by the media of public communications" (Sec. 5.3B) and that "it is inappropriate for either the prosecution or defense counsel to restate or individually sentence in the media of public communication" (Sec. 5.3G).

Disclosure by the prosecutor of information favorable to the defendant is constitutionally required in the guilt-adjudication stage of the criminal justice process; this standard extends the duty logically to the sentencing process as well. This recommendation is consistent with the approach of this chapter that sentencing usually is at least as important to the defendant as earlier stages of the process.

References

Related Standards
The following standards may be applicable in implementing Standard 5.18.

5.16 Disclosure of Presentence Report
5.17 Sentencing Hearing—Rights of Defendant

Standard 5.19

Imposition of Sentence

Sentencing courts immediately should adopt the policy and practice of basing all sentencing decisions as an official record of the sentencing hearing. The record should be similar in form to the trial record or in any event should include the following:

1. A verbatim transcript of the sentencing hearing including statements made by all witnesses, the defendant and his counsel, and the prosecuting attorney.
2. Specific findings by the court on all controverted issues of fact and on all factual questions required as a prerequisite to the selection of the sentence imposed.
3. The reasons for selecting the particular sentence imposed.
4. A precise statement of the terms of the sentence imposed and the purpose that sentence is to serve.
5. A statement of all time spent in custody or under supervision for which the defendant is to receive credit under Standard 5.8.
6. The record of the sentencing hearing should be made a part of the trial record and should be available to the defendant or his counsel for purposes of appeal. The record also should be transmitted to correctional officials responsible for the care or custody of the offender.

Commentary
As illustrated throughout this chapter, the imposition of the criminal sanction traditionally has been characterized by broad discretion, inarticulated premises, and few protections for the defendant. Thus, while elaborate formal procedures are meticulously required for the determination of guilt—a process in which about 10 percent of those eventually sentenced participate—the sentencing decisions have not been subjected to legal restraint for the most part. The result has been ineffectiveness, disparity, and confusion.

The process which is the concern of most standards in this chapter culminates with imposition of sentence. Statutory criteria have little value for sentencing if courts do not follow them. Presentence reports are meaningless unless they are accurate and in fact serve as the foundation for the sentence imposed. Sentencing disparity will not be resolved through the appellate process unless appellate tribunals have not only standards to apply but also an idea of the standards applied by the sentencing court. All of these recommendations require that the court outline its arguments and factual findings for a particular decision. Furthermore, correctional agencies will be in a better position to carry out the
order of the court if they know the reasons upon which that order is based.

The standard does not impose procedures unknown to the judiciary. Courts are used to resolving difficult factual questions and articulating their findings. Issues just as complex and just as subject to opinion and judgment as sentencing questions are resolved daily by courts of law. The tradition of the written opinion is one of the most substantial safeguards required in Anglo-American jurisprudence to protect against judicial abuse. The sentencing decision should be subjected to the same requirements.

The standard thus requires that a verbatim transcript of the sentencing hearing be made and preserved. This facilitates not only the sentencing court's decision but also the appeal of the sentencing decision. This will reduce the need or desirability of appealing sentences in many instances. By articulating the purpose of the sentencing, the court will, in addition, have a standard to which to govern its review of correctional practices under the Commission's recommendation in Standard 5.9 that the court maintain continuing jurisdiction over sentenced offenders.

The official record of the sentencing hearing should be part of the record of trial of the offense and should be available to the defendant for appeal to and to correctional agencies for guidance. Information developed by the sentencing court may be useful in classifying confined offenders or in supervising those subject to community-based programs.

References

Chapter 6
Classification of Offenders

Theoretically, classification is a process for determining the needs and requirements of those for whom correction has been ordered and for assigning them to programs according to their needs and the existing resources. Classification is conceptualized as a system of process by which a correctional agency, unit, or component determines differential care and handling of offenders. To date, however, there has been considerable confusion about classification systems in corrections.

One of the basic problems experienced by correctional systems in adopting the concept of classification as a useful correctional tool is that too often the purpose which a classification system might serve has not been specified. Most classificational correctional schemes in use today are referred to as classification systems for treatment purposes, but even a cursory analysis of these schemes and the ways in which they are used reveals that they would more properly be called classification systems for management purposes. This judgment does not imply that classification for management purposes is undesirable. In fact, but may be the only useful system today, given the current state of knowledge about crime and offenders. It is important, however, that correctional schemes begin to acknowledge the bases and purposes of classification systems that are in use.

There is another problem with trying to answer the question: Classification for what? While it is often conceded that no generally valid and useful system of classification for treatment now exists, there seems to be broad agreement within the corrections field on the desirability of finding such a system. It is also pointed out that a number of serious and dedicated social science researchers have been working for years on developing "treatment-relevant typologies" of offenders, and there is a possibility that they will reach a consensus on the basic components of a classification system and types of offenders fairly soon. It is one of the ironies of progress that just as the development of "treatment-relevant typologies" at last appears likely, there is growing disenchantment with the entire concept of the treatment model.

DEVELOPMENT OF CLASSIFICATION

Classification may be said to have developed in response to demands for the reform of corrections that began to be heard in England in the mid-16th century. Blasphemy, gambling, drunkenness, lowness of officers and keepers, and their cooperation in supporting prisoners' vices were reported as commonplace in the jails and prisons. To overcome these practices, committees from time to time rec-
ommented that neophytes should be separated from hardened offenders, and that prisoners should be separated on the basis of age, sex, and type of offense. Indeed, as it was, this was the beginning of classification. Both elements of the prison reform movement—Christianity, especially the Quakers, and Utilitarianism—led also to the introduction of methods of classifying offenders. The first practical efforts toward classification were based less on theoretical concepts regarding the cause of crime and possible ways to correct it than on the practical necessity of managing people. The early classification schemes did, in fact, eliminate many abuses of the Bedlam type of institution that preceded the modern prison. But like most innovations, this solution itself generated problems.

Segregation as Classification

Traditionally, administrators of correctional agencies have taken the position that men and women should be separated; (b) untried prisoners shall be kept separate from the convicted prisoners; (c) persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of criminal offense; (d) young offenders shall be kept separate from older offenders on the basis of the seriousness of their offense rather than the availability of program or their individual needs. State institutions generally care for felons, county and municipal institutions for misdemeanants. This differentiation is far from satisfactory, for current knowledge dictates that the offense is not a suitable index of an offender's character, dangerousness, or needs.

Rise of the Treatment Model

Adoption of the treatment model has had major implications for correctional operations. As it gained prominence, institutions moved from segregation based on various categories of offenders from each other to that of implementing different rehabilitative strategies. Under the new models, offenders are received in the correctional system, diagnosed, classified, and assigned to treatment based on their classifications. The combination of these two principles of classification, systems turned to the social work profession for assistance and introduced the caseworker into the penal situation to diagnose and treat the offender. This attempt to incorporate casework theory into penal institutions has been warped, however, by a failure to absorb (two of the most basic tenets of social work) the first of these is that, for casework to be effective, the individual must be free, that is, have a problem and be motivated to seek help; this is the principle of voluntarism. The second is that the goals of the casework process must be established by the client; this is the principle of self-determination. In its zeal to "help" those in charge, corrections made the assumption that all offenders are "sick" and that all can thus benefit from casework services. With this assumption apparently came the belief that the two basic social work principles could be ignored. The American criminal justice system in which virtually all offenders are forced to accept "help" (or at least subjected to classification for treatment as if they were going to get help) and in which the goals of that help are based on institutional staff needs runs headlong into the assumptions that make casework a viable component of the criminal justice process. It has continuously complained about the ungratefulness and recalcitrance of its clients who refuse to change while so many generous attempts are being made to change them.

Current treatment concepts in penal settings put the emphasis on individual "sick" offenders. In order to use them as a foundation for practice, it is necessary to assume that all offenders are sick. That is, "We know you're sick. What can we do for you?" Or, "If you deny that you're sick, you're going to have more trouble with the ward than those who acknowledge that they're sick, then you really must be sick unless you wouldn't admit it." The fact that there is little knowledge about causes of criminal behavior and how to eliminate it means that systems of forced treatment based on small nodal amount of knowledge will necessarily be extremely subjective and, worse yet, more than ever before. In other words, the overriding goal of institutions remains that of maintaining order and control, it is not surprising that in large measure classification schemes are based on this objective and are used to the extent that they coincide with it.

For the offender, on the other hand, the main goal is release; thus, his success comes from that of trying to figure out what is supposed to do to obtain release and then do it, or appear to do it. Most of the time, this is the first part; that is, trying to figure out what they are supposed to do. Given the fact that the offender is classified and assigned on the basis of subjective judgments by the treatment staff and that their judgments tend to shift as it is administratively convenient to do so, the individual can feel no confidence that whatever course of behavior he may try to follow will in any way help him to reach his goal. Furthermore, he is likely to be judged less on his behavioral performance and more on his "attitude," his "desire to change," or some other subjective factor.

In addition to its "help" and "treatment" concepts tend to lend staff to focus on intrapsychic problems while most offenders' crimes are probably at least equally related to some environmental factors as poverty and lack of education or other opportunity. And when the problem actually is mainly internal and psychological, correctional institutions are seldom an effective place to deal with offenders.

Originally hailed as a major revolution in the field, adoption of the treatment model in corrections has undoubtedly had positive impact in moving the system from one in which virtually no individualization occurred to one in which some attempt is made to account for individual differences. However, corrections has failed so miserably to improve its use and understanding of such tools as classification and diagnosis that a social work theory that their mode of application today is increasingly being recognized as counterproductive.

**SOME CLASSIFICATION PROBLEMS**

Running a Smooth Ship

It is around the problem of agency and personnel convenience, or "running a smooth ship," that a classification system supposedly geared to offenders' needs runs headlong into the administrative order and convenience. Organizationally, it is difficult for correctional programs responsible for offering services to all persons to individualize services for a specialized few. In public education, this problem is frequently expressed by the classroom teacher, who says he cannot deal with the disturbing or distracting child because the routine designed to accommodate the other 29 students in the classroom.
Traditionally, security and custody have been primary concerns in establishing the direction of a correctional program. In recent years, development of greater skills and availability of more sophisticated"need information about offenders who have made it possible to view security requirements from a new perspective, but much more progress is needed if such factors are to influence decisions affecting the offender. Subjective and irrational influences must be eliminated whenever possible. If subjective influences are the only available basis for action at the moment, they should be recognized and research initiated to replace ignorance with knowledge.

Difficulties in Application

One of the difficulties with classification is that, even after agency goals have been clearly established and commitment has been made to a specific classification program, there continues to be a wide range of latitude for response to overall decisions by agency personnel. Because of the latitude the classification process frequently breaks down.

Correctional staff by necessity are concerned with making judgments to as appropriate levels of custody, needs for education or vocational training, suitability for counseling, and readiness for parole. In making these judgments, the staff may well encounter offenders' experiences and other factors that simply have no relevance to classification decisions. Whether such factors are irrelevant or not, they are often viewed as criteria for further action. Correctional staff are clearly overwhelmed by the complexity of their decision-making tasks.

Even superficial analysis of most current classification programs in correctional settings would indicate that decisions concerning offenders' placements are made on the basis of court policy, agency policy, and management convenience. So much emphasis is placed on the attitudes of the committing court, the public relations of the agency, space requirements, and the like that the process resembles a bureaucratic system more than an agency capable of responding to the needs of its own inmates. In practice, it has been demonstrated that a number of correctional systems are of little value to their inmates, and personal behavior is often influenced by procedures that are little understood by offenders and staff. Within a framework that has little consistency with the needs of the offender, each agency then can tailor its programs to resolve them. Almost without exception, classification systems exclude the offender himself from their operations. He is an object, subject, or ward; to be used or disposed of as needed. It is only available basis for action at the moment, it should be recognized and research initiated to replace ignorance with knowledge.

Need for Comprehensive System

A major difficulty with present classification procedures is the need for lengthy interviews with each subject. It is extremely difficult to impart to staff the degree of knowledge needed to elicit evaluations and program plans. Needs for staff training have often exceeded the capacity of correctional agencies. Additionally, many classification decisions at reception centers have not proved accurate or consistent from one center to another. Persons assigned to given correctional systems often arrive at meaningful program plans from interviews, Consequence, once the information that the entire classification task is important, and relevant evaluators and researchers are seeking ways to standardize and computerize the classification application. This is possible due to the confluence of advances in computer technology and the increased use of electronic data processing in correctional systems. It presents an opportunity to do away with the biases and prejudices that affect decisions by classification process. At the same time, it presents an opportunity to match subjects and programs. Experience suggests that when such differential programming is inaugurated, the overall success rate achieved by offenders may be increased, particularly when the offender is included in determining the extent of his own program.

Ultimately, the full utilization of classification systems requires the application of technology. For too long, the correctional system has maintained an archaic system of keeping offenders' records. These, after all, provide little information with which to examine the offender accurately. Security classification decisions are made on the basis of escape records, coupled with an appraisal of the seriousness of the commitment offense, even though this information never has been used as a reliable indicator of the inmate's custody requirements or potential for future violence. Accountability to a counseling program is determined by the availability of the program; or the offender's willingness to participate, and the counselor's willingness to make his services available. Even those forms of counseling are of little value to some inmates and actually detrimental to others.

Discriminatory Decisions

Discriminatory program decisions are made on the basis of the behavior of others. Offenders react to the reactions of the person who is their primary concern. These discriminatory practices, planned or not, tend to be immoral to effective classification systems that would organize resources around the offender's needs and not around the needs of the agency's administrative structure or the type of classification system that is used.

A classification system or scheme cannot be adapted to an organization until the agency has spelled out its goals realistically and in a language clearly understood by offenders and staff. Within the framework can be established, goals, and a classification system can be devised to select those persons whose needs can be met within the agency's goals. Each agency then can tailor its programs to meet the goals.

Involving the Offender

Offenders should be involved in assessing their own problems and needs in selecting programs to resolve them. Almost without exception, classification systems exclude the offender himself from their operations. He is an object, subject, or ward; to be used or disposed of as needed. It is only available basis for action at the moment, it should be recognized and research initiated to replace ignorance with knowledge.

CONTRIBUTIONS OF CLASSIFICATION

Classification systems can be useful in a number of ways. Foremost is the requirement that the agency or program adopting a classification scheme conceptualize the problem with which it is dealing in terms of the complex issues it presents. Simple solutions are no longer acceptable. The act of conceptualizing, by its very nature, forces the correctional system to deal with the significance of classification as a whole. No part of the correctional system is available for analysis. If an adequate classification scheme are adopted, it is possible to match offenders to programs. Experience suggests that when such differential programming is inaugurated, the overall success rate achieved by offenders may be increased, particularly when the offender is included in determining the extent of his own program.

Another advantage is that classification can make handling large numbers of offenders more efficient through a group method process based upon an extensive and complete use of electronic data processing. From an administrative standpoint, classification schemes can be used to provide for more orderly processing and handling of individuals. From a financial standpoint, classification schemes can help administrators to a more effective use of limited resources and to avoid providing resources to offenders who do not require them. From a research standpoint, they can provide comparative studies.

The bulk of differences in the impact of classification systems are due to the potential usefulness as a communications device. No part of the correctional system is an end in itself. The goal of developing a continuum of assistance, care, and supervision cannot be accomplished until the various parts of the system are able to communicate intelligently. This statement is true within segments of the system, but not just a single component such as corrections.
true of communication between probation depart-
ments and courts, courts and State correctional
agencies, and correctional agencies and private
organizations that have resources to meet offenders' 
needs outside the criminal justice system.

Classification affords administrators a system for
bringing order to a series of multiple and often
related activities. When used properly, it can
help overcome a tendency for various elements of
the correctional bureaucracy to operate in a vacuum 
and fail to coordinate experiences for the offender.
These experiences must reinforce each other to move
the client toward a planned program objective.
This fact is not possible unless there is
as a basic theoretical plan that can be translated into
program strategies and communicated in language
comprehensible to staff in charge of managing the offender.

Essentially, classification should insure a more
effective pooling of relevant knowledge about the
offender and the development of a more effective
method by which all important decisions and activi-
ties affecting him may be coordinated. Ideally, it
should provide offenders with a means for changing
themselves rather than inculcating the offend-
er or offender types. An effective correctional
system would match offender types successively with
program types and correct the individual offender or
types of his environment to assure

An effective classification process, beyond the period of
direct agency responsibility. Most if not all clas-
sification schemes in use today are geared in actual
practice to risk and facilitating the
management of offenders.

In a community setting, management primarily
involves control of offenders to prevent further
violations while protecting society and the offender.
This protection means, for example, that high
surveillance should be employed only for those
offenders who require it. Furthermore, surveillance
is for those who have little or no
threat to others. All these management decisions
require an implicit or explicit classification system.

In a community setting, classification of
inmates in order to allocate resources
rationally who require it. Management is now based on four
coded elements. "R" is for rating and represents
the professional opinion of staff; "A" refers to the
type of the offender; "P" refers to the number of
prior commitments; and "S" to the nature of the sentence.

Originally, offenders were placed in categories labeled "intensive," "selective," or "minimal,"
according to staff judgment of the likelihood of a change. The bases for these judgments were
subjective and, predictably, there was considerable
divergence in decisions.

The three categories used early in the RAPS
program have been replaced by Categories I, II, and
III. Category I denotes the greatest expenditure of
resources above the essential level; Category II
denotes some expenditure above the essential level;
and Category III denotes expenditures at the
essential level. The system is designated to allocate available resources among offenders on the
basis of objective assessment of relative need.

Accuracy is a difficult but important issue for
determining offender categories. Need assessment is based on the RAPS
categories. Each element is given a numerical rating,
and the ratings for the elements are combined to give a
code that determines the appropriate
classification for each offender and the extent to which
available resources will be used for him.

The RAPS system is in the process of evolution
and development. Evaluation of its ultimate value as a
classification technique is a process of evolution.

Classification systems are useful solely for
management purposes. The term "manage-
ment" means effective control of offenders to avoid
further law violations while the agency is
responsible. In contrast to management, the term "treat-
ment" is used to change the individual offender or
types of his environment to assure

CLASSIFICATION FOR MANAGEMENT PURPOSES

Classification systems useful solely for management
purposes are distinguishable from those designated
as useful for treatment. The term "manage-
ment" means effective control of offenders to avoid
further law violations while the agency is respon-
sible. In contrast to management, the term "treat-
ment" is used to change the individual offender or
types of his environment to assure

1 Breed, "The Significance of Classification Procedures."
Thus, society is faced with a number of crucial social policy determinations. Given the facts stated above, a common response is to declare that the public policy must be to reduce the large numbers of offenders for purposes of punishment, retribution, deterrence, or condemnation, even though they do not present a high risk to the safety of others.

There are other alternatives that can be entertained, however. If current sanctions in use other than incarceration if not to deter or punish adequately, then new sanctions should be explored. Just as society devised use of imprisonment as a response to the lawlessness and brutality of cutting off the hands and feet of offenders, other forms of sanction can be tried. Particularly in view of the fact that imprisonment appears to serve fully only one of the above listed purposes—punishment—surely more effective and less brutal alternatives can be carried out as well. This may be a major challenge to classification in the future—to find alternatives to incarceration for various types of offenders which will better serve to punish, to deter, to express disapproval, or to reduce the probability of recidivism.

CLASSIFICATION STUDIES INCREASE KNOWLEDGE

Offender typologies are an important basis for the integration and increasing knowledge in the correctional field, which is considered important in the possibility of systematically developing differential programming for various offender types. The "treatment versus typology" being investigated for the correctional world vary considerably in complexity. At the middle range of complexity are offender groupings based on criteria of criminality and risk of assessment. The British Home Office has been attempting to develop a typology based on the nature of offenders' problems. Proponents of this approach have identified such problems in terms of personal inadequacies, psychological disturbance, or social stress. The study seeks to determine how each type of problem interacts with the others, with the "treatment" given, and with the probability of recidivism.

One of the most comprehensive studies has been conducted utilizing the Schag model, based on professional care and research into some of the basis of their attitudes toward others. A number of studies have been carried out using the Schag model, with varying results. The policy implications of each group make only in terms of some logic or rationale, some argument in defense of a particular choice of variables. However, it is not possible to claim that a particular system is causally significant. This aspect of classification or typology justifies the use of the term "contextualized risk." It is out of this kind of risk-taking by social scientists, theorists, practitioners, and correctional administrators that knowledge and skill advance. Eventually a classification scheme should be developed that would seek to explain the cause (or, more likely, causes) of an individual crime while in groups that will reduce the potential for further illegal behavior by the offender.

Current research in offender classification is severely limited and inadequate, but it provides evidence of the priority assigned to identifying "treatment-relevant" subgroups in heterogeneous offender populations. Only by some form of grouping is it possible to interpret research findings and test the efficacy of correctional practice. From a theoretical and management standpoint, a desirable classification system would be one that permits an organization to provide planned, specified programs for different types of offenders in ways that allow for program evaluation.

Theorists, practitioners, and researchers are constantly seeking some meaningful grouping of offenders into categories to offer (1) a step in the direction of an explanatory theory with a resulting aid in prediction that fulfills the understanding, (2) more implications for effective management, (3) effective differential programming strategies, and (4) greater precision for maximally effective research.

CLASSIFICATION AND THE COMMUNITY

The determination of action needed to deal with a given offender's antisocial acts varies widely among communities throughout the United States. The decision-making process that brings people into the correctional system often is based on divergent attitudes and philosophies, not only of the community's power structure but also of the community itself. All agencies tend to select or reject certain people or programs. The correctional agency in its current role in society not only establishes itself as a contributing part of the basic correctional classification system. Each community, through the creation of certain social agencies and the exclusion of others, defines for itself the offender types it is willing to sustain. The degree to which the community will provide services and its offender population fluctuates with its basic values, understanding of the problems, and leadership. Over the years, corrections have been subject to a radical change in emphasis and direction that can be related directly to society's awareness and understanding of the offender's needs. Any change of policy or attitude toward offenders or development of new programs by a community will alter population projections for correctional institutions, change the normal flow in and out, and modify the types of clients that must be served.

For correctional programs to be advanced, some concerns of the citizenry, the courts, and the political body, as well as those of correctional agencies must be satisfied. Persons in the criminal justice system must undertake massive public orientation and education programs concerning offenders' needs. They must contribute to the refinement of existing selection instruments that help keep offenders in the community unless they are specifically found to represent a serious threat to others.

Many of the issues discussed depend more on program development, attitudinal change, and financial readjustment than on refinement of selection instruments for assessment. Just as staff and administration must understand and accept the logic of a classification system, so too must the public be willing to support the purposes of the agency using the system. Both moral and financial support of the public are required to carry out any comprehensive classification system successfully.

CURRENT CLASSIFICATION PROCEDURES

Classification procedures generally are carried out through one of four organizational arrangements: classification units within an existing institution; classification committees, or diagnostic centers; and community classification teams.

Classification within an Existing Institution

The first organizational alternative involves classification clinics or reception units in the institutions to which offenders are committed. In the State systems using this arrangement, there are certain minimum requirements for "diagnosis," orientation, and protec-

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tion from contagion through quarantine, although the necessity of the latter is being increasingly questioned.

The reception unit is primarily a diagnostic section, administered by professional personnel whose functions are to make diagnostic studies and treat recommendations. For this process to be of value and utility, it is considered essential that upon admission there be thorough study of offenders by competent staff; differentiation based on methods elaborated at the reception center; treatment based on careful study of individual inmates; an effective orientation program for all inmates; and, finally, development of systematic research to explain criminal behavior and determine appropriate treatment programs.

The classification section of the system suffers from a number of defects that virtually deprive it of usefulness. Reports usually are submitted to administrative authorities, who may or may not follow the recommendations. Even when high-quality diagnostic work is produced, the results may not be applied, because diagnosis has not been linked directly or operationally with available programs. The system also becomes the victim of institutionalization. Procedures usually are rigid. Too many inmates are kept too long in the reception unit and process. The procedure is a character of an assembly line, with little selectivity in adapting the process to the individual inmate. Invariably the research component is completely lacking, and there is no check on whether the process really is fulfilling its purpose.

The Classification Committee

The second organizational arrangement is the institutional classification committee, which studies individual case records and collectively makes judgments as to the disposition of inmates in the institution. Professional personnel on the classification committee help develop the diagnostic evaluation and have a direct responsibility for translating this material into recommendations for inmate programs.

Although the committee's composition may vary, it is generally made up of individuals whose knowledge and skills are relevant to the offender's particular problem. It may include social workers or sociologists, nurses, doctors, and a vocational supervisory officer, a recreational supervisor, a chaplain, and a medical officer, a psychiatrist, or others. The committee determines inmate security ratings, assigns individuals to educational and vocational training programs, and decides whether work will be in the institution. Like other classification systems in use, the committee procedure becomes institutionalized, and decisions are made with little consideration of the old-dwelling mission or the offender's background. Like other classification systems in use, the committee procedure becomes institutionalized, and decisions are made with little consideration of the old-dwelling mission or the offender's background. Like other classification systems, it is unnecessarily restricted in its discussion of issues and interactions with individual inmates. The committee members are departmental representatives of administrative divisions and seldom know the inmate whose case is under consideration.

The demands of time, program routine, and workload—and the institutionalization of personnel themselves—prevents effective work in this area. The result is that a large number of institutionalized personnel are tied up in a process that accomplishes very little in effective programming for the individual inmate, although the system in its way does promote the orderly management of large institutional populations.

The effectiveness of a classification committee in carrying out its responsibilities presupposes considerable interaction with the offender; yet rarely does the committee have an opportunity to interact meaningfully with the inmate. Even when a brief interview between the inmate and the committee is permitted, the officer is asked to respond to a few structured and superficial questions and given little if any opportunity to initiate questions that might reveal a great deal about the way the offender perceives the world. And contrary to the concept that classification decisions must be based on the needs of individual inmates, committees habitually base their decisions on administrative needs and convenience.

Reception-Diagnostic Centers

A third organizational arrangement for the classification function emerged during the late 1940's and early 1950's with development of reception centers. By this method of operation, all offenders are committed to a central receiving institution for study, classification, and recommendations for training and "treatment" programs, and the institution to which the individual should be assigned. The process has already begun in some institutions.

The anonymity of inmates in the reception center is pervasive. The diagnostic and treatment line procedure permits them little opportunity to feel that they have any role or individual involvement in the process. For a description of varying reception centers, see Chapter 11, Major Institutions.

Reception and diagnostic centers use whatever resources are available to them in choosing the "rehabilitative" approach for each offender. Typically, decisions are based on the backgrounds of an inmate who has subjectively weighed a collection of opinions and perhaps employed a few educational, vocational, or psychological tests. The basis of the intake worker's judgment may or may not be clear in process. In any case, institution and personal bias are involved, because the work group is apprised of the result of his recommendations. Even if he is only an experienced worker is capable of rendering such judgments in a manner beneficial to the correctional system. Only when explicit criteria form the basis of recommendations is the system's management and structure designed to analyze relationships, and pass along pertinent data to inexperienced workers.

The central diagnostic facility is also in conflict with current theory over the importance of following up and programming correctional efforts at the community level. Many theorists in the field argue that a valid classification system can be applied throughout the whole of corrections, would be more useful.

Community Classification Teams

Another organizational arrangement for classification that is now emerging suggests that with development of a realistic classification system used throughout a correctional system, the classification function can be placed in the hands of correctional personnel. For instance, a classification team consisting of professional correctional officers might collect the social history, while local practitioners could provide necessary medical and psychiatric examinations. State and local institution personnel, in cooperation with the office of the community classification team, in turn would review the appropriate correctional programs available to meet the offender's needs.

The community-based classification team concept is superior to current practice. It has already begun to emerge within the correctional system and may be generally realized within the next 5 years. Indeed, to the extent that community correctional programs become the pattern, offenders should not have to be removed to a State diagnostic center for information developed at the diagnostic center and may repeat clinical evaluations and study.

The anonymity of inmates in the reception center is pervasive. The diagnostic and treatment line procedure permits them little opportunity to feel that they have any role or individual involvement in the process. For a description of varying reception centers, see Chapter 11, Major Institutions.

A Uniform Classification System

A widely accepted classification system could serve a vital research function. At present, persons in the corrections field are frustrated in their attempts to build an empirically based body of knowledge,
partly because research findings are not comparable. Availability of a reliable, valid, commonly accepted classification procedure that is simple to apply could improve this situation vastly.

The need for an efficient, reliable classification system generally is conceded by practitioners and researchers alike. Such a system would lead to more effective assignment and management decisions. It would enable correctional administrators to guide inmates into programs that have been found appropriate for others with the same characteristics. It also would help minimize the "shotgun" approach that assumes that all inmates derive equal benefit from program innovations.

A large number of classification schemes are in existence today. They have been fully described and summarized in other works and will only be highlighted briefly here to give some indication of their variety and orientation. Contemporary classification schemes include several different systems that may be grouped according to the underlying dimensions of the system's logic.

1. Prior probability approaches represented by the Bosstal studies, the base expectancy studies of the California Youth Authority and Department of Corrections, Glueck prediction tables, and configuration analysis procedures developed by Glaser.

2. Reference group typologies represented by Schrag and Sykes and the social class typologies represented by Miller.

3. Behavior classification covering a wide range of groupings varying in specificity from those based on offense type to conformity/non-conformity dichotomies represented by Roebeck; McCord, McCord, and Zola; Ohlin; and Reckless.

4. Psychiatrically oriented approaches represented by the works of Jenkins and Hewitt, Redl, Erickson, Alethorn, Makkay, Reiss, Argyle, Bloch and Flynn, and the Illinois State Training School Treatment Committee.


In addition to the five groupings, some investigators, using a more eclectic approach that includes combinations of several of the dimensions listed, have produced empirical-statistical typologies. Among these investigators are Hirszvit, Jeness, and Palmer. In a recent paper, the Gluecks make a case for this approach and appear to be moving toward development of such a typology.38

Cross-Classification Approaches

Sociologists and psychologists continue to be in conflict over the appropriate theoretical basis for various approaches. Sociologists accuse psychologists of taking insufficient cognizance of environmental factors, while psychologists accuse sociological typologists of having insufficient regard for intra-psychic factors. Nevertheless, a few investigators are attempting to link theoretically the sociological and psychological, or methodological, elements necessary for a satisfactory classification system.

In an effort to explore the feasibility of developing a more uniform basis for classification, a conference on typologies was held in 1966 under sponsorship of the National Institute of Mental Health. Conference participants, including many of the foremost theorists in behavior classification and typology, identified many areas of agreement. On the basis of review and cross-tabulation of a number of classification systems, preliminary consensus was reached on the validity of six broad bands that cut across the various systems. These six bands distinguish the following major types of offenders: social, conformist, antisocial manipulator, nervous, subcultural identifier, and situational.39

It should be noted that most of the typologies discussed were based on studies of juvenile boys. Only Hunt, Schrag, and Warren40 specifically included girls or women, but these investigators have found the bands to be equally appropriate for females. Schrag's typology is based primarily on adult offenders, although it has been applied successfully to institutionalized juveniles by some of Schrag's followers. The original form of Warren's typology (interpersonal maturity levels without subtypes) was found to be appropriate for adult as well as juvenile offenders. The fact that cross-classification is possible is even more impressive when one considers the varieties of methods used for deriving the subtypes—statistical, empirical observation, and multivariate analysis procedures. Additionally, it is important to recognize that similarities are evident in the descriptions of the etiological and background factors and the "treatment" prescriptions for similar subtypes, as well as in the descriptions of offender characteristics across typologies.

There is evidence at both the theoretical and practitioner level that the field is ready to move toward developing programs based on categorizing the range of problems represented in the offender population. Not only is there a ready ear for conceivability


39Warren, "Classification of Offenders."
Comprehensive Classification Systems

Each correctional agency, whether community-based or institutional, should immediately reexamine its classification system and reorganize it along the following principles:

1. Recognizing that corrections is now characterized by a lack of knowledge about offenders, and that classification systems therefore are more useful for assessing risk and facilitating the efficient management of offenders than for diagnosis of causation and prescriptions for remedial treatment, classification should be designed to operate on a practical level and for realistic purposes, guided by the principles:

   a. No offender should receive more surveillance or "help" than he requires; and
   b. No offender should be kept in a more secure condition or status than his potential risk dictates.

2. The classification system should be developed from the management concepts discussed in Chapter 13 and issued in written form so that it can be made public and shared. It should specify:

   a. The objectives of the system based on a hypothesis for the social reintegration of offenders, detailed methods for achieving the objectives, and a monitoring and evaluation mechanism to determine whether the objectives are being met.
   b. The critical variables of the typology to be used.
   c. Detailed indicators of the components of the classification categories.
   d. The structure (committee, unit, team, etc.) and the procedures for balancing the decisions that must be made in relation to programming, custody, personal security, and resource allocation.

3. The system should provide full coverage of the offender population, clearly delineated categories, internally consistent groupings, simplicity, and a common language.

4. The system should be consistent with individual dignity and basic concepts of fairness (based on objective judgments rather than personal prejudices).

5. The system should provide for maximum involvement of the individual in determining the nature and direction of his own goals, and mechanisms for appealing administrative decisions affecting him.

6. The system should be adequately staffed, and the agency staff should be trained in its use.

7. The system should be sufficiently objective and quantifiable to facilitate research, demonstrate administrative decision-making.

8. The correctional agency should participate in or be receptive to cross-classification research toward the development of a classification system that can be used commonly by all correctional agencies.

Commentary

A good classification system should be able to ask three basic questions: (1) What caused the offender to break the law? (2) What kinds of help, if any, does the offender need to keep him from further law violations? and (3) If he needs assistance, where can the offender best receive the help he needs?

All three questions are of major importance and are listed in the sequence in which they should be answered. Unfortunately for the offender, most classification systems seek only the answer to the third question, and even then consideration centers chiefly on the resources available where the offender will be assigned. The field of corrections does not yet have the knowledge or the techniques to answer the first question other than by educated guesswork, and deficiencies in correctional resources and initiatives disregard attempts to answer the second question adequately.

Therefore, correctional administrators should (1) acknowledge handicaps of the field in devising a truly scientific classification system and (2) adopt the realistic view that the only objectives obtainable with present knowledge and techniques are assessment of risk and efficient management of offenders.

The same intellectual honesty should be used to acknowledge that involving the offender with the correction system actually is experienced by him as a loss of punishment, despite the most sincere motives of correctional personnel to offer "rehabilitative treatment." And "rehabilitative treatment" too often is an exercise in semantics lacking in substance.

Therefore, to subject the offender to more surveillance or security than he requires, and to coerce him into submitting himself to "treatment" that he does not want, and perhaps does not need, may produce results counter to those intended by the classification system.

The correctional agency should develop its classification system with the assistance of all possible advisors—from lawyers, offenders, community representatives, professionals, etc.—as indicated in Chapter 7. The result should be issued in written form, so that everyone concerned will know its objectives, its assumptions, and its policies and procedures. The critical variables should be identified because the logic represented by these variables is derived from certain behavioral assumptions. Detailed, specific indicators of the components of the classification categories also should be presented, so that the system's utility can be verified by empirical evaluation.

Furthermore, a contemporary classification scheme must have a clear hypothesis (a reasoned guess) concerning what is needed to achieve the social reintegration of the offender, along with a plan of care, custody, and programs that should be checked or reexamined continuously to determine the scheme's effectiveness and appropriateness.

Finally, the system should be sufficiently objective and quantifiable as to facilitate research and decision-making. It also should be flexible enough to contribute and be adaptable to cross-classification research that will enable corrections eventually to adopt a common classification system. Until offender classification is handled in some generally acceptable way, it is impossible to compare programs used in various parts of the country. Cross-classification agreements by leading typologists will open the path for significant advances in correctional programming.

They can become a means by which the community-based program is encouraged and central diagnostic facilities, institutions, and procedures depersonalized.

References


Related Standards

The following standards may be applicable in implementing Standard 6.1.

2.9 Rehabilitation.
9.8 Local Correctional Facility Programming.
11.3 Social Environment of Institutions.
12.7 Measures of Control.
13.1 Professional Correctional Management.
14.7 Participatory Management.
15.5 Evaluating the Performance of the Correctional System.
16.1 Comprehensive Correctional Legislation.

Standard 6.2
Classification for Inmate Management

Each correctional agency operating institutions for committed offenders, in connection with and in addition to implementation of Standard 6.1, should reexamine and reorganize its classification system immediately, as follows:

1. The use of reception-diagnostic centers should be discontinued.
2. Whether a reception unit or classification committee or team is utilized within the institution, the administration's classification issuance described in Standard 6.1 also should:
   a. Describe the makeup of the unit, team, or committee, as well as its duties and responsibilities.
   b. Define its responsibilities for custody, employment, and vocational assignments.
   c. Indicate what phases of an inmate program may be changed without unit, team, or committee action.
   d. Specify procedures relating to inmate transfer from one program to another.
   e. Prescribe form and content of the classification interview.
   f. Develop written policies regarding initial inmate classification and reclassification.
3. The purpose of initial classification should be:
   a. To screen inmates for safe and appropriate placements and to determine whether these programs will accomplish the purposes for which inmates are placed in the correctional system, and
   b. Through orientation to give new inmates an opportunity to learn of the programs available to them and of the performance expected to gain their release.
4. The purpose of reclassification should be the increasing involvement of offenders in community-based programs as set forth in Standard 7.4, Inmate Involvement in Community Programs.
5. Initial classification should not take longer than 1 week.
6. Reclassification should be undertaken at intervals not exceeding 6 weeks.
7. The isolation or quarantine period, if any, should be as brief as possible but no longer than 24 hours.

Commentary

This standard is intended only to supplement Standard 6.1, Comprehensive Classification Systems, with particular applicability to major institutions. It frankly recognizes the corrections system does not now have the knowledge to identify the causes of
The medical model of treatment, which many correctional agencies have attempted to follow in structuring classification, is rejected as inappropriate and incapable of fulfillment due to corrections' lack of knowledge and resources. On the other hand, correctional staffs have the capability to screen offenders for risk and to place them appropriately in programs involving different degrees of community involvement. The traditional "treatment" programs—education, vocational training, employment—are not seen as necessarily rehabilitative in themselves. But these learning experiences may be useful assets in enabling offenders who are given opportunities to change their own behavior and who benefit from them to persist in a lifestyle that will avoid future involvement with the criminal justice system.

In view of this rejection of the treatment model and in consideration of the characteristics of today's reception-diagnostic centers as discussed in the narrative of this chapter, the use of such centers should be discontinued. They are unrealistic in concept, considering the handicaps of corrections in making accurate evaluations and program plans. And they consume resources and time that can be put to better use.

No position is taken here as to the respective merits of the use of reception units within institutions or classification committees and teams. Undoubtedly the methods can be used for at least several more years will involve some variation or combination of these arrangements. However, their objectives should be set forth for correctional agencies. The intent is to reduce the unproductive expenditure of time on classification, the period allocated to this procedure should be reduced to a minimum, no longer than 4 hours for quarantine and no longer than 1 week for initial classification or screening. The recommendation for reclassification—-at intervals not exceeding 6 weeks—will require more effort on the part of many correctional agencies. The intent is to provide a continuous followup and reassessment of inmates, with a view to making program changes as quickly as possible and involving inmates increasingly in community programs.

The objectives of this standard, taken with Standard 6.1, are to:

1. Generate ways to improve management practices.
2. Differentiate among offenders by needs and problems rather than traditional classification categories.
3. Provide for efficient management grouping of offenders.
4. Enable staff to offer consistent, planned assistance and facilitate the individual training and behavior change of the offender.
5. Pool relevant knowledge more effectively, advance theory, and enable an agency to maximize impact of research.

References


Relates Standards

The following standards may be applicable in implementing Standard 6.2.

2.9 Rehabilitation.
2.13 Procedures for Nondisciplinary Changes of Status.
6.1 Comprehensive Classification Systems.
11.3 Social Environment of Institutions.
16.4 Unifying Correctional Programs.

Standard 6.3

Community Classification Teams

State and local correctional agencies should establish jointly and cooperatively by 1978, in connection with the planning of community-based programs discussed in Chapter 7 and Chapter 9, classification teams in the larger cities of the state for the purpose of encouraging the diversion of selected offenders from the criminal justice system, minimizing the use of institutions for convicted or adjudicated offenders, and programming individual offenders for community-based programs. Establishment of community classification teams should be governed by Standard 6.1, Comprehensive Classification Systems, and the following considerations:

1. The planning and operation of community classification teams should involve State and local correctional personnel (institutions, jails, probation, and parole); personnel of specific community-based programs (employment programs, halfway houses, work-study programs, etc.); and police, court, and public representatives.

2. The classification teams should assist pretrial intervention projects in the selection of offenders for diversion from the criminal justice system, the courts in identifying offenders who do not require institutionalization, and probation and parole departments and State and local institutional agencies in original placement and periodic reevaluation and reassignment of offenders in specific community programs of training, education, employment, and related services.

3. The classification team, in conjunction with the participating agencies, should develop criteria for screening offenders according to:

a. Those who are essentially self-correcting and do not need elaborate programming.

b. Those who require different degrees of community supervision and programming.

c. Those who require highly concentrated institutional controls and services.

4. The policies developed by the classification team and participating agencies also should consider the tolerance of the general public concerning degrees of "punishment" that must be inflicted. In this connection the participation of the public in developing policies, as discussed in Chapter 7, would be useful.

5. The work of the classification team should be designed to enable:

a. Departments, units, and components of the criminal justice system to provide differential care and processing of offenders.

b. Managers and correctional workers to array the clientele in caseloads of varying sizes and programs appropriate to the clients' needs as opposed to those of the agencies.
Few systems are intended to determine which fenders need not be processed into or through the and immediately or subsequently placed in community~based little coordination with other existing community~made to exclude offenders who do not need a correction principles:

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Freeman, Henry; Hildebrand, Catherine; and Ay. Donald. "A Classification System That Prescribes Treatment," Social Casework, 46 (1965), 423-


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Related Standards

The following standards may be applicable in implementing Standard 6.3.

2.9 Rehabilitation.

3.1 Use of Diversion.

5.2 Continuation of Sentencing Court.

6.1 Comprehensive Classification Systems.

7.1 Development Plan for Community-Based Alternatives to Confinement.

9.4 Adult Intake Services.

9.7 Internal Policies.

9.8 Local Correctional Facility Programming.

10.2 Services to Probationers.

12.6 Community Services for Paro.

14.8 Redistribution of Correctional Manpower.

16.14 Community-Based Treatment Programs.


Warren, Marguerite Q. Interpersonal Maturity Level Classification: Juvenile Diagnosis and Treatment of Low, Middle and High Maturity Delinquents. Sacramento: California Youth Authority, 1966.
Part II
Correctional Programs

Chapter 7
Corrections and the Community

Revised public and professional expectations of corrections have brought about a transformation in its means and ends during the last several years. Tradition required institutions merely to hold prisoners until ordered to release them. Now both the public and the correctional staff expect prisoners to be, at least, no worse for the correctional experience and, at most, prepared to take their places in society without further involvement with the law. Tradition required probation and parole merely to provide some form of nominal supervision. Now it is expected that the experience of probation and parole will provide the offender with positive assistance in making a better adjustment to his circumstances. (Probation and parole are discussed in detail in Chapters 10 and 12 respectively.)

These revised expectations have led to an awareness that corrections must be linked to the community in every phase of operations. These links are hard to forge because correctional agencies of all kinds traditionally have maintained an isolation from other human service agencies.

In a sense this entire report is a discussion of what is conveniently referred to as community-based corrections. The Commission considers community-based corrections as the most promising means of accomplishing the changes in offender behavior that the public expects—and in fact now demands—of corrections.

Dissatisfaction with incarceration as a means of correction has grown to a point where some States have almost completely abolished incarceration for some classes of offenders. In other States, experimental programs have been successful enough that once overcrowded prisons and reformatories now are unused. Clearly, the future lies with community-based corrections.

The institution model for corrections has not been successful in curbing potential crime. But at least it exists, with its physical plant and identified processes of reception, classification, assignment, custody, work, academic and vocational training, religion, and recreation.

The substitute models are talked about and are occasionally used. But community-based corrections is not well organized, planned, or programmed. This task is the challenge of the future. Required is a complicated interplay among judicial and correctional personnel, those from related public and private agencies, citizen volunteers, and civic groups. This interplay of the correctional system with other parts of the public sector and greater involvement of the private sector, including civic participation in dimensions not foreseen in the correctional world just a few years ago, requires leadership in the entire criminal justice field to collaborate in the exploitation of all possibilities for successfully changing repression to reintegration. Policymakers must understand
the essential elements of a sound community-based corrections system, on which we now understand the orderly management of the prison.

DEFINITION

As used in this chapter, the term "community-based corrections" includes all correctional activities that take place in the community. The community base must be an alternative to confinement of an offender at any point in the correctional process.

At the beginning of his experience as a subject of criminal justice decisionmaking, the offender has not even been defined as such. A police officer decides whether to arrest or give him a summons. A magistrate rules on his eligibility for release on his own recognizance or on bail. Released in either of these ways, he may or may not receive correctional attention. Some communities have court employment projects. Some have informal probation for certain types of juvenile offenders. More have diversion programs for alcoholics and narcotics addicts. Such pre adjudication programs are described in Chapter 5.

After conviction and commitment to the control of the corrections agency, the now officially defined offender may be placed in the oldest community-based correctional program, supervision under probation. Probation service is described in Chapter 10. This chapter stresses supervision as a foundation on which to build a wide range of community-based services.

Most persons confined to custodial control are potential participants in community-based corrections through work- and study-release programs, family visiting furloughs, and reentry programming. Finally, well-established parole services constitute the community maintenance care for offenders released from relatively lengthy custody.

This enumeration of major program components does not exhaust the potential of community-based corrections, but the central principle of the definition is clear. Community-based correctional programs embrace any activity in the community in which the offender is not under the control of the criminal justice system (police or courts). It may call for changing the offender through some combination of services, for controlling him by surveillance, or for reintegrating him into the community by placing him in a social situation in which he can satisfy his requirements without legal violation. A community-based program

may embrace any one or any combination of these processes.

The use of control and surveillance is basic to a sound community corrections system. Both policy and practice are dominated by the belief that the elimination of incarceration does not eliminate control.

SIGNIFICANCE OF COMMUNITY-BASED CORRECTIONS

In this chapter, the significance of community-based corrections will be assessed from three aspects: humanitarian, restorative, and managerial. The criteria of success in each differ markedly.

The humanitarian aspect of community-based corrections is obvious. To subject an accused to custodial correction is to place him in physical jeopardy, to narrowly restrict his access to sources of personal satisfaction, and to reduce his self-esteem. That all these unfavorable consequences are the outcome of his own criminal actions does not change their reality. To the extent that the offender can be relieved of the burden of custody, a humanitarian objective is realized. The proposition that no one should be subjected to custodial control unnecessarily is a humanitarian one.

The key question is the definition of necessity, which must be settled by the community in which he does not violate the law. These measures may be directed at change, control, or reintegration. The failure of offenders to achieve these goals regularly but also then find that their success is defined by reaching specific objectives set by correctional decisionmakers.

The managerial goals are of special importance because of the sharp contrast between the per capita costs of custody and any kind of community program. Any shift from custodial control will save money. But the criterion of correctional success in such programs is to protect the public. Therefore, any saving of public funds must not be accompanied by a loss of public protection. When offenders can be shifted from custodial control to community-based programming without loss of public protection, the managerial criteria require that such a shift be made. Otherwise public funds will have been spent without satisfying public objectives.

It is necessary here to note that public protection is not always the sole objective of correctional programs. Some kinds of offenders, especially the most notorious, often could perfectly well be released without jeopardizing public safety. But their release will not be countenanced because public demands for retribution have not been satisfied. Offenders in custody should be those predominately because public protection seems to require it. Decisionmakers must disentangle these objectives to assure that use of community-based correctional programs is not denied for irrelevant reasons.

RATIONAL FOR CORRECTIONS IN THE COMMUNITY

The movement toward community-based corrections is a move away from society's most ancient response to the transgressor. As Whiting notes, society relied mainly on physical punishment, or death penalty, to achieve the goals of criminal justice. The world is now too small for any society to reject anyone. Our culture has so changed that we no longer consider imposing capital penalties on the swiping scale that seemed appropriate to our ancestors.

Out of the realization that the old ways were unacceptable there emerged the prison, a place for artificial banishment or civil death. Nearly two centuries of experience with the penal institution have brought us to the realization that its benefits are transient at best. At worst, the prison offers an insidiously fake security as those who were banished return to the social scene of their former crimes. The former prisoner seldom comes back better for the experience of confinement. The effectiveness of the prison as a school for crime is exaggerated, for the criminal can learn the technology of crime far better on the streets. The damage the prison does is more easily remedied because the culpability and self-confidence is lost. The prison is a place of coercion where compliance is obtained by force. The typical response to coercion is alienation, which may take the form of active hostility to all social controls or later a passive withdrawal into alcoholism, drug addiction, or dependency.

Mitigating Damages Done by Prisons

One of the tasks of corrections is to mitigate alienation. For generations this task has been attempted mainly by placing some offenders in prison instead of sending them to prison. When offenders have been incarcerated, parole has made it possible for them to serve part of their terms in the community. In this way, the belief that existence of a parole officer will help them to choose a law-abiding course.

There has been a growing realization that prison commitments for many offenders are not at least abbreviated without significant loss of public protection. If the committed offender eventually returns to the community, community supervision removes him for as short a time as possible.

The principle has evolved: incarcerate only when nothing less will do, and then incarcerate as briefly as possible. The services provided by probation and parole should strengthen the weak, open new channels to the erradic, and avoid openly reinfesting any society with the results of the relationship between the offender and the state.

The objective is to motivate each offender by the incentives that motivate most citizens toward orderly social life. In large part these incentives derive from an economic philosophy in which a day's pay for a day's work forms a unit in a prospect of lifetime security. Such employment is the necessary, if not sufficient, basis for conventional life in America. Emphasis on the employment of the offender is a major reason for the community reorientation. In that the unemployed offender is a probable recidivist.

But community-based corrections cannot be limited to the services of an ex-offender employment office. A man who has committed a crime and been convicted and convicted has suffered a blow to his self-esteem that may be marked by bravado or indifference. He has good reason to believe that society will reject him, and he therefore seeks out the unconventional. In the prison he has no choice; he must associate with the unconventional. But in the community, probation and parole resources should make accessible a whole range of social support services as needed.

The difficulty of the task is obvious. Far more is required than the one-to-one contact between probation or parole officer and the offender. The offender's rehabilitation stems from the correctional system's pursuit of personal deficits and social malfunctions that produced a criminal event and a social status. Most personal deficits characterizing offenders are also commonly found in nonoffenders. The social malfunctions of unemployment, discrimination, economic inequity, and congested urban living affect most citizens. The offender, like other citizens, must

1Although these views are too well known to require detailed documentation, these seeking a recent and persuasive refutation are referred to Hans M. Matter, The Princple of Prisons Violence, University of Chicago Law School Occasional Papers, 1972.

2See, for example, Herman G. Stark, "Alternatives to Institutionalization," Crime and Delinquency, 13 (1967), 323.
find a way to live with his deficits and with the disorder around him. If corrections is to mitigate alienation, it must mobilize the community services that can make such an outcome possible.

To a much larger extent than has been realized, social support services must be given outside the official correctional apparatus and inside the community. The community and its leadership must incorporate the dislocated instead of exiling him to reform schools. Unions and employers must open doors to adult offenders, thus restricting employment to the most menial and insecure labor.

Corrections cannot continue to be all things to all people. The correctional structure must change from a second-class social system consisting of a correctional bureaucracy and a dependent population of offenders subject to official control and services. Although the pattern of the future is not yet clear, it seems to consist of a brokerage service in which the agency opens up to the offender community, where such services exist, and helps create new services for the entire community where none existed before. This enlarged theory of corrections will be unfamiliar to many correctional and community agency personnel, but it offers the only reasonable prospect for dealing more successfully with the serious problem of the recidivist offender.

Community-Based Corrections as Deterrents

There remain two additional public policy considerations in the rationale for community-based corrections: the deterrence or intimidation of the offender who is caught and the deterrence of potential offenders. It is generally argued that the milder punishment aspects of community-based programs will not sufficiently deter either the actual or potential offenders.

For the offender who has been under control, deterrence can be measured by whether he commits further crimes. Current measurements hardly support the contention that incarceration deters crime. But, regardless of this finding, one should minimize the deterrent effect of noninstitutional control by the community. The system, indeed, the deterrent effect of proper control by the community, coupled with realistic opportunities for the offender to make an adjustment there, may be expected to be considerable, not only on the basis of theoretical assumptions but also as indicated by preliminary studies which offer suggestive findings.1 And the experience of simply being under official jurisdiction constitutes a punitive experience for nearly all offenders.

The deterrence of potential offenders has not been supported by empirical evidence. Despite many attempts, especially in the controversies over capital punishment, no one has ever proved that the threat of severe punishment actually deters crime. Indeed, there is evidence that the ability of the community to make the deterrent effect than a long prison sentence.6 This raises the serious question of how just it is to adhere to a policy that can be supported only by assumption.

But even if we allow that some crime is deterred by the criminal justice system, the deterrent potential of the prison is grossly exaggerated. The argument should be framed properly in terms of the statistical chances of getting caught. In the case of most crimes other than homicide, the chances are much less than even. In most communities a criminal can reasonably assume that, even with repeated law violations, if the getting caught are relatively slight. The prospect of incarceration or other punishment is distant.

Documentation of the foregoing is available, particularly with reference to the failure of imprisonment in primary deterrence; that is, the discouragement of further criminal activity by those punished at least once. Although we suggest strongly that jurisdiction making extensive use of probation instead of prison do not experience increased recidivism.1 Similarly, studies of confinement length do not establish that longer prison terms result in decreased recidivism.

Secondary deterrence—the discouragement of first-time criminal behavior by persons who may fear punishment—is a more elusive subject. However,

ROLE OF THE COMMUNITY IN CORRECTIONS

The recent shift in our Nation's values—particularly in corrections—toward criminality helps explain the rationale and current emphasis on citizen involvement and community programs. Within this general context, the various roles citizens play and their opportunity to influence the public can be understood better.

Circumstances of the past decade have had drastic impact on corrections. The poverty programs of the 1960s, which failed to end the war on poverty but made strong impressions on the Nation, are of particular interest for corrections. The ideology underlying those programs suggested that persons of minority origin and low socioeconomic status are persists overrepressed among those who experience mental and physical illness, educational failure, unemployment, and crime and delinquency.

Problems. The emphasis of poverty and social programs failed to achieve what it called for, made official the acknowledged but often ignored role of all Americans to have a say in their own destiny.

The disadvantages began to assume positions on boards of public and private agencies designed to serve them but formerly reserved for persons of more affluent status. "New careers" provided alternative routes for low-income persons to social and economic mobility through job training and employment and training schemes. The pervasive ideology promoting to the formerly powerless that "you, too, have power, if you want to exercise it."

This trend, visible in civil rights concerns, in welfare, and in student unrest, has its counterpart in correctional systems, and for the first time the voices of the inmates and ex-offender are being heard. There are prisoners' unions and racial and ethnic ex-offender groups in all American cities. This as yet undocumented movement offers powerful new allies for correctional reform. If those in correctional services choose to take that view instead of the frequent, defensive reaction to exclusion.

Today American prisons may be, for almost the first time in our history, substantial numbers of young persons of middle and upper socioeconomic levels, largely through prosecution of the Nation's youth for drug use. Another new set of allies for correction reform that exists today: concerned parents and friends of such youths, along with a vast body of parents who fear that their children might be among those jailed or imprisoned in the future.

This group is perceived by correctional staffs as less threatening than minority or low-income offenders. The reforms they urge may be listened to more closely.

Ex-offenders. This is a unique opportunity to enlist such potential supporters and to organize their widespread concern into constructive aid for improving the correctional system. This audience is a prime source for volunteers. Those with political influence and other interests that might affect the debate can be influential. The categories of people that might be able to influence the debate are those who have political influence and know how to influence policy at local and state levels. The correctional system must provide an arena for public participation and discussion of its present facts and interpretations. If the potential of this group in aiding the correctional cause is to be realized, it must inform the public of their needs and welcome participation.

Social Service Agencies

Other social service agencies also have an impact on corrections. As community-based treatment pro
grams increase in number and variety, correctional personnel and offenders will interact increasingly in formal settings. Professionals from other human service areas such as welfare, education, health, and employment. As institutional walls distance them from those of the outside world, the boundaries between the various human service areas will disappear as well—and correctional problems will come to be regarded as problems of a range of professionals serving communities.

Another group of allies thus is identified: colleagues in related fields, many of whom have had relatively limited contact with the world of correction. While there has been some professional mobilization between welfare and corrections, or corrections and rehabilitation, such relationships will become closer and more common as community-based programs develop. Concerns for meeting human needs for guidance and training have been faced in various settings. Social welfare personnel, broadly defined, clearly are allies of corrections. Their special talents and experiences will add enormously to the strength of criminal reform movements.

**Education**

In similar vein, greater interest and concern for all correctional issues can be fostered among educators. Corrections is related to education on many levels. School systems (and institutions) face a demand for direct correctional services, particularly with juveniles. Universities are training and recruiting grounds for future correctional leaders. Training involved in service education. Various high school and college programs are part of the services offered in correction. These programs, involved in service education, the Nation’s schools provide citizens with their basic knowledge of the community they live in: its problems, its criminal justice, and its correctional personnel. Those training programs can make citizens conscious of the possibilities of change for the better. Those citizens in turn are concerned about what they see happening in the community. The role of corrections must be understood and clarified. In workable rationale. The confusion about individual vs. social causation underlies some of the lack of coherence. Correctional reforms has not integrated theoretical base and its practice. Despite the shift in social science theory, notions of interven­

**Corrections and Correctional Personnel**

In addition to increased public concern, correctional systems, more involved in or attempts to limit the behavior of certain individuals, have contributed to acceptance of citizen participation and community programs. Since the 1920s, research in crime and delinquency has undergone a gradual shift from the individual per se as the object of study to the environment in which he has his origins. Clifford Shaw, who discussed indi­

**Responsibility of Citizens**

In a democratic nation, responsibility for provi­

**IMPLEMENTATION OF PROGRAMS**

Implementation of community programs involves consideration of geographic area targeted, number of individuals required from the community, whether persons must become involved, availability of programs from other agencies, etc. A systemic approach to making these decisions is out­

**Chapter 9, Local Adult Institutions.** A gen­

**General Discussion of Citizens' Writings**

As the correctional administrator’s responsibility for involving them should provide overall guidance in assessing what is available and possible.

**WORKING HISTORICALLY**

Historically this objective has not been realized, and a massive public information campaign to bring about citizen involvement will be required to reverse the patterns of the recent past. In an earlier era, the community directly exercised law enforcement and correctional responsibilities: for example, the religious tribunals, the justices of the peace, the county jails, police, and the citizen posses of the frontier West, with their guns and possessions or execution by hanging. These are well-documented examples of citi­

**Prisons.** Nowhere in modern times has a public information program brought about citizen involvement in a direct service. The jail, workhouses, and prisons replaced the public, willing to insist on exercising its right to make informed decisions concerning correction.

Nowhere in modern times has a public information program brought about citizen involvement in a direct service.
scribed by the correctional unit responsible for recruiting and utilizing volunteers.** The public come to feel little sense of responsibility for these services. To a considerable extent it has come to view the criminal justice system as an adversary—an institution to be outwitted rather than a service controlled by and organized to serve the interests of individual citizens and the general public. One has only to listen to the talk of circumventing tax laws or traffic regulations to realize the extent to which the American public views the criminal justice system as "them" and not as "us."

The citizenry must be involved again, in more constructive ways than the past, in determining the potential of the entire criminal justice system. The participating public should be able to exert a real influence on the shape of any community program, not only in the planning stages but at all crucial junctures involving actual operations. Because of their representative status, citizens must be considered as a resource on which the eventual success of a program heavily depends. Opinions and reactions of citizen participants can provide a useful index to levels of public tolerance, insights into ways of affecting certain attitudes, and suggestions for new techniques to generate further public participation.

The immediate aim of administrators should be to encourage as many public representatives as possible during all stages of a program from planning through operation. This should not be token participation for the sake of appearances but participation of individuals representing a single community sector. It is especially important not to limit participation to persons associated with the power centers or with whom correction officials have closest rapport and can expect to be in least conflict.

The correctional administrator launching new programs faces a conflict that may be inherent in his effort to offer services for convicted persons: the need in innovative, local planning levels of public acceptance. The easiest programs to launch are those that do not require radical adjustment of attitudes toward the offender. The correctional administrator cannot abdicate his responsibilities for the custody and activities of offenders committed to his care. Nor can he give only lip service to community involvement while actually ignoring public fear and wishes. Complex decisions are required—determinations of initial eligibility, conditions for participation, selection of activities, extent of custody and supervision, revocation procedures, standards for evaluation, and program changes. These decisions must be made in the light of legal rights of offenders, legitimate community concerns, and administrative prerogatives in balance.

But programs cannot be geared toward existing attitudes with the assumption that attitudes will change. The ability of corrections to make a difference depends on the extent to which the corrections in the broader society must not be limited by unwillingness to risk uncharted territory, even when it appears potentially hostilc or politically undesirable. Community support or opposition leading to achievement or frustration is related directly to the manager's skills in mediating among the variety of forces represented and in understanding the varying roles citizens play.

**See, for example, Ints County (Pa.) Department of Corrections, Citizen Volunteer Program, Fact Sheet 1-73, p. 3.

The Community as Policy-Maker

A variety of specialized policymaking roles currently are undertaken by citizens, especially at all crucial junctures but at all stages of the criminal justice system. They may be inherent in the "prisoner's aide" tradition. Frequently such councils have strong, informal, and mutually supportive links to State corrections systems.

In the past few years, all States have created informal citizen advisory bodies for developing and administering State plans for utilization of funds from the Law Enforcement Assistance Administration. These agencies have taken a variety of forms, invariably involving citizen participation, even in concert with professionals from law enforcement, the judiciary, and corrections. This involvement represents another model of citizens serving in advisory roles.

In some cases, special boards have been created whose responsibilities are much broader. These bodies can best be handled by an advisory body merely to reestablish a body of citizen involvement of the State and Federal commissions. No data exist on how widely this mechanism is employed, but where used, as in the county juvenile justice commissions in California, it is viewed as effective in interpreting correctional issues and enlisting community support.

The Citizen as Reformer

The penal and criminal reform groups springing up in recent years are setting objectives for substantive change in the correctional system, such as juvenile courts, local correctional agencies, or branches of State systems or institutions. At the local level, a broad spectrum of citizenry can be involved, in contrast to the "important person" membership of the State and Federal commissions. No data exist on how widely this model is employed, but where used, as in the county juvenile justice commissions in California, it is viewed as effective in interpreting correctional issues and enlisting community support.

Memberships, radial political entities, a range of ethnic organizations, counterculture youth movements, and the like have been joined by professional groups in representing community needs and concerns. These bodies have taken up the cause of penal and criminal reform. The scope of this reformist movement is documented by reports of a ground swell to be observed with interest in the conviction process and penal reform movements, increasing impact on the problem of crime.

One model of citizens representing the manager's role in mediating between the criminal justice system, the police and their elders, and the public is the citizen councils on crime and delinquency affiliated with the National Council on Crime and Delinquency. These are examples of this type of citizen participation. They are characterized frequently by "blue-ribbon" opinion leaders, whose membership, and support from voluntary contributions.

This involvement of many citizens in penal reform clearly is an important way in which citizens relate to their correctional administrators—so long removed from any public scrutiny and vested with unquestioned power. The proposition that probably has great difficulty in responding constructively to some of these groups. For example, some of them oppose any improvements in the criminal justice system. This opposition probably would be directed toward solution of problems such as corruption, lack of knowledge.

When the public cries out in protest against inadequate facilities of the penal system, often resulting from the simplistic education of the Boston shoe polishers, it is logical to conclude that the reformers are saying only what professionals have said to themselves for decades. To be criticized publicly is painful. The challenge to the correctional administrators is to utilize constructive criticism to help solve public problems.

Appropriate strategies must be planned and implemented. The almost unprecedented public concern for improving correctional services can be put to constructive use. Disagreements and resources by the correctional administrator can only delay progress.Courageous and enlightened correctional leaders (with the very tough skin) are needed to accomplish this difficult task.

Citizens in Direct Service Roles

Involvement of citizens in direct service roles with correctional clients is a new phenomenon in the American justice system. The voluntary associations of citizen volunteers—the Boston shoe polishers, the citizens on crime and delinquency—represent a ground swell to be observed with interest in the conviction process and penal reform movements. These groups vary widely in philosophy and are characterized by extremely diverse membership patterns in different areas of the nation.

Church memberships, radical political entities, a range of ethnic organizations, counterculture youth movements, and the like have been joined by professional groups in representing community needs and concerns. These bodies have taken up the cause of penal and criminal reform. The scope of this reformist movement is documented by reports of a ground swell to be observed with interest in the conviction process and penal reform movements, increasing impact on the problem of crime.

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Estimates of the National Information Center on Volunteering in Courts suggest that citizen volunteers outnumber professionals four or five to one, and that the range of correctional agencies and above the misdemeanor court level, approximately 70 percent of correctional agencies have some sort of volunteer involvement. In the majority of such programs are impressive, including one-to-one big brothers, pen pals, aviation training for delinquent boys, and a variety of other community and continuing education offerings, and legal services.

Some of these roles supplement professional responsibilities (teaching services and supervisory correctional system boys, group programs of many kinds, basic and including library work, teaching, legal service, and Social Science. Years, institution doors that were formerly closed to possibilities (friendship situations).

Each has substantial material to assist correctional administrators must define roles in which volunteers can serve. They must recruit, train, and properly supervise volunteers across the entire range of programs. Volunteer roles, including Alcohols Anonymous and other self-help groups, ethnic culture programs, and church organizations. Such programs have the double effect of enhancing citizen involvement with the correctional system and providing needed services to correctional clients.

Correctional administrators must define roles in which volunteers can serve. They must recruit, train, and properly supervise volunteers across the entire range of programs. Volunteer roles, including Alcohols Anonymous and other self-help groups, ethnic culture programs, and church organizations. Such programs have the double effect of enhancing citizen involvement with the correctional system and providing needed services to correctional clients. Voluntary counselors have been used successfully as institutional counselors and parole aides.

Professional persons in education, religion, medicine, psychology, law, and other fields have donated their services. University departments have established institutional field placements in which interested students are supervised jointly by correctional and academic officials in work-study programs. (See Chapter 14.) Aid organizations concerned with needed services have donated their volunteer effort to make such programs. "Who works as a volunteer can make a more effective voice in policymaking and direct service—directly interact with the many subcommunities—ethnic racial, religious, political, and social. An example, has been carefully evaluated and has demonstrated in actions. The National Council for Voluntary Action, Washington, D.C., all volunteers. Each has substantial material to assist correctional agencies, such as resources, information, organization and skills, training guides, and audio-visual materials. The literature in this area is richer than in most other suggested areas for citizen involvement. The interested reader should also refer to this Commission's Report on Community Crime Prevention. The chapter on citizen action in that report contains an extensive examination of such public part of the larger society.

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be viewed as an alternative to community treatment. Work-release usually is still limited to the last few weeks before release from prison, and probation and parole residents are treated somewhat differently than by community corrections is the challenge for this decade.

IMPLEMENTATION OF COMMUNITY-BASED CORRECTIONS

A basic principle underlying the philosophy of community-based corrections is that all efforts consist with the safety of others should be made to reduce involvement of the individual offender with the institutional aspects of corrections. The alleviation of overcrowding in prisons, as in schools, hospitals, and welfare institutions, requires the use of community-based corrections for the ment of some residents, to community-based alternatives-and the use of community-based services that should characterize these facilities include "live-in" requirements, are another community-based correction. Moreover, the use of these more comprehensive services than probation usually can offer, yet are not in need of institutionalization. School and community correction programs, by treatment with vocational training, and guided group interaction programs are among the treatment modes used, many with related services to families.

The principle is the need for extensive involvement with the multiple aspects of the community, beginning with the offender and his world and extending to the larger social system. As a final basic principle, it is apparent that community-based programs demand radically new roles for humans, staff, and citizens. This must be made explicit in altered job descriptions, new patterns of training, different performance expectations. Since corrections need to relate increasingly with the various facets of the community, its work force must increasingly represent those facets. This means an expanded recruitment from minority and economically disadvantaged groups, with all that implies for development of training programs. This means innovative training, and for new kinds of staffing patterns.

Community Alternatives to Confinement

Diversions, probation, and parole—the major community alternatives—and the use of community services should characterize these programs, are discussed in detail in Chapter 3, Diversions from the Criminal Justice Process, Chapter 19, Probation and Parole, Chapter 12, Parole, and will not be repeated here.

Nonresidential Programs

Structured correctional programs, which supervise a substantial part of an offender's day but do not include "live-in" requirements, are another community-based correction. Moreover, the use of these more comprehensive services than probation usually can offer, yet are not in need of institutionalization. School and community correction programs are among the treatment modes used, many with related services to families.

In most jurisdictions, foster care has been far less extensively aided than in the Merrill Palmer experiments. Foster care appears to be considered a less helpful tool than the more recently developed group homes. These quasi-independent homes are administered by agencies with home parents as paid staff, in contrast to foster homes where a monthly or daily check and board fee is customarily made to foster parents. The theoretical assumptions underlying the group home are related to child development stages. Most delinquency occurs in adolescence when family ties are loosening as adulthood approaches. Transfer to a new family situation, as in the foster home, is felt to be more beneficial for young people from family that is possible in the group home, along with a supportive environment and rewarding experi­ences with adults.

The group home model usually has six to ten young people living in a home owned or rented by agencies and staffed by employed "parents" or counselors, supplemented by other necessary professional services obtained mostly through existing community resources. The Institute for the Study of Crime and Delinquency, California, has undertaken a lengthy study to develop a model community-based treatment program for young adults, with attention to architectural design as well as management concerns.

Community Correctional Center

The popularity of the "community correctional center" concept in recent years has led to a bandwagon effect with several states adopting a wide variety of programs. Definition, therefore, becomes increasingly difficult for purposes of this report, the term is used to mean a relatively open institution located in the neighborhood and using community resources to provide most or all of the services required by off­fenders. The degree of openness varies with offender types, and use of services varies with availability and offender needs. Such institutions are used for multi­ple purposes—detention, service delivery, holding, and prerelease.

The lines between community-based and institu­tional programs blur substantially. Because of their newness, projects of this nature have generated little evaluation, minimum descriptive material, and few guidelines. They do, however, provide a flexible and theoretically sound design with potential for meeting varied correctional needs.

The Institute for the Study of Crime and Delinquency, Sacramento, California, has undertaken a study to develop a model community-based treatment program for young adults, with attention to architectural design as well as management concerns.

The project, originally planned to develop a model prison, eventually came to envision a blending of lines between institution and community. This was done intentionally to tailor the amount of "freedom" to the needs of each indi­vidual. An offender progresses from secure facility to open community residence gradually in systematic phases. Decisions on individual programs are shaped by offenders, staff, and citizens. The model represents a kind of amalgam of institution and community-based programs.

A comprehensive project undertaken by the De­partment of Architecture, University of Illinois, and supported by the Law Enforcement Assistance Admin­istration funds, has developed a "Guidelines for Planning and Design of Regional Community Correctional Centers for Adults." Its concepts are discussed more fully in Chapter 8 of this report, Juvenile In­take and Detention, and Chapter 9, Local Adult In­stitutions.
Community Adjuncts to Institutions

The program activities discussed so far have been designed with an eye to the social role of the institution. A major assumption throughout this report is that most persons committed to correctional authority can be served effectively and economically through socialization settings. The implications require a brief review.

It seems obvious that institutional populations will be comprised of many extreme criminals and persons difficult to control. Prison will become the final resort. However, all but a very small fraction of institutionalized individuals ultimately return to the community, and it is therefore essential that correctional programs also involve the community.

The notion that isolating individuals from the community influences that made them engage in crime and that exposing them to the influences of prison will reform them is no longer accepted. Instead, this report so often notes, prisons have proved to be criminogenic to themselves. For this reason, administrators have been seeking alternative experiences for inmates.

Many of the programs in use today favor the traditional values of work, training, and education. While reintegration efforts must encompass standards that society accepts and endorses, correctional administrators should not impose their own value systems on the potential range of community programs. To do so may restrict the breadth and innovativeness of correctional efforts.

Instead, the range of activities permitted in the larger community should be considered. For example, some offenders might participate with noninmates in their own work, in therapy, as lawyers, conduct investigations in connection with their own trials, negotiate with community institutions for a given purpose, attend social functions, and engage in athletics in the community.

Some of these ideas may seem unrealistic and forlorn to today's conception of the inmate's role. However, the hypothesis is that the benefit to be derived when an offender's feelings of hopelessness and powerlessness are dissipated by virtue of his having a meaningful part in his own destiny will far outweigh administrative anxieties and burdens.

The institutional custodial element that so clearly separates the keeper from the kept should be replaced in significant measure by one of mutuality as staff and offenders work together in responsible citizen roles that are meaningful to both parties.

The concept of "bridging" is used to denote programs that establish links between imprisoned inmate, institution, and free society, to afford the inmate experiences expressly intended to maximize his reintegration potential. Inmates participate in training, work, education, or other activities that provide as many normal transactions and experiences with community persons and organizations as possible. The number and variety of community institutions that can be developed for this purposes is virtually unlimited.

The bridging concept contains the reciprocal notions of inmates relating outward to the community and of opening the institution to community access. As bridging from the prison to the outside is intended to normalize interactions with community resources, so bridging into the prison is intended to transform traditional prison activities into more normal patterns of life. Families and neighbors, employers and teachers, ministers and counselors enter the prison, participate in its life, and bring the ongoing community life into the formerly isolated institution.

Bridging activities provide much-needed diversification of options for inmates. Staff and program can be augmented significantly by utilizing more fully the opportunities available outside the walls or by bringing them inside. Inmates have the opportunity to try out socially acceptable roles in a planned transitional process.

The dependence fostered by institutionalization can be reduced. Inmates are allowed to discharge some near-normal personal responsibility by assuming financial obligations and a larger measure of control over their destinies, thus contributing to their self-esteem and an awareness of their stake in the community.

Citizens who participate in bridging activities become involved in correctional services and decision-making. Greater public participation should result in increased understanding of and support for these programs. Such public involvement also will prepare community for a rehabilitation of conflict and failure, for bridging concepts imply risk of an untested nature. Expectations of total success will lead only to disillusionment, but realistic optimism for partial success must be retained. (See Chapter 11, Major Institutions.)

Work Release

Work-release programs began to be used extensively in the 1950's. The practice permits selected inmates to work for pay outside the institution, while continuing their employment in the work gang for hire as a well-known feature of penal history. The work-release concept differs

quently; however, in allowing regular civilian employment, under specified circumstances, for selected low-risk inmates. Initially used mainly with Indians and youthful offenders, work release now is used widely with felons and youthful offenders, with various versions, similar in intent, to provide for weekend sentences, further, and release for vocational training or educational purposes. To help to reestablish links to the community for the inmate is the major assumption.

In a few instances, commercial manufacturing operations have been introduced into prisons. Honeywell, Inc., has loaned a Massachusetts prison for use by inmates to do programming and data processing for various departments of State government, an up-to-date version of "state use." Union involvement in such efforts is crucial; it will add a much needed dimension to employment programs and represent a further potential resource for correctional programs.

Family Visits

Prisons are attempting in a variety of ways to assist the reintegration of offenders into family circles, as well as the work world. Prison visiting has always been allowed, frequently under less than favorable circumstances, with minimum opportunities for privacy and personal relationship, by reserving appointments and visitation only for institutional staff and family visitors who have been pre-screened as prison friends or fans but have not been allowed elsewhere in this country until recently. A relatively new California scheme allows inmates to spend up to two days in cottage-like houses on prison grounds.

Family counseling programs for inmates and families are available in a few States. A family life education program in Pennsylvania is a relatively recent innovation. Inmates are used with adult inmates, their families, and with juvenile probation caseloads.

Adrian group counseling is one approach to the problems of predictability in these endeavors may pose specific burdens on the administrator who must utilize these programs confined largely to institutions of certain States and with more control and surveillance. However, some scientific evidence may be inconclusive in approach. For example, Isaac Adlerian group counseling, for selected inmates, their families, and with juvenile probation caseloads. (See Chapter 11, Major Institutions.)

Volunteers of America programs for youth involve families in somewhat similar ways, with special emphasis on use of inmates as mentors, and with families are invited to participate.

In the Swedish penal system, where family visitation is taken for granted, some institutions even permit husbands and wives to live together. Both are institutionalized. Most interesting is their policy—illmates, like other citizens, are entitled to a two week period in the beach accompanied by their families. Such programs seem startling to American observers but are sensitive if assisting families through difficult days and preparing them for stable relationships are desirable goals.

Educational Programs

An educational bridging program is the Newgate model, in which mini-universities are established within prison walls to serve higher educational needs of inmates. Newgate programs are located across the country in State and Federal institutions. Each uses different procedures, but the common thread is use of education as the major tool. Opportunities for continuation of college work and extensive support given. Evidence developed in such programs is positive; a serious limitation of the program, however, is that it is limited to a few students.

Students from Augsburg College, Minneapolis, as part of their regular curriculum attend classes held in the penal institution on weekend nights. Inmates and prison officers as well as students attend. While a range of courses can be taught in this "co-learner" model, the criminology course is of most interest as a living laboratory with mutual benefits to all students.

Ethnic Programs

In recent years, with heightening cultural and ethnic awareness, various minority consciousness groups have formed in the Nation's prisons, many involving extensive contact with similar groups outside. Enriching in many ways and clearly of potential assist
tance to the reintegration of inmates with their community, such programs are sensitive issues in correctional circles. Prisons mirror the racial unrest of the Nation in aggravated form associated with the tensions of anxiety and fear, close quarters, lack of privacy, and hours of idleness. Cultural groups, strengthening the individual's awareness of his group identity and raising questions of discrimination, are potential sources of discord. But they are nonetheless vital links to the self-help potential of such groups on the outside.

Prerelease Programs

The Federal prison system pioneered in the development of prerelease programs in the early 1960's. In several cities small living units were organized, usually in leased quarters, to which individuals could be transferred for the final months of a sentence as part of preparation for release. Special orientation programs and employment assistance were provided, with gradually increasing opportunities to exercise decision making. The purpose was to phase inmates into community life under supervision, with assistance as needed. Such centers are used increasingly in State programs.

The California system has reorganized its services to give its field staff (parole personnel) greater responsibility for inmate programming during the last 6 months of confinement, in essence converting that period into a release-planning phase. Arrangements have been made to permit temporary release at any time in the last 60 days before the official release date, thus permitting more flexible timing as plans are developed. Inmates within 90 days of release may make unescorted trips to home communities or 3-day passes to facilitate release plans, another way of easing into the often difficult postrelease period.14

Short-Term Return of Parolees

Related closely to prerelease planning is recent development in many States of programs permitting the short-term return of parolees who have made a misstep that is potential cause for parole revocation and return to the prison. Frequently, prerelease facilities are used for this function. The return to a relatively open institution allows the parolee a broader, more supervision than in the community, and time to plan a new and hopefully more effective reentry into the community. Research indicates that short-term returns in California do as well on second release as those released after a long period of reinternment.15

15 California Department of Corrections, Short-Term Return Unit Program (Sacramento: 1967).

Standard 7.1

Development Plan for Community-Based Alternatives to Confinement

Each State correctional system or correctional system of other units of government should begin immediately to analyze its needs, resources, and gaps in service and to develop by 1978 a systematic plan with timetable and scheme for implementing a range of alternatives to institutionalization. The plan should specify the services to be provided directly by the correctional authority and those to be offered through other community resources. Community advisory assistance (discussed in Standard 7.3) is essential. The plan should be developed within the framework of total system planning discussed in Chapter 9, Local Adult Institutions, and State planning discussed in Chapter 13, Organization and Administration.

Minimum alternatives to be included in the plan should be the following:

1. Diversion mechanisms and programs prior to trial and sentence.
2. Nonresidential supervision programs in addition to probation and parole.
3. Residential alternatives to incarceration.
4. Community resources open to confined populations and institutional resources available to the parolee community.
5. Prerelease programs.
6. Community facilities for released offenders in the critical reentry phase, with provision for short-term return as needed.

Commentary

Many correctional systems currently are using community-based programs as part of their array of services in pursuit of reintegration. But few, if any, provide a full range of alternatives, and there is little evidence of systematic planning for development of the most appropriate and most needed programs at local and State levels. Rather, programs have sprung up as grant funds have been available or as a result of the specialized interest of a staff member or administrator. There is a clear need to systematize on a State level the orderly development of community corrections, with full consideration of specific local needs.

The purpose of such effort is to ensure that: (1) no individual who does not absolutely require institutionalization for the protection of others is confined; and (2) no individual should be subjected to more supervision or control than he requires. Overrestriction of offenders may have been practiced because alternative programs and understanding of offender needs have been lacking or inadequate. This situation should be changed by development of a systematic plan for creation of varied community-based programs that will best respond to the range of offender needs and community interests. Each such plan should include a detailed implementation scheme and timetable for each alternative.
program. At a minimum, the plan should contain provision for the following programs:

1. Formal and informal diversion mechanisms and programs for all decision points prior to sentencing. Consideration should be given to police discretion to divert and to police-run service programs, summaries in lieu of arrest, provision of intake services, guidelines for probation officers or other court intake personnel, release on personal recognizance, or to a third party in lieu of bail or detention, court-based diversion programs and other pretrial intervention projects, informal services (constant decrees, informal probation, etc.), suspended sentences, use of fines instead of supervision, etc. All of the above are discussed in more detail in Chapters 3, Diversion from the Criminal Justice Process; 4, Pretrial Release and Detention; 5, Sentencing; 6, Juvenile Intake and Detention; 9, Local Adult Institutions; and 10, Probation. They are also discussed in varying degrees in this Commission’s reports on Police, Courts, and Community Crime Prevention.

2. Nonresidential programs of supervision such as probation; supervision by a private citizen or citizen group such as an employer, a relative, a “big brother,” or a local social service agency or neighborhood center; assignment to day care, a sheltered workshop, or other nonresidential counseling, education, or training program.

3. Residential alternatives to incarceration such as foster and group home arrangements; halfway houses; residential educational programs on college campuses; and community-based correctional centers.

4. Community resources made available to confined population and institutional resources open to the community, which serve as effective bridges to community life, with inmates and community residents participating together in such programs as:
   a. Civic, recreational, and social activities such as chambers of commerce, sports, concerts, speakers, crafts classes, and art shows and sales.
   b. Education and training programs such as adult basic education, General Equivalency Diploma (GED) training, ethnic studies, high school and college courses, and various job and skills training programs.
   c. Special interest and self-improvement groups such as Alcoholics Anonymous, “T” groups, group counseling, social action and political organizations, women’s liberation groups, welfare rights organizations, ethnic or cultural groups.
   d. Religious groups, meetings, and services.
   e. Opportunities for inmates to volunteer as tutors, hospital aids, or similar service activity.
   f. Prerelease programs including furloughs, work release, study releases, halfway houses, or release to participate in other ongoing activities or programs such as those in Item 4.

Implications of implementing such a plan are substantial. The standard therefore calls for development of a plan that can be implemented over a 5-year period. The fiscal implications of the plan involve mainly reassignment of staff responsibility and hiring new staff as required. Such a plan and its results should achieve cost savings by reducing construction and operation costs of large institutions and by increasing use of existing community resources.

References


Related Standards

The following standards may be applicable in implementing Standard 7.1.

3.1 Use of Diversion.
3.2 Construction Policy for Pretrial Detention Facilities.
3.4 Alternatives to Pretrial Detention.
Standard 7.2

Marshaling and Coordinating Community Resources

Each State correctional system or the systems of other units of government should take appropriate action immediately to establish effective working relationships with the major social institutions, organizations, and agencies of the community, including the following:

1. Employment resources—private industry, labor unions, employment services, civil service systems.

2. Educational resources—vocational and technical, secondary college and university, adult basic education, private and consumerled training, government and private job development and skills training.

3. Social welfare services—public assistance, housing, rehabilitation services, mental health services, counseling assistance, neighborhood centers, unemployment compensation, private social service agencies of all kinds.

4. The law enforcement system—Federal, State, and local law enforcement personnel, particularly specialized units providing public information, diversion, and services to juveniles.

5. Other relevant community organizations and groups—ethnic and cultural groups, recreational and social organizations, religious and self-help groups, and others devoted to political or social action.

At the management level, correctional agencies should seek to involve representatives of these community resources in policy development and interagency procedures for consultation, coordinated planning, joint action, and shared programs and facilities. Correctional authorities also should enlist the aid of such bodies in formation of a broad-based and aggressive lobby that will speak for correctional and inmate needs and support community correctional programs.

At the operating level, correctional agencies should initiate procedures to work cooperatively in obtaining services needed by offenders.

Commentary

The fact that many variables beyond the direct control of correctional staff impinge on and influence offenders' adjustment in the community is well documented. Substandard housing, irrelevance or unavailability of education, job restrictions and discrimination, racial prejudice, exclusion of ex-offenders from community agency programs, and inconsistent or unfair practices of law enforcement agencies can contribute to an offender's failure. Instead of blinding a large number of additional correctional staff members to perform the services already provided to nonoffenders, it is much wiser for correctional agencies to try to develop effective working relationships with the agencies and institutions with which offenders come in contact.

Community programs and services to broaden opportunities and experience for the offender should be planned and coordinated, to provide efficiently the continuum of services so urgently needed for successful reintegration. Overspecialization perpetuated by competing or unrelated bureaucracies must be replaced by mutually respectful coordinated procedures that diminish the possibilities of insensitive handling of offenders by the community and corrections.

References


Related Standards

The following standards may be applicable in implementing Standard 7.2.

4.1 Comprehensive Pretrial Process Planning.

9.8 Local Correctional Facility Programming.

10.2 Services to Probationers.

12.6 Community Services for Parolees.

14.5 Employment of Volunteers.
Standard 7.3

Corrections' Responsibility for Citizen Involvement

Each State correctional system should create immediately: (a) a multipurpose public information and education unit, to inform the general public on correctional issues and to organize support for and overcome resistance to general reform efforts and specific community-based projects; and (b) an administrative unit responsible for securing citizen involvement in a variety of ways within corrections, including advisory and policymaking roles, direct service roles, and cooperative endeavors with correctional clients.

1. The unit responsible for securing citizen involvement should develop and make public a written policy on information, term of service, tasks, responsibilities, and authority for any advisory or policymaking body.

2. The citizen involvement unit should be specifically assigned the management of volunteer personnel serving in direct service capacities with correctional clients, to include:
   a. Design and coordination of volunteer tasks.
   b. Screening and selection of appropriate persons.
   c. Orientation to the system and training as required for particular tasks.
   d. Professional supervision of volunteer staff.
   e. Development of appropriate personnel practices for volunteers, including personnel records, advancement opportunities, and other records.

3. The unit should be responsible for providing supervision of offenders who are serving in volunteer roles.

4. The unit should seek to diversify institutional programs by obtaining needed resources from the community that can be used in the institution and by examining and causing the periodic reevaluation of any procedures inhibiting the participation of inmates in any community program.

5. The unit should lead in establishing and operating community-based programs emanating from the institution or from a satellite facility and, on an ongoing basis, seek to develop new opportunities for community contacts enabling inmate participants and custodial staff to regularize and maximize normal interaction with community residents and institutions.

Commentary

Correctional systems have hidden themselves and their problems behind walls, legal procedures, and fear tactics for many years. To the maximum possible extent, citizens have been systematically excluded. In addition, the general public never has been well informed about corrections and correctional issues, and this lack of information has led to apathy and lack of understanding, occasionally to indignation and hostility.

It is obvious that community support is required if community corrections is to become a reality. Education programs of the past, such as crime prevention weeks with speakers, spot announcements on the media, press coverage, and so on, have not accomplished the task of informing the public. Such efforts should be continued, but only as a small part of the overall community involvement program.

Public information and public relations work should be personalized and issue-oriented; in effect, a community organizational effort to bring about change. The new direction requires bringing community members into corrections in a wide array of roles: as observers for information purposes, as policymakers and advisors, as active participants in operations, and as volunteers in a range of direct services to offenders.

Such community participation is required not only in community-based correctional programs but even more so in correctional institutions. In institutions, community involvement can play a crucial role in "normalizing" the environment and developing offenders' ties to the community, as well as changing community attitudes toward offenders. Major institutions seldom have enough money and expertise to accomplish all that is required; therefore, the responsibility for community participation in institutional programs should improve institutional programs, break down isolation, and help the offender explore the possibilities for his adjustment to the community.

Volunteer groups should be encouraged to assess needs and review all activities, programs, and facilities to insure their suitability in light of community standards and offender needs. Volunteers already are used in some institutions and are able to meet institutional programs, such as work relapse, that are carried out within the community. In addition, in some jurisdictions they serve as assistants in probation, parole, and other community-based alternatives to incarceration.

Volunteers should be introduced on a large scale into the traditional institution and its community extension activities. They are an invaluable source for development and implementation of further areas of community participation. Such action requires attention to concerns of custody, security, recruitment, selection, training, nature of involvement, and similar factors to safeguard the present fragile public acceptance of the bridging concept and expand it to include many more inmates than are now able to participate in these programs.

For techniques and procedures on organizing citizen and volunteer efforts, the reader is referred to the Commission's Report on Community Crime Prevention and in particular to the chapter on citizen action.

References


7. Scheiber, Ivan, and others. Guidelines and Standards for the Use of Volunteers in Correctional Programs. Washington: Law Enforcement Assistance Administration, 1972. The volume contains extensive and detailed descriptions of projects across the Nation, as well as sources and addresses for further information.


Related Standards

The following standards may be applicable in implementing Standard 7.3.

6.3 Community Classification Teams.

11.4 Education and Vocational Training.

13.2 Planning and Organization.

14.7 Participatory Management.

16.14 Community-Based Treatment Programs.
Inmate Involvement in Community Programs

Corrections agencies should begin immediately to develop arrangements and procedures for offenders sentenced to corrections institutions to assume increasing individual responsibility and community contact. A variety of levels of individual choice, supervision, and community contact should be specified in these arrangements, with explicit statements as to how the transitions between levels are to be accomplished. Progress from one level to another should be based on specified behavioral criteria rather than on sentence, time served, or subjective judgments regarding attitudes.

The arrangements and procedures should be incorporated in the classification system to be used at an institution and reflect the following:

1. When an offender is received at a corrections institution, he /she should first be placed in a classification unit (committee, team, or the like) to develop a plan for increasing personal responsibility and community contact.

2. At the initial meeting, behavioral objectives should be established to be accomplished within a specified period. After that time another meeting should be held to make adjustments in the individual's plan which, assuming that the objectives have been met, will provide for transition to a lower level of custody and increasing personal responsibility and community involvement.

3. Similarly, at regular time intervals, each inmate's status should be reviewed, and if no strong reasons exist to the contrary, further favorable adjustments should be made.

4. Allowing for individual differences in time and progress of release, the inmate should move through a series of levels broadly encompassing movement from (a) initial security involving few outside privileges and minimal contact with community participants in institutional programs to (b) lesser degrees of custody with participation in institutional and community programs involving both citizens and offenders, to (c) partial-release programs under which he would sleep in the institution but have maximum participation in institutional and outside activities involving community residents, to (d) residence in a halfway house or similar institutional residence, to (e) residence in the community at the place of his choice with moderate supervision, and finally to release from correctional supervision.

5. The presumption should be in favor of decreasing levels of supervision and increasing levels of individual responsibility.

6. When an inmate fails to meet behavioral objectives, the team may decide to keep him in the same status for another period or move him back. On the other hand, his behavioral achievements may indicate that he can be moved forward rapidly without having to go through all the successive stages.

7. Throughout the process, the primary emphasis should be on individualization—on behavioral changes based on the individual's interests, abilities, and priorities. Offenders also should be afforded opportunities to give of their talents, time, and efforts to others, including other inmates and community residents.

8. A guiding principle should be the use of positive reinforcement in bringing about behavioral improvements rather than negative reinforcement in the form of punishment.

Commentary

If there is one thing on which the criminal justice world is agreed, it is the difficulty of evaluating "readiness for release." In large part, the difficulty is related to the "either/or" philosophy evident in current practice. Today, some person or group of persons must decide whether an inmate is or is not ready for release. While it is true that mechanisms such as partial release programs, halfway houses, and parole sometimes are used, their use generally is limited to individuals whose release date already has been set.

Given the acknowledged "unnaturalness" of a place release environment, inability to assure release readiness is not surprising. The range for exercise of individual choice and responsibility is limited in today's institutions.

Officials charged with assessing release readiness thus have meager grounds for evaluating an individual's likelihood of responsible behavior in the community. The tendency to reward cooperation also may stem from (c) other released inmates who evidence cooperation and a "good attitude." But, given the institutional environment, a "good adjustment" is not necessarily indicative of the behavior to be expected on the outside. The tendency to reward cooperation also may stem from concern with smooth operations rather than from belief about its relationship to outside adjustment.

Attempts to assess offenders' attitudes probably are even less successful than an "implied" behavior. Given the state of knowledge about causation, control of crime, and individual motivations, "evaluative statements" of psychological states are of questionable usefulness. The tendency has been to rely on an offender's verbalization of contrition, strong desire to change, and agreement with staff values as he perceives them. This is perhaps the ultimate "con game," involving extremely high stakes. If the offender says the right things, he will be released; if not, he will have a period of months to prepare for his next performance. The ritual is made even more distasteful by the "fadism" and inconsistency frequently characteristic of treatment teams and hearing examiners. Thus, an offender may rehearse his part well, only to learn that the script has been changed since his last appearance.

Corrections has failed to utilize fully the theories and experience of other areas of the behavioral sciences—such as child development, education, training, and social work—particularly with reference to behavior modification and positive reinforcement and the importance of the individual's increasing assumption of responsibility and choice as preparation for full independence.

Within a wide range of variation, offenders either are greatly restricted (incarcerated) or have few restrictions (probation and parole) in their opportunities to exercise individual choice. Such a sharp distinction clearly is not in the interests of the individual or the community. Corrections must acknowledge that the only reasonable way to assess an individual's "readiness" for a particular program is to allow him progressively more responsibility and choice under controlled conditions. The either/or approach should be modified greatly.

The offender's goal (release) currently is related chiefly to factors of time, attitude of staff and parole board, sentence, and absence of major disruptive or violent behavior, except for the very indirect and delayed reinforcement of "good time." New motivations for change should be introduced in the form of more immediate rewards.

The Non-Prison: A New Approach to Treating Youthful Offenders provides a good example of recent thought about how to avoid extended periods of incarceration following a group of offenders through community living. The book presents a model for rapid transition of a cohort of offenders and staff through a community correctional center, using a graded process in which each individual offender develops a program plan and schedule with the advice and consent of the rest of the group, including both staff and inmates. A series of transitional phases emphasizing progressively more responsibility and choice is used, with continuing but decreasing amounts of supervision, to prepare a group of offenders for full independence in a few months. While this model was designed for youthful offenders, its principles have a common criterion, the approach has broad applicability.

Implementation of the standards recommended in Chapter 5, Sentencing, would allow incorporation of a series of levels, with varying amounts of supervision and individual responsibility and choice, into all corrections programs, including institutions, community confinement. In fact, it is at the institutional level that such a change is most strikingly needed.
For example, an individual arriving at a correctional institution would meet with a committee or team to develop an individualized progress plan. The plan would incorporate specific behavioral objectives to be met in a specified period of time, preparatory to transition into a new level with different or additional behavioral objectives.

Such a plan might specify that for a certain period of time, the individual would be assigned medium security status, in which he would work a regular schedule and participate in an educational and training program. Depending on the individual's preferences, he also might agree to accept responsibility for part of a certain recreational activity, observing certain advisory council meetings, or other such activities. It should be stressed that each plan might be different from every other plan, because each should emphasize those activities and responsibilities the individual felt to be important, interesting, or rewarding. A date would be set for the next such team meeting when a new and less controlling plan would be developed, assuming the basic behavioral objectives were not violated.

At the next meeting, the individual would make program choices such as whether to take educational courses, participate in vocational training, join a group therapy session, begin to participate in an arts and crafts program, etc. Again, he would help determine a daily schedule, but this time with more flexibility built in. He would also have the option to begin participating in institutional-community programs. In this institution and certain types of such activities in the community.

At the following meeting, assuming no major problems under the existing plan, further changes would be made. The inmate might progress now to attending an adult education course at a nearby high school to which he would be provided transportation. He also might wish to seek a position on the inmate advisory council or to undertake supervision of an evening recreational period involving community and institution residents. In this phase, the available participation in cooperative programs would be greater, but he would still be subject to regular supervision.

The next phase might involve full-time attendance at a nearby community or community correctional center. Where progression would continue in assuming individual responsibility and choice, until a release to the community with supervision was made, followed by release from all correctional supervision.

The above case is merely illustrative. There would be great variation in the rate and detail of individual plans. In general, however, current rates of progression should be speeded up greatly. There also might be some backward steps when change has been made too quickly and behavior problems resulted. The important point, however, is that a number of transitional phases would be employed instead of the current one or two, greatly separated in time, by which individuals now typically move from confinement status to that of free citizen.

The advantages in terms of protection of community interests are obvious. Many of the random practices of release today would be eliminated, and an offender proved to be responsible would be released. The advantages to the individual involved also would be substantial. It would give him an immediate, realizable goal to work for, and above all, hope and feelings of worthwhileness as an individual reintegrated into society.

References

Related Standards
The following standards may be applicable in implementing Standard 7.4.
4.9 Programs for Pretrial Detainees.
6.2 Classification for Inmate Management.
6.5 Juvenile Detention Policies and Programs.
9.8 Local Correctional Facility Programming.
11.3 Social Environment of Institutions.
11.4 Education and Vocational Training.
16.14 Community-Based Treatment Programs.

Chapter 8
Juvenile Intake and Detention

Youth crime is one of the Nation's most troubling problems. The United States has a long tradition of dealing differently with juveniles than with adults who are in difficulty with the law, in the hope that juveniles can be rechanneled into becoming law-abiding citizens. However, many of the methods of dealing with juveniles in this country have come to be viewed either as counterproductive or as violations of the rights of children. Thus there is a pressing need for national standards to improve the quality of juvenile contacts with the justice system.

SIZE OF THE PROBLEM
In 1971, persons under the age of 18 accounted for 25.8 percent of all arrests. They accounted for 50.8 percent of all arrests for crimes against property and 22.8 percent of arrest for violent crimes against persons. In specific offense categories, more youths under 18 than adults were arrested for burglary, larceny, auto theft, arson, and vandalism. In addition, youth crime appears to be increasing faster than other crime. The National Commission on the Causes and Prevention of Violence found that arrest rates for the four major violent crimes (murder, forcible rape, robbery, and aggravated assault) increased by 15.4 percent for all urban whites over 10 years of age and by 20.6 percent for such whites in the 10 through 17 age bracket. For all urban blacks over 10, the arrest rate for these crimes increased by 23.0 percent as against 48.5 percent for all urban blacks aged 10 through 17.

These statistics are hard to interpret. Recording techniques are not uniform, and police practices differ. Crime statistics are known to be economically and racially skewed because middle- and upper-class offenses do not show an increase in the number of persons aged 10 through 17. More seriously, the arrest rates for the four major crimes increased by 23.0 percent as against 48.5 percent for all urban blacks aged 10 through 17. The causes of rising youth crime are complex and difficult to determine.

Related Standards
The following standards may be applicable in implementing Standard 7.4.
4.9 Programs for Pretrial Detainees.
6.2 Classification for Inmate Management.
6.5 Juvenile Detention Policies and Programs.
9.8 Local Correctional Facility Programming.
11.3 Social Environment of Institutions.
11.4 Education and Vocational Training.
16.14 Community-Based Treatment Programs.

persons arrested for the four major violent crimes were under the age of 18. The corresponding figure for property crimes was 23 percent.

A fact of major significance to this report on corrections is that young recidivists commit more serious offenses than one-time delinquents. Because the most youngsters mature out of delinquent behavior on their own and because present intervention programs are admittedly inadequate, a recent study suggests that if the effects of the first offenders alone, if they were disregarded, resources could be concentrated on delinquents with three or more official police contacts, who account for a high proportion of serious crime.

This is not to say that all youths who come into conflict with the law should be ignored. Many of them may want or need some kind of help. However, processing through the juvenile justice system may be precisely the opposite of what most of them need. It is believed that the first contact young persons have with the justice system may be one of the most significant events in their lives. As a result, concern at this crucial point seems to promise the greatest yield, assuming that what happens to a child apprehended for his first offense may well decide whether or not he will become a full-fledged delinquent.

This report will focus on the first stages of juvenile involvement with the justice system—those occurring before adjudication. Specifically, the focus of this chapter will be on mechanisms that move juveniles away from official processing (case of discretion, informal conferences, informal dispositions) and on what happens before adjudication to those for whom official processing is deemed necessary (filing a petition and release or detention).

DEFINITIONS

The words "child," "youth," and "youngster," are used synonymously throughout this chapter and denote a person of juvenile court age. Juvenile court laws define a "child" as any person under the specified age, no matter how mature or sophisticated he may seem. Juvenile jurisdictions in at least two states, California and Florida (under 18; the others also include youngsters between the ages of 18 and 21)."juvenile court age." The focus of this chapter will be on mechanisms that move juveniles away from official processing (case of discretion, informal conferences, informal dispositions) and on what happens before adjudication to those for whom official processing is deemed necessary (filing a petition and release or detention).

"Discretion": The term refers to matters which are settled or brought to a satisfactory state without official intervention of the court.

"Court": The court having jurisdiction over children who are alleged to be or found to be delinquent. It is the thrust of this chapter that juvenile delinquency procedures should not be used for neglected children of supervision. "Delinquent act": An act that as committed by an adult would be a crime. In this chapter the term "delinquent acts" will not include such ambiguities and niceties as "being ungovernable," "tur­

ancy," "incoercibility," and "disobedience." "Delinquent child": A child who is found to have committed an act that would be considered a crime if committed by an adult. "Detention": Temporary care of a child alleged to be delinquent who requires security custody in physically restricting facilities pending court disposition or execution of a court order. "Dispositional hearing": A hearing held subsequent to the adjudicatory hearing in order to deter­

mine what order of disposition should be made con­

cerning a child adjudicated as delinquent.

"Residential child care facility": A dwelling other than a detention or shelter care facility, which provides living accommodations, care, treatment, and maintenance for children and youth and is licensed to provide such care. Such facilities include foster family homes, group homes, and halfway houses. "Petition": An application for an order of detention. "Detention": Temporary care of a child in physically restricting facilities pending court disposition or execution of a court order or for placement. Shelter care is used for dependent and neglected children and minors in need of supervision. Separate shelter care facilities are also used for children apprehended for delinquency who need temporary shelter but not secure detention.

THE JUVENILE JUSTICE PROCESS

The police, court, probation office, public and pri me social service agencies, schools, and parents all affect the juvenile justice process. The court has the ultimate authority in the process, but the other agencies occupy a crucial role in the decisionmaking process.

"Attack": There is evidence that the police handling of juvenile offenders is more of a function of informal police discretion as compared to prosecutors. Because the community, and its geographical location than ob­

serves of abstract principles of law enforcement. 8 For example, a recent study found that the proportion of juveniles arrested who are referred to court depend­

ed on the type of community and the relationship of police and the public there. Rural communities, where there is apt to be a high degree of personal relationship between citizens and police, tend to have significantly fewer court referrals of arrested juveniles than do communities with a high degree of imperson­

ality in contacts between police and public. In each case, police reflect their perception of community attitudes toward delinquency, exercising maximum discretion in homogeneous rural areas and less urban areas where the population is heterogeneous and therefore perceptions of the citizenry are likely varied. 9

Some empirical indices, however, show that even in high-density metropolitan settings police exercise considerable discretion. Most large police depart­

ments have specialized divisions for handling juveniles. Officers of these divisions often deal only with juveniles referred to them by patrol officers. Most juvenile police officers are not formally trained for the task (i.e., on the street) are made by patrol officers. 10 It is up to the police officer to decide whether or not to arrest a partic­

ular juvenile. The police may exercise this discretion for a potential referral to the court having jurisdiction over juvenile matters.

While most research on juvenile justice tends to focus on events occurring after the police field encounter, a recent exploratory study of police contact of juveniles in Boston, Chicago, and Wash­

ington, D.C., showed that 70 percent of such contact is initiated by police. 11 Police should not exercise much discretion in the selection of the legally liable juvenile suspects are arrested. 12 A second significant finding corroborated earlier evi­

dence that most juvenile cases stem from complaints of citizen complaints. Of a total of 281 juvenile complaints, 72 percent were citizen-initiated. Only 28 percent were initiated by police on their initiative. In view of this evidence, police should be regarded more as responding to citizen requests than as being initiated by police.

In all states, the police have the initial responsibility for law enforcement discretion to release is equally vital after a child has been arrested and brought to the police station. At this point, the police exercise discretion to "detain" or "release." This means that the releasing police officer ("referral to community resources or other interdepartmental handling by police) occur in 45 to 50 percent of all juvenile contacts in the nation as a whole. 13 A study of Washington, D.C., juvenile delinquency needs by the National Council on Crime and Delinquency found that exercise of police discretion resulted in court referral of only 50 percent of young persons who had been arrested. 14 Finally, an analy­

ses, of national data on juvenile disposals found that 45 to 60 percent of juvenile arrests were referred to the court, with considerable variations de­

pending on community size and, to some extent, on geographical region. 15

In recent years, there has been a movement in some areas to guide and structure the exercise of police discretion. Departments have established written policies and review procedures to protect against discriminatory treatment and to make dispositions more appropriate. In addition, numerous police agencies are now engaging in formally organized diversion programs. A number of such police-based diversion programs are discussed in Chapter 3, Diversion from Criminal Prosecution.

While some have criticized police discretion and diversion policies as inappropriate to the police role, the trend today is clearly toward support of such policies. There is increasing recognition of the value of police authority to channel youths into community resources or other nonjudicial alternatives. Judicial oversight is the role of the police, in contrast to the legislative or executive functions of the police. 16

The policy guidelines for the police role in the course of investigation in the use of informal disposition as the safety of the community permits. Jurisdictions that lack enforce­

ment is in order to facilitate early police screening techniques and to de­

velop criteria and programs for their use.

The judiciary often tests law enforcement agen­

cies with the responsibility for the maintenance of law and order. Police have discretion to arrest or to send juveniles to detention centers when court or probation office ser­

vices are not available. Police frequently have com­

plete control of intake on weekends, during holidays, and at night.

1 National Institute of Mental Health, Center for Studies of Crime and Delinquency, Diversion from the Criminal Justice System, 1971,


INTAKE SERVICES

Intake services should be formally organized under the court to receive and screen all children and youths referred by police, public and private agencies, parents, and other sources. Intake services should direct as many delinquents as possible from the juvenile justice system and refer for court action only those for whom such action is necessary. The court's jurisdiction is over delinquents and persons of juvenile age (usually 16, 17, 18, or 21) and it does not consider cases involving civil and criminal matters. The objective is to separate the "detected and catching" function from the "detailing, adjudicating, and correcting" function.

The Juvenile Court Process

In 1971 1,125,000 juvenile delinquency cases, excluding cases of status offenses and delinquencies, were handled by more than 2,900 juvenile courts. This represented an increase in the number of juvenile court cases over the previous year, an amount exceeding the increase in child population. Rural court cases increased by 11 percent, cases in urban courts by 5 percent. About 58 percent of delinquency cases referred to juvenile courts in 1971 were handled nonjudicially (without filing a petition). Some variation was noted according to region; urban and semirural courts tend to handle a larger proportion of cases nonjudicially than do rural courts.

Between 1970 and 1971, the number of delinquency cases reaching the courts increased by 7 percent, compared with a 3 percent increase in cases handled informally. This may mean that more serious cases are being brought before the courts, that informal procedure is less effective, or a combination of these factors. The juvenile court is a relatively new institution in this country, and it is a logical assumption that as more community agencies become involved in the treatment of delinquents, the court will tend to play a greater role in the system.

Two crucial issues in regard to juvenile court jurisdiction are the age of persons who may be involved in the process and whether it has concurrent jurisdiction with criminal courts. These two factors determine whether a juvenile court can waive its jurisdiction over some juveniles in favor of their being prosecuted as adults on criminal charges and, if so, at what age. The lower age limit of the Illinois "waiver" statute is 13, but it is doubtful that many waivers are granted in cases involving 13-year-olds.

There may be constitutional problems in concurrent jurisdiction. After a result of the "Gault" decision, 387 U.S. 1 (1967), may the juvenile court be treated as a court of record and have the power to enforce its orders? The juvenile court is a court of record. If it is decided that the juvenile court is not a court of record, the question of whether the juvenile court has concurrent jurisdiction with a criminal court will not arise. However, if it is decided that the juvenile court is a court of record, the question of whether the juvenile court has concurrent jurisdiction with criminal courts will arise.

Intake services should function in close cooperation with other private and public agencies, such as service bureaus and community mental health services, toward the goal of delinquency prevention and crime reduction. Intake services should be able to purchase needed services, including substitutes for detention.

Role of Intake Personnel

A recent survey reveals that 42 States have statutory provisions regarding the court intake process, but there are wide variations with regard to intake procedures, criteria, and personnel. While smaller counties sometimes rely on "good primary screening" by police, schools, and other agencies and may have no intake procedures, or have intake procedures at the discretion of the court, the objective is to provide a court system that addresses delinquency with separate processes for the family and the juvenile court.

In most jurisdictions, the intake process involves the family as the primary source of information. The juvenile court's jurisdiction starts with the filing of a petition. In an intake procedure, the intake officer gets information concerning the child and his family from the police or other agencies, such as schools or social service agencies, and then screens the case to determine if it should be referred to the court.

The case may be referred to the court for further investigation, or it may be referred to a nonjudicial agency for action. In many jurisdictions, the intake officer and the juvenile officer perform these functions. In a few jurisdictions, intake functions are performed by specialized staff who are not considered crimes if committed by adults.

Intake services should function in close cooperation with other private and public agencies, such as service bureaus and community mental health services, toward the goal of delinquency prevention and crime reduction. Intake services should be able to purchase needed services, including substitutes for detention.

Role of Intake Personnel

A recent survey reveals that 42 States have statutory provisions regarding the court intake process, but there are wide variations with regard to intake procedures, criteria, and personnel. While smaller counties sometimes rely on "good primary screening" by police, schools, and other agencies and may have no intake procedures, or have intake procedures at the discretion of the court, the objective is to provide a court system that addresses delinquency with separate processes for the family and the juvenile court.

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6. Preparation of a report for the court to be used in making the decision, presenting the reasons why detention was deemed necessary.

The probation officer may be charged with gathering evidence as an advocate, but in the absence of special detention facilities,25 and most ex-

In order to provide a check on the system. Such a mechanism could effect-

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In many cases, the youth worker would exert a considerably more lenient influence on the youngster than that of the police officer or judge. While the youth worker might have a suspicion, no evidence for either is required to inflict such detentions on nondelinquent children.

In addition to the obvious inequity, the situation, most jurisdictions do not differentiate legally between delinquent and nondelinquent children. While the Standard Juvenile Court Act long has called for sepa-

In the interests of coordination and program effectiveness, it should be incorporated into the administrative unit having overall responsibility for intake services.

Role of the Prosecutor

The prosecutor's role in delinquency matters dif-

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Initial Screening

Children coming to the attention of the police and courts generally may be classified into two principal categories: those accused of committing acts that would be considered crimes if committed by adults, and who are not accused of any offense. The
ter category can be further differentiated into those who have broken certain rules applica-

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How often and how appropriately youngsters are screened out of the juvenile justice system depend largely on whether suitable services and other options are actually available in the community. A great number of workers who favor retaining court jurisdiction over nondelinquent children is the need for "protective custody" in many cases in which deben-

While the number of community services and agencies providing alternatives to detention is small, there are some precedents. For example, day care facilities with case work and group work serv-

Along with the status of probation, another persuasive legal reason for elimin-

Despite the obvious inequity of the situation, most jurisdictions do not differentiate legally between delinquent and nondelinquent children. While the Standard Juvenile Court Act long has called for separ-

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The role of intake services in this process would be to provide separate legal recognition of those nondelinquent children who are deemed to require service to the appropriate private or public agency or agencies functioning as shelters for runaway juveniles.

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The Youth Council's Juvenile Justice Committee, in its report, states that this issue is "one of the most complex in juvenile justice systems." While the number of community services and agencies providing alternatives to detention is small, there are some precedents. For example, day care facilities with case work and group work services are gaining in popularity and offer the advantage of allowing youngsters to stay in their own homes during evenings. Furthermore, public and private agencies functioning as shelters for runaway juveniles provide short-term living accommodations and counseling for juveniles and their parents counseling which may lead toward the child's successful return to his home. Finally, programs conducted at a community's Y.M.C.A. and similar agencies can furnish low-security residential centers for youngsters lacking adequate parental supervision. Without the existence of such programs, neglected or abused children would be shunted into detention programs. Existing community agencies also can accept voluntary placement of "incorrigible" or "beyond control" youngsters in periods of crisis, thereby avoiding detention and involvement of the juvenile justice system.

Pre-Judicial Dispositions

After court intake personnel have sifted out non-

delinquent and social problem cases that can be served better in other programs, a number of other avenues to minimize penetration into the judicial process should be explored. Since more than half of all juvenile cases presently referred to the courts are being handled nondelinquently (other than formal hear-

Through this process, inappropriate complaints should be kept from the courts, fewer children would experience the official adversary process of the juvenile justice system, and more children would be diverted into juvenile diversion prevention and social service programs. A tangible reduction of probation officers' caseloads could be achieved, thus freeing the officers to give greater assistance to youngsters requiring their help. The intake worker should be


Informal Probation

Informal probation, another method of nonjudicial handling of juvenile cases, coming to the attention of the court, permits informal supervision of young persons by probation officers who wish to reserve judgment regarding the case, and permits the case filing a petition until after a child has had the opportunity for some informal treatment. There are several recognized advantages of informal probation:

- It does not interrupt school or job attendance.
- It avoids the stigma of a delinquent record and a delinquent reputation.
- It does not reinforce antisocial tendencies, as formal adjudication has a tendency to do.
- It is less costly than formal probation.

Informal probation may be differentiated from informal adjustment in that the former generally deals with the so-called "probationary period" during which the child must fulfill certain requirements, such as attending school, or obeying his parents, while informal adjustment generally denotes an informal disposition without any行政处罚.

Opponents of informal probation and similar informal dispositions point to the possibility of inherent coercion and legal double jeopardy, since violations of the rules of the disposition may lead to formalization of informal probation procedures.

However, because of the general desirability of informal dispositions and of a wider range of informal and quasi-formal methods of handling juveniles, courts should either maintain or establish informal probation procedures. To assure equity and protection of rights, the following procedural safeguards should be observed:

1. The facts of the case should be undisputed, and all parties including the juvenile should agree to the proposed plan.
2. The juvenile and his parents should be advised of their right to formal adjudication procedures.
3. Self-incriminating statements made during the informal process should not be used if formal adjudication procedures ensue after the informal settlement.

A reasonable time limit (between 3 and 6 months) should be placed on the informal probation period.

5. A petition on the original complaint should not be allowed after an agreement has been worked out with all parties involved.

Consent Decrees

A consent decree is a more formal order for case-work supervision or treatment to be provided either by the court staff or another agency. It is approved by the judge with consent of the parties involved. The court does not make a formal determination of the jurisdictional fact or a formal disposition. The consent decree provides another method of disposition that can ease the caseload of the court as well as provide an intermediate approach for cases too serious for informal handling but not grave enough for formal probation or institutionalization. This additional procedure serves to protect the public as well as the juvenile, removes and eliminates the stigma associated with findings of delinquency.

Official responses to certain types of behavior initiate processes that may well lead juveniles to further delinquent conduct. Rejection of a newly made and grow delinquent behavior patterns. Discretion in official intervention and labeling therefore is advised, lest describing a youth as delinquent to family, peers, and neighbors create a self-fulfilling prophecy. In the absence of clear-cut evidence that official sanction reduces delinquency or is otherwise beneficial to the child, formal adjudication and official pronouncement of delinquency should be avoided.

It should be stressed that consent decrees do not conflict with the Gault decision which established that, in any action jeopardizing a youngster's liberty, a written notice of the charges be given at least 10 days in advance of a possible time, informing him that he has a right to counsel and the privilege of confronting and cross-examining the witnesses against him as well as the right against self-incrimination. Consent decrees appear appropriate in situations where:

- Services would otherwise be unavailable through other informal adjustments appear desirable.

* Model Rules, p. 15.
* Sheridan, Legislative Guides, paragraph 13.
* Recent relevant statute is: Maryland, Toward a Political Definition of Juvenile Delinquency (Washington: Legislative Committee of the Maryland Bar Association, 1966), p. 222.
• Neither the needs of the youngster nor the protection of the community requires his removal from home.
• There is no dispute as to the facts that brought the youngster before the court.
• Written consensus of all parties can be reached on the decree.
• Procedurally, consent decrees should exhibit these features:
  • The youngster should have right to counsel and right to a formal proceeding.
  • The youngster and his parents should be apprised of their legal rights and the fact that the decree could not result in the removal of the child from his family.
  • Statements given in connection with the case should be made under oath by the youngster to establish jurisdiction in any court but would be admissible only at later dispositional hearings.
  • No decree should be issued unless the facts are legally sufficient to confer jurisdiction upon the court if proved in trial.
  • Decrees should specifically state that they do not constitute an adjudication of an offense or impose probation.
  • Decrees should be in force for an average of 3 to 6 months, not longer than a year, with renewals requiring the consent of all parties.
  • Decrees should be entered only with the explicit consent and participation of the child and his parents, who should have a clear understanding that they have the right to withdraw from the program in favor of adjudication at any time.
  • Once a decree is entered upon, the State has lost the right to reinstitute the case, unless there is willful noncompliance with the terms of the decree by the youngster and in that event the fact of noncompliance should not be relevant to the question of adjudication.

Decrees should explicitly preclude the filing of petitions, since the latter negate the goal of removing juveniles from the adjudicatory system.

Use of the decree should be without its critics. It is argued, for example, that stigmatization is possible as long as records on the transactions are maintained. Stigmatization, however, does not destroy such a decree. The objection is made that unethical handling might tend to duplicate existing child welfare services or even prevent communities from developing alternative programs. However, consent decrees and similar court services should not be seen as dispositions in lieu of other programs but simply as improved mechanisms for making full use of them.

There is another serious criticism regarding the use of consent decrees: being a relatively informal procedure, the consent decree can lend itself to unfair practices on the part of the parties. The juvenile and the court must be assured that any findings of the court rather than the needs of the individual youngster may be the determining factor in the decision. To ensure that the decree serves the public interest and is beneficial to the child, no consent decree should be issued without a hearing at which sufficient evidence appears to provide a proper foundation for the decree. A record of such a hearing should be kept, and the court in issuing the decree should state in writing the reasons for its decree and the factual information on which it is based.

While the previously discussed informal services are utilized at least to some degree by most jurisdictions, court personnel should explore further the possibilities of formally organized diversion programs as discussed in Chapter 3, Diversion from the Criminal Justice Process.

Constitutional Rights of Juveniles

Gault asserted a juvenile's right against self-incrimination and his right to counsel. In addition, the young person is entitled to the same warnings pro­vided for adults, 384 U.S. 436 (1966), for adults: i.e., a child in custody needs to be warned of his right to counsel and the right to re­ject any statement or answers he may make. In fact, the youngster needs to be taken that the child understands these rights. Juveniles are under great pressure to cooperate with authorities. The question the Miranda warning raises is whether or not the youngster and his child are willing to cooperate. As a general rule, formal proceedings appear ap­propriate to actual waiver for the child may not necessarily protect the child's rights. In view of these serious reservations, the Model Rules for Juvenile Courts published by the American Bar Association on Crime and Delinquency require, in effect, that all additional statements to peace and court officers not made in the presence of parents or counsel be rendered inadmissible in juvenile court.

In the initial intake interview, when an intake officer decides whether or not to refer to the court for formal petition, the parents and the child should be allowed to answer questions without their statements being used as evidence in any formal adjudication.

that may result. This recommendation dovetails with those of the Model Rules for Juvenile Courts, extending them to informal services and the entire adjudication disposition process. Only in this man­ner can the dispositional decision be made with ade­quate information. Thus, the juvenile can take ad­vantage of the informal disposition possibilities, if offered, and yet not lose his right to remain silent if formal adjudication results.

Because a juvenile is at stake, a child and his parents should have the right to counsel at each phase of the formal juvenile justice process, deten­tion, adjudication, and disposition hearing. The right to counsel should be a non-waiverable right. In the interest of an equitable and more uniform proc­ess, a juvenile taken into custody should be referred immediately to court intake services. Professionally trained personnel must again inform him of his rights in this new version of Miranda, that, in the end, he can un­deniable. His parents, if not already present, should be notified immediately and informed of their child's rights. At this point, the intake worker would gather the information necessary to decide whether or not as an informal disposition is desirable.

In all situations, the child and parents should be apprised of his options and the possible conse­quences of each. One option is formal disposi­tion—the filing of a delinquency petition or equivalent court procedures. If such a course is chosen, counsel should be provided. If the alleged offense is such that informal disposition is possible, it is not likely that a formal hearing will be chosen.

Assuming the juvenile chooses the informal proce­dures, he should be informed that he can, at any time, terminate such a disposition and request formal legal representation at the very beginning. The decision is made on the basis that a result of such disposition should be minimal, since adjudication has actually occurred. Obviously, such dispositional decisions are where both par­ents and child are willing to cooperate.

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population of 13,567 in 1969 also was slightly higher than that of 13,065 estimated for the nearly half-million children believed to have been admitted to detention homes in 1966 represent approximately two-thirds of all juveniles taken into custody in that year. Since larger numbers of the juvenile court jurisdictions in this country detain too few children to warrant construction of detention homes, it is estimated that at least 50 percent and possibly more than 100,000 children of juvenile court age are held in jails and police lockups each year." According to the 1970 National Jail Census, 7,800 juveniles were confined on March 15, the census date, in 4,037 jails. Of the juveniles detained, 66 percent had not been adjudicated.

Nineteen States have statutes permitting detention of juveniles in jail. Provided they are segregated from the adult population. At the other end of the spectrum, Delaware, Rhode Island, and Puerto Rico do not keep juveniles in jails. Nine States have statutory or administrative provisions against housing them in jails, but these prohibitions often are violated.

About half of the 258 juvenile detention facilities reported in the 1969 survey were constructed specifically for that purpose. The rest were converted from other types of facilities. Detention homes usually are located in urban areas and are frequently of poor quality.

According to the 1969 survey, detention homes have an average capacity of 61. Administrators reported being more concerned about custody than any other goal. A comparative analysis of the homes' capacities and their average daily population indicates that many homes tend to be overcrowded, while smaller ones are not.

Analyzing staff patterns, the survey reveals that 37 percent of the homes employed a caseload capacity which would be persons do not meet recommended minimum staff requirements.

The 1969 survey of detention home workers meet the recommended minimum of a college degree in

social work, psychology, or education. The actual number of 4,692 to 6,684, an extremely low figure considering the job responsibility and the high qualification requirements. Finally, only 21 percent of the homes report a regular mean of personnel advancement, such as a civil service or merit system.

Very few detention homes even approach the recommended minimum rate of 5 percent. Of the 7,800 detained, they may be equipped with television sets, lounging areas, and table games. In some detention homes, the day room does not provide for furnishing being limited to a few fixed table-chairs and a television set. As a rule, girls are kept separate from boys. However, a few innovative centers permit joint use of dayrooms on the premise that the close relationships they will aid in developing much-needed abilities to relate to the opposite sex.

Some homes have counseling programs. A few feature rehabilitative programs. Recreation provisions range from none to gymnasiums, outdoor recreation, game rooms, and swimming pools. An analysis of educational programs confirms earlier findings of limited and mixed quality.

Young persons are housed in detention homes usually are arranged in units of the detention decision. Young persons are housed in detention homes ranging from bedrooms to cells similar to those in local prisons. The most recent survey of youth detention facilities indicated that juvenile detention facilities are designed to facilitate safe movement of residents, sets lounging areas, and parent or guardian and the child. The right to bail has plagued the adult criminal justice system for decades. Few have realized that the same issue is involved in the detention of juveniles. In view of the recognized disruptive experience of detention, counsel should insist on a formal detaining hearing.

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The detention decision

Standard 16.9, Detention and Disposition of Juveniles, sets forth criteria for the detention decision. Briefly, it proposes that the delinquency jurisdiction of the court should require that those juveniles who commit acts that if committed by an adult would be more than 20 criminal, and that juveniles accused of delinquency offenses would not in any circumstances be detained in facilities for housing adults accused or convicted of crime. The decision to detain prior to adjudication, or the discharge of a delinquency should be based on the following criteria:

• Detention should be considered as a last resort when no other reasonable alternative is available.

• Detention should be used only when the juvenile has no parent, guardian, custodian, or other person alive to provide supervision and care for him and to take the juvenile's delinquency decision.

• Detention decisions should be made only by the court or intake personnel, not police officers.

• Juvenile is not detained in jails, lockups, or other facilities used for adults.

The detention decision is an integral part of the predetention screening process, the appropriateness of any detention decisions should be favored over deten-

dors to cages. Housing usually is arranged in units holding 24 to 24 youths each. Dayrooms may be located next to sleeping areas, and they may be equipped with television sets, lounging areas, and table games.

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The detention decision is an integral part of the predetention screening process, the appropriateness of any detention decisions should be favored over deten-
Finally, in the interest of a fair and speedy process, detention hearings always should be separate from the adjudication and disposition hearings.

The Detention Hearing

Although there is considerable variation among States, there is consensus regarding the detrimental effects on children of undue delays in hearing. The Standard Juvenile and Family Court Act proposed by the National Council on Crime and Delinquency provides that children may not be held in a shelter or detention facility without a court order for more than 48 hours, excluding Sundays and holidays. California requires that a child admitted to detention must receive a hearing on the next judicial day after filing of a petition. Illinois has reduced this requirement to 36 hours.

In view of the consensus of most jurisdictions on the gravity of detention and the well-documented proof that long detention periods are unnecessary, detention hearings ordinarily should be afforded within 24 hours after a child is detained. The period should not exceed 48 hours without a court order. Every effort should be made to dispose of these hearings during the day of admission. This recom-
mendation is a major departure from the practice in many jurisdictions where the court is in operation regularly throughout the work week. However, small rural counties, where hearings tend to be held on an "as needed" basis, should not be put under this same undue pressure. The child should not be kept in detention longer than is necessary.

The need for speedy hearing makes it all the more essential that intake personnel be trained promptly when children are being detained. According to the Model Rules of Juvenile Courts, they should also obtain a scheduling hearing and notify the parents and the child.

DETECTION

Most correctional administrators agree that there are too many maximum security facilities for juveniles and adults alike on State and local levels. Many recently constructed facilities are of concrete and steel institutions. The existing institutions in too many instances are monuments to the mistakes of the past and to an "edifice complex," the propensity for trying to solve social problems by building an enclosure to keep them in mind and sight. It is particularly important for jurisdictions to think twice before building or enlarging juvenile detention centers because of an unfortunately verified tendency, where new detention space is constructed, to detain more children and to keep them confined longer. Another tendency in detention center design is the increasing tendency to build new institutions in remote areas from which the youngsters come, in order to facilitate family visiting, community support, and maximum utilization of community resources. Few detention centers can be as important for both full- and part-time professional staff; thus, centers should be located near juvenile courts, universities, and teaching hospitals. Additional location considerations involve availability of volunteers, community workers, and paraprofessionals.

Finally, location planning for a center should involve special consideration of the reintegration function of its program. This function is not served by locating the center on a vast area of land remote from the community and its support. The center should be near the community it serves. Proximity to the community should be achieved not only in terms of travel distance and linkages with community services but also in visual terms. The degree of acceptance or rejection of community by residents and visitors is an important component of the environment in which the child is to live. Ideally, the social physical environment will, in large measure, be communicaed by physical planning and design features.

Residential programming should be supported by arranging individual sleeping spaces in "clusters," establishing small groups. Residential structures should be located in each cluster, providing for close interaction within the unit. Variations call for planning and design that establish clearly identifiable modules, each having small-group size. Long corridors with room after room lining their length are completely obsolete. Consistent with individual safety and with program requirements, individual occupancy should be provided in all primary detention centers. The single cell is favored by many counselors because it:

- Allows privacy and a place of respite.
- Encourages expression of individuality and personality through room decorations.
- Denotes territoriality, the right to demarcate one's personal space.
- Reduces the possibilities for assaults.

It must be stressed that the concepts of single room and personal space are inseparable. There is no doubt that staff hold the key to any program, regardless of the physical environment in which it takes place. The argument that dormitories would automatically increase resident-staff interaction is unacceptable. Any staff beat on increasing the barriers between themselves and the residents would do so, regardless of the type of sleeping facilities available. Finally, great care should be taken that individual rooms do not convey a punitive and hostile atmosphere. Small windows and doors, bar grates and narrow strip lights, and small windows are prototypes of maximum security penitentiaries. They have no place in a just facility like this center. Pleasant rooms and self-locking doors with master keys should be provided.

Community Relations and Security

Facility design should support a high degree of interaction with community resources, families, and volunteer workers. Since a stay in a center frequently is the child's first contact with the juvenile justice system, the need for a natural relationship with the outside world is paramount. It is recognized today that security does not depend absolutely on the physical environment, but is based on a combination of staffing patterns, technological devices, and design. In general, the following design provisions should be considered:

- An open communication system is the basis of any good security system.
- Repugnant physical environments will encourage rather than deter escape attempts.
- Security glass, for example, is preferable to steel bars.
- Entrances and exits should be monitored without resort to guard stations.
- Entry signs should welcome visitors and residents rather than merely exclude them.
- The need for security hardware decreases in proportion to staff increases and interaction.

Use of Existing Facilities and Resources

Residential planning should take into account existing residential facilities in the community. Such facilities can serve as group or shelter group residential detention centers. Among the many advantages is the fact that these facilities are already resident in character.

Community acceptance also is more easily obtained when the proposed facility will not require construction that might deviate from existing physical patterns. Arrangements should be encouraged by which correctional agencies can lease such structures. Finally, the prospects of early occupancy in lieu of time-consuming construction and attainment of an appropriate environment for the program are significant determinants. Facility space programming should start with small investigation of community resources. In program
planning, priority should be given to provision of educational, medical, counseling, and other services from the norm of existing community services.

New construction and renovation of existing facilities should be based on consideration of the functional interrelationships between program activities (i.e., sleeping, dining, counseling, visiting, recreation) and program participants (i.e., staff and youngsters). Adequate consideration of these factors can go far toward bringing about the achievement of increased staff-resident interaction.

Activity Spaces

The detention center should have a school program that is part of the city's or region's public school system. Library resources should be provided in the center. Recreational activities should include gymnasiums (where population size permits), multi-purpose activity rooms, and ample indoor and outdoor recreational space. Activities encouraging individual creativity should be fostered, and opportunity for arts and crafts, music and drama, and writing and entertainment should be featured. Religious services should be provided for individuals who desire them.

Recognizing that the needs of the individual child will fluctuate at various points, facility planning and design should provide ranges in environmental conditions. Flexibility spaces need to be differentiated in their size and intended use. A range of options, for resident as well as program staff, would allow selection of an environmental setting most conducive to structured or unstructured program activity at a particular time. Such differentiation would help to avoid repetitions and monotonous institutional qualities.

Primary consideration should be given to providing individual and small group activity and a number of large group functions. Selectively then can become an individual, group, and staff function.

Economic Considerations

Economic considerations call for institutionalization of the smallest number of children. In 1971 the estimated cost of maintaining a minimum staff for a detention home with an average daily population of 12 children was about $120,000 per year. Per capita cost of care came to $27.25 per day. Current construction costs for new centers are estimated at a rock-bottom figure of $10,000 to an astonishing $30,000 per resident. 

Construction costs show regional variations and, more importantly, vary according to the amount of security and detention hardware. If community resources are utilized, total cost per resident can be held to approximately $7,000 to $8,000 per year. Community-based nonresidential program costs are estimated at $400 to $700 a year.

These facts are a prime reason for the need to delineate clearly only those youngsters who really need detention, for the use of suitable existing facilities rather than building new ones, and sufficiently for diversion of the largest number of children into community-based nonresidential programs.

Citizen Advisory Boards

A vital element in good planning is the use of citizen advisory panels. Ideally, such committee include representatives of community leadership and a cross-section of the citizenry, including offenders and professionals as well as interested lay persons. Experience shows that such committees allay public anxiety that may inhibit progress and innovation.

These committees also rally, community support for adequately staffed and programmed detention facilities and alternatives to incarceration. Furthermore, they can furnish positive, active support for those elements conditioned for a successful reintegrative phase. They have been found invaluable in raising financial support and securing active participation for special projects. They also aid in creation of job ladders, scholarships, and loans. On occasion, placing program opponents on committees has helped to change their attitudes as they became more aware of center objectives, services, and problems.

Environmental Impact

All applicable health and safety codes should be complied with in the planning and design of any juvenile facilities. Pertinent State and Federal regulations should be given equal attention. The Environmental Policy Act of 1970, for example, requires careful consideration of the environmental impact of any proposed construction. "Impact" is defined in terms of social, physical, or aesthetic characteristics.

Inspection of Facilities

Enabling legislation should be developed within each State to enforce standards for all juvenile intake and detention services, operations, and facilities. (See Standard 9.3, State Inspection of Local Facilities.) Inspection activities should be planned with the following considerations in mind:

1. Inspection should cover administration and records, facility operation, programs, health and medical services, food service, housing, and attitudes and performance of staff.
2. Ultimate responsibility for inspection should rest with the State, although States may wish to have judges with jurisdiction over delinquency matters appoint citizen commissions to conduct inspections in their own counties.
3. Inspection should be made quarterly.
4. Juveniles should not be detained in a condemned facility under penalty of law.

STAFFING FOR INTAKE AND DETENTION

The key to success or failure of programs always will remain with the staff.

Staffing standards for handling intake and detention personnel should be established, as discussed in more detail in Chapter 14, Manpower. Job specifications should call for specialized professionals who should receive salaries that are commensurate with their education, training, and experience and comparable with salaries for administrative and governmental positions requiring similar qualifications. All personnel, including administrators and directors, should be hired without regard to political affiliation and promote on the basis of well-defined merit systems. Job functions and personnel requirements and authority should be specified clearly, with particular attention to coordination of activities and teamwork.

While highly qualified administrators and supervisors are vital to the success of any program, lower-level personnel who have direct and continuous contact with the children are the real basis of the program. They, therefore, are either the strongest or weakest link in the program and are chiefly responsible for the social climate prevailing in the facility.

Coordination With Other Agencies

Another important personnel consideration is need for coordination and cooperation with other service agencies. Too often, the effectiveness of detention services is inhibited by lack of communication with, and sometimes even hostility toward, other agencies. As a result, special efforts must be undertaken to bridge the gap. When all community resources can be pooled to tackle the problem of delinquency control.

Staff Development

According to a recent survey, only 46 percent of detention homes provide any kind of in-service training program for their staffs. Those with capacities less than 20 tended to provide no training at all, View of the great need for upgrading personnel, States and individual jurisdictions need to undertake rigorous, intensive staff development programs involving every employee. While most of the training will be of the inservice type, special efforts should be made to develop junior college or university training programs through regularly scheduled seminars, workshops, and apprenticeships. In addition, expenses should be paid for professionals to attend workshops, conferences, and institutes. Professional training materials and journals should be subsidized. (See Standard 14.11, Staff Development.)

Staff Ratios

Since youngsters in detention must be under supervision continuously, the size of staff should be adequate for that purpose. The National Council on Crime and Delinquency recommends sufficient nonresidential staff to meet minimum capacity needs of detention homes and a total staff-child ratio of 3 to 5, not 4 to 5, depending on the size and nature of the facility.

As its title indicates, this chapter is intended to cover only juvenile intake and detention. The adjudication of juveniles and other related issues are covered in the Commission's report to Courts. The post-adjudication disposition of juveniles is discussed in this report in Chapter 5, Sentencing, and in Standard 16.5, Detention and Disposition of Juveniles.
Standard 8.1

Role of Police in Intake and Detention

Each juvenile court jurisdiction immediately should take the leadership in working out with local police agencies policies and procedures governing the discretionary diversion authority of police officers and separating police officers from the detention decision in dealing with juveniles.

1. Police agencies should establish written policies and guidelines to support police discretionary authority, at the points of first contact as well as at the police station, to divert juveniles to alternative community-based programs and human resource agencies outside the juvenile justice system, when safety of the community is not jeopardized. Disposition may include:
   a. Release on the basis of unfounded charges.
   b. Referral to parents (warning and release).
   c. Referral to social agencies.
   d. Referral to juvenile court intake services.

2. Police should not have discretionary authority to make detention decisions. This responsibility rests with the court, which should assume control over admissions on a 24-hour basis. When police have taken custody of a minor, and prior to disposition under Paragraph 8.1 above, the following guidelines should be observed:

1. Under the provisions of Gault and Miranda, police should first warn juveniles of their right to counsel and the right to remain silent while under custodial questioning. The second act after apprehending a minor should be the notification of his parents.

2. Extra-legal statements to police or court officers not made in the presence of parents or counsel should be inadmissible in court.

3. Juveniles should not be fingerprinted or photographed or otherwise routed through the usual booking process.

4. Juvenile records should be maintained physically separate from adult case records.

Commentary

There is empirical evidence of wide variations in police dispositions of juvenile offenders, which are understandable in view of the great number and diversity of police departments. There also is good evidence that police officers exercise a great deal of discretionary power in the decisionmaking process and are highly responsive to community perceptions of crime and delinquency and to citizen complaints.

In the public interest, police should be able to exercise discretion in their decisions to apprehend, arrest, and refer to the court juveniles suspected of law violations. The use of discretion should be encouraged, and guidelines should be established to assure a more uniform quality of implementation. The police should be able to release juveniles outright if the charges are unfounded, otherwise to release them to their parents or refer them to social agencies and formal diversion programs outside the juvenile justice system.

Police should not have the authority to make detention decisions. In view of the known destructive effect of detention on children, this decision must be reserved for court personnel. The latter should assume full responsibility for detention admissions on a 24-hour basis to prevent needless detention of juveniles. The detention decision should be made by professionally trained personnel who under court supervision should divert as many children and youths from the juvenile justice system as the well-being of the youngsters and safety of the community permit.

When a juvenile is taken into police custody, and pending a decision as to disposition under police discretionary authority, his rights and those of his parents must be observed. The juvenile should be warned of his right to counsel and his right to remain silent during questioning. The parents should be notified immediately that he is in police custody. Any statements he might make out of the presence of his parents or counsel should be inadmissible in juvenile court proceedings. Juvenile records should be kept separate from adult case records.

References


Related Standards

The following standards may be applicable in implementing Standard 8.1.

3.1 Use of Diversion.

7.2 Marshaling and Coordinating Community Resources.

8.2 Juvenile Intake Services.
Standard 8.2

Juvenile Intake Services

Each juvenile court jurisdiction immediately should take action, including the pursuit of enabling legislation if necessary, to establish within the court organized intake services operating as a part of or in conjunction with the detention center. Intake services should be geared to the provision of screening and referral intended to divert as many youngsters as possible from the juvenile justice system, and to reduce the detention of youngsters to an absolute minimum.

1. Intake personnel should have authority and responsibility to:
   a. Dismiss the complaint when the matter does not fall within the delinquency jurisdiction of the court or is so minor or the circumstances such that no intervention is required.
   b. Dismiss complaints which seem arbitrary, vindictive, or against the best interests of the child.
   c. Divert as many youngsters as possible to alternative programs such as mental health and family services, public welfare agencies, youth service bureaus, and similar public and private agencies.
   d. Intake personnel should seek informal service dispositions for as many cases as possible, provided the safety of the child and the community is not endangered. Informal service denotes any provision for continuing efforts on the part of the court at disposition without the filing of a petition, including:
      a. Informal adjustments.
      b. Informal probation.
      c. Consent decrees.
   3. Informal service dispositions should have the following characteristics:
      a. The juvenile and his parents should be advised of their right to counsel.
      b. Participation by all concerned should be voluntary.
      c. The major facts of the case should be undisputed.
      d. Participants should be advised of their right to formal adjudication.
      e. Any statements made during the informal process should be excluded from any subsequent formal proceeding on the original complaint.
      f. A reasonable time limit (1 to 2 months) should be adhered to between date of complaint and date of agreement.
      g. Restrains placed on the freedom of juveniles in connection with informal dispositions should be minimal.
      h. When the juvenile and his parents agree to informal proceedings, they should be informed that they can terminate such dispositions at any time and request formal adjudication.
   4. Informal probation is the informal supervision of a youngster by a probation officer who wishes to reserve judgment on the need for filing a petition until after he has had the opportunity to determine whether informal treatment is sufficient to meet the needs of the case.
   5. A consent decree denotes a more formalized order for casework supervision and is neither a formal determination of jurisdictional fact nor a formal disposition. In addition, to the characteristics listed in paragraph 3, consent decrees should be governed by the following considerations:
      a. Compliance with the decree should bar further proceedings based on the events out of which the proceedings arose.
      b. Consumption of the decree should not result in subsequent removal of the child from his family.
      c. The decree should not be in force more than 3 to 6 months.
      d. The decree should state that it does not constitute a formal adjudication.
   6. Cases requiring judicial action should be referred to the court.
      a. Court action is indicated when:
         (1) Either the juvenile or his parents request a formal hearing.
         (2) There are substantial discrepancies about the allegations, or denial, of a serious offense.
         (3) Protection of the community is an issue.
         (4) Needs of the juvenile or the gravity of the offense makes court action appropriate.
      b. In all other instances, court action should not be indicated and the juvenile should be diverted from the court process. Under no circumstances should children be referred to court for behavior that would not bring them before the law if they were adults.
   7. Under the supervision of the court, review and terminating procedures should evaluate the effectiveness of intake services in accomplishing the diversion of children from the juvenile justice system and reducing the use of detention, as well as appropriateness and results of informal dispositions.
   8. Predetermination screening of children and youths referred for court action should place into their parental home, a shelter, or nonsecure residential care as many youngsters as may be consistent with their needs and the safety of the community. Detention prior to adjudication of delinquency should be based on these criteria:
      a. Detention should be considered a last resort where no other reasonable alternative is available.
      b. Detention should be used only where the juvenile has no parent, guardian, custodian, or other person able to provide supervision and care for him and able to assure his presence at subsequent judicial hearings.
      c. Detention decisions should be made only by court or intake personnel, not by police officers.
      d. Prior to first judicial hearing, the juvenile ordinarily should not be detained longer than overnight.
      e. Juveniles should not be detained in jails, lockups, or other facilities used for adults.

Commentary

Court and detention practices for juveniles throughout the country are characterized by great disparity and frequently a total lack of services. The common concept of the detention center, with its overemphasis on secure custody and relative neglect of other purported objectives—such as programming, guidance, and observation—is counterproductive. Court intake services and detention activities should be integrated and organized if the goal of delinquency is to be achieved.

Many children who commit offenses, and many whose actions would not constitute crimes if committed by adults, are brought before the courts even though they could have been helped better through other means. Often the court is used as a substitute when needed services either do not exist in the community or have not been made available to these children. This practice not only has destructive effects on children but also adds unnecessarily to the workload of the court.

Intake screening services should be made available to every child who is referred to the court. These services should assess the child’s situation and in every possible instance arrange for diversion to alternative programs and agencies outside the juvenile justice system. The services should also avoid the detention of children whenever possible, and the cri-
 Children should be referred for court action only when there are compelling reasons for doing so—at the request of the child or his parents, when there is a denial or significant discrepancy in the allegations of a serious offense, or when the protection of the community dictates.

Throughout the process the legal rights of the child should be observed, and informal adjustments should be sought, with the safeguards provided in the standard. Consent access particularly should be worked out with the direct participation of the court in the form of a hearing and a written statement as to the bases for detaining.

In the case of preadjudication informal adjustments, preservation of the child's right to demand a formal adjudication of his status is particularly critical. In all likelihood this preservation is constitutionally required, because the Supreme Court has held in *Klopfer v. North Carolina*, 386 U.S. 213 (1966), that preprosecution programs for adults violate their right to a speedy trial unless the accused can demand a formal trial at any time.

To guide the development of court services to children intelligently, these services and the decisions affecting children at every point in the process should be monitored and evaluated. Uniform statistics should be compiled and research undertaken to determine the effectiveness of these services on the recidivism rate.

References


Related Standards

The following standards may be applicable in implementing Standard 8.3.

3.1 Use of Diversion.

5.2 Sentence the Nondangerous Offender.

5.4 Probation.

7.2 Marshaling and Coordinating Community Resources.

9.1 Total System Planning.

13.2 Planning and Organization.

14.11 Staff Development.

15.5 Evaluating the Performance of the Correctional System.

16.9 Detention and Disposition of Juveniles.

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**Standard 8.3**

**Juvenile Detention Center Planning**

When total system planning conducted as outlined in Standard 9.1 indicates need for renovation of existing detention facilities to accommodate an expanded function involving intake services or shows need for construction of a new juvenile detention facility, each jurisdiction should take the following principles into consideration in planning the indicated renovations or new construction.

1. The detention facility should be located in a residential area in the community and near court and community resources.

2. Population of detention centers should not exceed 30 residents. When population requirements significantly exceed this number, development of separate components under the network system concept outlined in Standard 9.1 should be pursued.

3. Living area capacities within the center should not exceed 10 or 12 youngsters each. Only individual occupancy should be provided, with single rooms and programming regarded as essential. Individual rooms should be pleasant, adequately furnished, and houselike rather than punitive and hostile in atmosphere.

4. Security should not be viewed as an indispensable quality of the physical environment but should be based on a combination of staffing patterns, technological devices, and physical design.

5. Existing residential facilities within the community should be used in preference to new construction.

6. Facility programming should be based on investigations of community resources, with the contemplation of full use of these resources, prior to determination of the facility's in-house program requirements.

7. New construction and renovation of existing facilities should be based on consideration of the functional interrelationships between program activities and program participants.

8. Detention facilities should be coeducational and should have access to a full range of supportive programs, including education, library, recreation, arts and crafts, music, drama, writing, and entertainment. Outdoor recreational areas are essential.

9. Citizen advisory boards should be established to pursue development of in-house and community-based programs and alternatives to detention.


**Commentary**

No social problem area is more in need of coordinated and uniform planning than that of youth crime.
and juvenile delinquency. This planning should seek to encompass a total system philosophy, taking into consideration the full range of delinquency controls needed in a particular planning area and the ultimate goal of delinquency prevention. The planning of a detention center cannot be done in isolation or without factoring in the total service needs for the pre-delinquent and delinquent youths. As outlined in Standard 9.1, the planning process should include a thorough assessment of present practices, an evaluation of resources, an analysis of trends based on sufficient statistical information, and an exploration of community-based alternatives to dispositions currently being made.

The total system planning concept also implies coordination with and input from courts, probation departments, law enforcement agencies, State correctional agencies, and public and private agencies already involved in treating and preventing juvenile delinquency. Planning efforts also should include the participation of social welfare agencies, academic and vocational education departments, mental health services, employment agencies, public recreation departments, and youth groups.

The planning should emphasize community-based programs and treatment. While the success of these programs has yet to be documented through verified, empirical research, there are sufficient indications that they can achieve the goals of delinquency reduction and those of reintegration and recocialization of delinquents. Detention and incarceration have known deleterious effects, and therefore youngsters should be diverted from the juvenile justice system in every possible instance. For those who must be retained in the system, all possible alternatives to detention should be used. For economic reasons alone, full exploitation of community resources is warranted.

The expansion or construction of a detention facility should not be undertaken unless total system planning efforts indicate conclusively that it is needed and that no residential facilities in the community can be adapted to meet the need. The site or the structure to be used for detention should be located near court and community resources and in a residential area.

The center should not be planned for a population in excess of 30. Where the requirements of an unusually large metropolitan area exceed that number, separate facilities, small in size and forming a network system, should be considered. Living units within the facilities should accommodate 10 to 12 youngsters, or less, each in a separate room. Living unit design should reflect principles of facility programming. The individual rooms should be designed and furnished normally. Whatever security is needed should depend more on staffing patterns, safeguards, technological devices, and the physical design of the structure than on traditional security equipment.

Within the facility the design should reflect the interrelationships among in-house program activities—sleeping, dining, counseling, visiting, recreation—and between staff and youngsters. The entire facility should be designed for coeducation.

As in any other type of correctional planning, citizen advisory bodies should be used to develop programs and activities and to enlist community support and resources. Due consideration should be given to State and Federal regulations and the Environmental Policy Act of 1969. With respect to the latter, reference to the principles set forth in this standard should prevent difficulties in obtaining clearance for construction.

References

Related Standards
The following standards may be applicable in implementing Standards 8.3.

2.5 Healthful Surroundings.
7.1 Development Plan for Community-Based Alternatives to Confinement.
7.2 Marshaling and Coordinating Community Resources.
9.1 Total System Planning.
9.10 Local Facility Evaluation and Planning.

Standard 8.4
Juvenile Intake and Detention Personnel Planning

Each jurisdiction immediately should reexamine its personnel policies and procedures for juvenile intake and detention personnel and make such adjustments as may be indicated to insure that they are compatible with and contribute toward the goal of reintegrating juvenile offenders into the community without unnecessary involvement with the juvenile justice system.

Personnel policies and procedures should reflect the following considerations:
1. While intake services and detention may have separate directors, they should be under a single administrative head to assure coordination and the pursuit of common goals.
2. There should be no discriminatory employment practice on the basis of race or sex.
3. All personnel should be removed from political influence and promoted on the basis of merit.
4. Job specifications should call for experienced, "bilingual" personnel, who should receive salaries commensurate with their education, training, and experience and comparable to the salaries of administrative and governmental positions requiring similar qualifications.
5. Job functions and spheres of competency and authority should be clearly outlined, with stress on teamwork.

6. Staffing patterns should provide for the use of professional personnel, administrative staff, indigenous community workers, and volunteers.
7. Particular care should be taken in the selection of line personnel, whose primary function is the delivery of programs and services. Personnel should be selected on the basis of their capacity to relate to youth and to other agencies and their willingness to cooperate with them.
8. The employment of rehabilitated ex-offenders, new careerists, paraprofessionals, and volunteers should be pursued actively.
9. Staff development and training programs should be regularly scheduled.
10. The standards set forth in Chapter 14, Manpower, should be observed.

Commentary
As the trend in juvenile intake and detention increasingly emphasizes the diversion of youths, the use of community-based alternatives to detention, and the earliest possible reintegration of the juvenile, the need for professionally trained workers becomes critical.

While well-developed programs administered in exemplary facilities are essential, the key to success...
Chapter 9

Local Adult Institutions

Remote from public view and concern, the jail has evolved more by default than by plan. Perpetuated without major change from the days of Alfred the Great, it has been a disgrace to every generation. Colonists brought to the new world the conceps of the jail as an instrument of confinement, correction, and correction of those who broke the law or were merely nuisances. In the early 19th century, the American innovation of the State penitentiary made positive confinement the principal response to criminal acts and removed the serious offender from the local jail. Gradually, with the building of insane asylums, orphanages, and hospitals, the jail ceased to be the repository of some social casualties.1 It continued to house the town's minor offenders along with the poor and the vagrant, all crowded together without regard to sex, age, and history, typically in squalor and misery.

Many European visitors came to examine and admire the new American penitentiaries. Two observers—Beaumont and Tocqueville—also saw, side by side with the new penitentiaries, jails in the old familiar form: "... nothing has been changed: disorder, confusion, mixture of different ages and moral characters, all the vices of the old system still exist." 2 In an observation that should have served as a warning, they said:

"There is evidently a deficiency in a prison system which offers amnesties of this kind. These shocking contradictions proceed chiefly from the want of union in the various parts of government in the United States." 3

By and large, the deficiencies the two travellers found remain today. The intervening decades having brought only the deceleration of jail facilities from use and age. Changes have been limited to minor variations in the clientele. Jails became residual organizations into which were shunted the more vexing and unpalatable problems of each locality. Thus, "the poor, the sick, the morally deviant, and the merely unsightly, in addition to the truly criminal—all and in jail." 4

Although larger urban areas have built some facilities for special groups of offenders, in most parts of the country a single local institution today retains the dual purposes of custodial confinement and misdeemeanant punishment. The most conspicuous additions to the jail's function have been the homeless.


References


Related Standards

The following standards may be applicable in implementing Standard 8.4.

14.1 Recruitment of Correctional Staff.
14.2 Recruitment from Minority Groups.
14.3 Employment of Women.
14.4 Employment of Ex-Offenders.
14.5 Employment of Volunteers.
14.6 Personnel Practices for Retaining Staff.
14.7 Participatory Management.
14.8 A State Coordinating Agency for Criminal Justice Education.
14.10 Intern and Work-Study Programs.
14.11 Staff Development.
and the drunks. Thus jails are the catchall for social and law enforcement problems.

Jails are the intake point for our entire criminal justice system. There are more jails than any other type of "correctional" institution. Indeed, the current trend toward the decreased use of confinement in major State institutions promises to increase the size of and number of the smaller jails must bear. Perhaps this is a short-term expedient that will not become permanent. There are some faint stirrings of hope that it will only be temporary since the colonial era, attention is being given to the place where social problems originate—the community—as the logical location for solving these problems.

**MAJOR CHARACTERISTICS OF THE JAIL**

A jail census conducted in 1970 by the U.S. Bureau of the Census under an agreement with the Law Enforcement Assistance Administration found 4,037 jails meeting the definition of "a facility for the detention of adults suspected or convicted of a crime and which has authority to detain longer than 48 hours." These institutions ranged from New York City's "confining a Tombs" to the infrequently utilized small municipal lockups. Implementing recommendations and standards delineated in this chapter will require localities to make precise specification of their needs and resources. The prescriptive content of this chapter will consist of elements that may be combined into a suitable solution for any given situation. There is no single answer to the problems of jails.

Local control, multiple functions, and a transient, heterogeneous population have shaped the major organizational characteristics of jails. Typically, they are under the jurisdiction of the county government. In most instances, the county has neither the need nor the resources to finance a jail adequately or sufficiently to justify even the most rudimentary correctional programs. Local control in jails has meant involvement with local politics. Jails are left in a paradoxical situation: localities cling tenaciously to them but are unwilling or unable to make them adequate. Furthermore, most American jails, put most conceivably, is the problem of local control.1

Beyond their formally acknowledged tasks of correction and detention, jails have been adapted to perform a variety of "welfare" tasks by the local communities. For example, Stuart Queen, a jail critic of 50 years ago, noted the "shoofer custom" in California counties by which transients were brought to jail from out of town "in order to disappear."2 Similarly, Sutherland and Cressey observed the "Golden Rule disposition" of the jail in which the individual is held with no intention of bringing him to trial but only until his condition changes (as with drunkenness, disorderliness, etc.). Such uses, as well as detention of suspects and witnesses, are understandable responses to difficulties encountered by law enforcement personnel. They use, however, short-term expedients that rarely solve anything.

Because of their multiple uses, jails house a population more diverse than any other institution. The local jails found that, of 160,813 persons held on the census date, 27,660 had not been arraigned, 8,888 were awaiting some postarraignment legal action, 9,096 were serving sentences (10,496 for more than a year), and 7,800 were juveniles. Thus accused felons and misdemeanants and juveniles are found in American jails, often segregated from each other.

However, jail populations do share common socio-economic characteristics. Many inmates are poor, undereducated, and unemployed. Minority groups are greatly overrepresented. Fifty-two percent (83,079) of the inmates were convicted of only one offense, and although 95 percent were convicted, 47 percent were first-time offenders. It is crucial to note that the population of a jail bears no necessary or logical relationship to the quality of the general population. A study of Nebraska's country jails found that counties with the largest populations do not necessarily have the largest jail populations. For instance, the jails in the county having the largest population growth are not a suitable condition for the future. Given the fact that most jails are overcrowded, it is not surprising that most of the physical facilities are in crisis condition.

The National Jail Census found 5 percent of jails included in their survey overcrowded, with the propensity to be overcrowded increasing with design capacity.5 On the other hand, on four census dates, a survey found 35 percent to 45 percent of Idaho's jails occupied.6 Neither the situation of the overcrowded rural jails nor that of the underutilized urban jails is satisfactory. The means of delivering detention and correctional services must be reexamined. Otherwise, more lawyers and law students document the results.

The District of Columbia Jail is a filthy example of man's inhumanity to man. It is a case study in cruel and unusual punishment, in the denial of due process, in the failure of justice.

The Jail is a century old and crumbling. It is over-crowded, it is dirty, it is crowded. It confines as many as 2,500 inmates, it houses the entire local population in small, poorly ventilated cells, it is the hallmark of cruel, degrading discipline. The Jail is a reflection of the society. The life evidence of racial discrimination the Jail "serves" the male population of the District of Columbia and is, therefore, a reflection of the problem of criminals who race to receive better treatment than others.

The eating and living conditions would not be tolerated anywhere else. The staff seems, at best, indifferent to the horror which prevails here. This, they say, is the job society wants them to do. ix However, the time available for recreation and exercises is limited, sometimes by a guard's whim. Except for a few privileged prisoners on various details, there is no evidence that an inmate may combat idleness—certainly nothing that could be considered an adequate counseling or training.

The sad fact is that conditions in the D.C. Jail are by no means unique.

**Physical Facilities**

The most striking inadequacy of jails is their abominable physical condition. The National Jail Census found that 25 percent of the cells in use in 1970 were built before 1910.7 And the chronological age of the facility is aggravated by the manner in which it is used. Jails that hold few persons tend to be neglected, and those that are overcrowded are repeatedly pushed to their extreme capacity by the breaking point. Given the fact that most jails are either overcrowded, and hence overcrowded, or are using only a portion of their capacity, it is not surprising that most of the physical facilities are in crisis condition.

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combined with the short supply or complete lack of such items as soap, towels, toothbrushes, safety razors, personal hygiene kits, and toilet paper, create a clear public health problem, not to mention the depressing psychological effects on inmates. Mattick declares that if work is not next to godliness, most jails lie securely in the province of hell.24 He points out further disheartening physical conditions in jails:

Considering that sanitary fixtures are a necessity, yet are not as indispensable, are also lacking. The neglect of local jails is marked by an almost fanatic concern with security, but one practice totally contradictory to security is found in many jails. To operate and maintain the jail, selected inmates are granted the rank of trusty. They have free access throughout the jail and freedom outside the facility, in and out during the day, at night, weekends, holidays, and even frequent, staff supervision is minimal. Twenty percent of jail employees, according to surveys conducted by various authors, are former criminals or are the children of criminals. The need is for jailers to resist the temptation to convert initial sympathy into contempt for possible prey. The experienced jailer is aware of the power of regression, the need to make the transition from hands-on involvement to hands-off supervision, and the temptation to rely on the delinquent population to police itself.

While staff-inmate ratios often appear satisfactory, they do not reflect the fact that many jails are overcrowded, that some inmates are assigned two cells, that others must share a cell, and that some are in solitary confinement. Half of the jails surveyed in California counted in 1970 had no standards for determining staffing levels. Letters sent to the boards of charitors and corrections that had existed 30 years earlier had no statewide standards were granted broad powers by statute to oversee jail activities, including the right to set standards. By and large, however, these measures did not meet expectations. In the fall of 1971, the National Clearinghouse for State Criminal Justice Training and Research attempted to assess the status of current State inspection efforts. Letters sent to the 50 State agencies responsible for corrections requested that they send a copy of any jail standards they had or notify the clearinghouse if no standards existed. Twenty States replied that they had no responsibility for local jails and no statewide inspection systems. Nine of the States provided standards governing planning and construction but not operation. Two States replied that, while minimal standards existed, they were old and in some instances were to be replaced by pending legislation. (See Figure 9.1.)

Lack of Adequate Staff

The neglect of local jails is as apparent in staff as in dismal physical facilities. Jail employees almost invariably are untrained, too few in number, and underpaid. They are secondary to the society's arrangements that perpetuate the jail.27

A 1970 jail survey in California found 25 percent of the deputies and 41 percent of the nonsworn personnel in 58 county sheriff's offices engaged in custodial activities.28 Although these are full-time employees, jail work is only one of several roles they must perform. Moreover, "the law enforcement psychology of a policeman is to arrest and send people to jail,"29 contrary to the rehabilitative psychology of a correctional worker who should be prepared to manage an out of jail and take his place in the free community as a law-abiding citizen.30 When law enforcement officers are not used, the solution has been to hire low-paid custodians who are even less qualified than those they replace.

While staff-inmate ratios often appear satisfactory, the need to operate three shifts and the erratic nature of their tasks must be considered in comparing such figures. Nationally, there were 5.6 inmates per full-time equivalent employee in 1970.31 Illinois had a ratio of 2.3 to 11.4.32 Interpreting these ratios on the basis of a 24-hour, 7-day operation gives an average of 15 full-time workers per shift, regardless of the facility. Outside the jail, the courts are similarly too low to permit regular supervision of inmates.

In Nebraska, staff members were able to see all prisoners from their station in only five of the 90 county jails.33 During the past year, the number of supervisors in the jail comes more acute. In Idaho, for example, only 2 percent of the jail had a full-time staff member present at night.34

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Twenty-four States replied with copies of their current standards. One State answered that the need for standards had been eliminated through State operation of all county jails.

Standards now in use vary considerably—from minimal statutory requirements to detailed instructions, from mimeographed sheet to printed book. But such standards neglect the myriad connections jails have with other components of the criminal justice system. Many standards are vague and thus difficult to enforce. Several State agencies theoretically responsible for such enforcement complained of insufficient funds to carry out the inspection function. The all too-frequent difficulty in identifying the specific department of State government responsible for supervision is probably indicative of the quality of the inspection services.15

Existing State standards and inspection procedures may have alleviated some of the most glaring physical defects in local jails. However, they do not constitute a program of action; they fail to cover the large complex of processes and agencies to which the jail is related. Furthermore, they inevitably involve political considerations. Standards and inspections aimed at institutional procedures are only two necessary components of the process by which jails may be dramatically reformed. Minimal standards that include only a small portion of the problem's components inevitably will perpetuate a haphazard approach to jail reform. For individuals seeking reform of local adult corrections, precautions must be taken not to set off in the wrong direction. Hans Mattick has articulated well what must be avoided.

At least two kinds of investment should be postponed in any statewide jail reform program based on a phased-stage implementation of State standards: the building of new jails and the hiring of more personnel. Investment in new jails, or the major refurbishing of old ones, would merely cement-in the old problems under somewhat more decent conditions. Increasing the number of personnel in existing jails would only have the effect of giving more persons a vested interest in maintaining the status quo and contribute to greater resistance to future change. By and large, new buildings and more staff should come only after the potential effects of criminal law reform and diversion alternatives have been fully considered. Such collateral reforms, combined with an increasing tendency toward rationally planned jails, would require fewer jails and fewer, but better qualified and trained, jail personnel.16

This position may be difficult for some to accept because at first blush the answer to poor jails seems to be to build better ones; the response to inadequate personnel, to hire more. It must be remembered, however, that this is not the first generation to confront the plight of American jails. Concerned individuals have been speaking out for at least a hundred years. But, for the most part, the situation has not

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15Survey conducted by National Clearinghouse for Criminal Justice Planning and Architecture, Fall 1971.

16Mattick, "Contemporary Jails," draft page 147.
For some components the situation is more complex. For example, arraignment under examination analyzes, and develops responses to problems of a generic term to refer to activities, actions, events, relations varies widely, depending on law enforcement range of these items necessary to explain phenomena be affected subsequently by feedback from those of others, the dangers of a piecemeal approach to problem solving are obvious.

**Nature of the Process**

In this discussion, "system" is defined as a group of related and interdependent activities, actions, or events organized to achieve a common purpose. The range of these items necessary to explain phenomena under examination determine the system's "scope." For purposes of this report, a"scope" is limited to a State corrections system; for others, to the State criminal justice system. Throughout this discussion, corrections system refers to any segment of the criminal justice system. "Component," will be used as a generic term to refer to activities, actions, events, and subsystems. "Total system planning" is a process that defines, analyzes, and develops responses to problems of a specific service area. The process, is open ended. That is, it describes the interactions between activities or components of one system and those of another. Changes in any single component of an open system in a related system will affect all other components. For example, an arraignment scheduling directly affects the number of persons awaiting trial and the detention capacity required. Similarly, jail population may be reduced by diverting alcoholics from the criminal justice system to a variety of rehabilitative programs. The latter is a component of a health service system. The system resulting from the planning process must be able to link offenders' needs with available services.

Results from one step in the planning process may be affected subsequently by feedback from those of another step. In the above example, creating detoxification programs may change judicial practices that is a component of a health service system. The system resulting from the planning process must be able to link offenders' needs with available services.

**Coordinating for Planning**

When the total system is not limited to a political subdivision, interjurisdictional cooperation in planning (for example, city-county, multicounty, State-local) is required. The term "coordination" is intended to reflect a somewhat less structured working relationship than that implied by "integration." Open-endedness implies that the planning process should account for interactions between systems and their components in different political jurisdictions. Related practices in different jurisdictions should be examined for their effects on the flow of offenders through a system. For example, one jurisdiction defines related prosecutions limited to a State corrections system; for others, to the State criminal justice system. "Component," will be used as a generic term to refer to activities, actions, events, and subsystems. "Total system planning" is a process that defines, analyzes, and develops responses to problems of a specific service area. The process, is open ended. That is, it describes the interactions between activities or components of one system and those of another. Changes in any single component of an open system in a related system will affect all other components. For example, an arraignment scheduling directly affects the number of persons awaiting trial and the detention capacity required. Similarly, jail population may be reduced by diverting alcoholics from the criminal justice system to a variety of rehabilitative programs. The latter is a component of a health service system. The system resulting from the planning process must be able to link offenders' needs with available services.

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**Difficulty of Functional Integration**

**Steps in Planning**

The process of total system planning for a corrections service area is summarized in Figure 9.2. There are six phases:

1. **Problem Definition**: Survey, Analysis, Program linkage, System concept.
2. **Physical translation**: Each phase involves a definition of the context (for example, the service area), an end product (statement of the problem), and a course of action (how to allocate planning funds). Each end product and course of action determines what is to be done in the next phase. Subsequent phases may affect prior ones through the feedback mechanism; for example, an initial service area demarcation (Phase 1) may be modified by an analysis (Phase 3) of survey data (Phase 2).

**Identification of the service area to be covered is the initial step of the planning process. This step will determine the scope of the overall effort and result in a preliminary statement of the correctional problem being addressed.**

Given the diversity, quantity, and quality of data, the survey and structured analysis of its results are critical steps. Standards may be developed that will guide the analysis of the programs and facilities available. There are always information deficiencies (unreliability, lack of coverage, inconsistency) that force "best guesses" based on professional judgments. Tables, graphs, charts, and diagrams should be used to organize survey data for the decisionmaker and to highlight information gaps.

These products should result from Phases 2 and 3:

- An inventory of existing correctional programs in the service area.
- An assessment of current law enforcement, judicial, and detention standards, as represented by types of offenders flowing through the system.
- An inventory of programs and resources not part of the criminal justice system.
- A projection of criminal justice system population.

These four items are used to assess the community's ability to meet specific program needs.

**Program Linkage**

The "program linkage" phase (Phase 4) should include examination of alternative correctional service networks. For example, the population of local institutions can be reduced by diverting certain classes of offenders from the criminal justice system. An alternative flow for alcohol-related offenses would emphasize aftercare and social service programs not available in a jail. For offenders not diverted, the potential for alcohol-related incarcerations should be examined, including summary in lieu of arrest, release on recognizance, and release to a third-party volunteer.

The underlying objective is to divert, either from the criminal justice system entirely or from incarceration, as many offenders as possible. Representatives of public and private social service agencies, community groups, and professional organizations should be involved in developing these alternatives. Public interest and support is an important aspect of the planning process that contemplates extensive use of community-based programs.

**A Vision of the Future**

Following an analysis of program relationships, there are two further steps in the planning process: system concept (development of definitive programs) and physical translation. When a community is working to achieve social change, development of a vision of what the future could look like is undoubtedly more effective than attempting to present facts that contradict the old way. Thus, while the details of programs or "delivery systems" developed will vary depending on the service area's requirements, the Commission envisions emergence of community correctional centers as a basic component of local adult corrections. A community correctional center is more a concept than a planner. To illustrate, the community correctional center concept may be structured on either a regional or network approach.

**The Regional Approach**

Where resources and offenders are not sufficient to justify a separate rehabilitative institution, there is sufficient community may pool on a regional basis. Regionalization consolidates existing facilities through cooperative interjurisdictional planning and, in some cases, operation of a new institutional complex. A **Regional Approach to Jail Improvement in South Mississippi: A Plan—Maybe a Dream** describes one regional arrangement for five contiguous counties. The report recommends building a new facility in one of the service area's five counties. The host county maintains jur-
corrections to provide all rehabilitation services is one building. The range of facilities within a network provides for offenders' special needs, including the potential for some total institutionalization. An additional variable is provided by the progression of an offender from one program or facility to another. Within the service area, a network is established, with the community correctional center serving as the coordinating point. Following a survey of program needs, inventory of diverse area resources, and development of detailed program linkages, the planning process must translate this information into physical resource requirements. Plans for facilities within a network are described in terms. In regions comprised of scattered medium-sized cities, it will be difficult to keep individuals involved in their home community. To facilitate reintegration, the inmate must interact continually with his community and must be allowed furloughs to find postrelease employment and housing. The distribution of jobs over a large territory makes work-release programs difficult, though not impossible.

A frequent objection to regionalization is the time and cost involved in moving people to and from facilities. A systematic analysis of cost factors should be part of the planning process and be included in the overall cost projections for any delivery system—regional or network.

The Network Approach

In major metropolitan areas, the corrections program can be developed on the basis of a network of dispersed facilities and services geographically located to perform their functions best. The traditional correctional institution, with its inclusion of all functions in a single facility, creates an unnatural physical and psychological environment. For example, in the free world, existing schools are not used for adult education, and individuals rarely work in the same building in which they live. Correctional institution arrangements may be convenient for management, but they are unrealistic for the inmate. It is inconsistent with the intent of community

"Liberty County, Georgia's Regional Detention Center: Lightens Burdens on Area Jails." American County, 36 (1973), 9-11.

### FIGURE 9.2

<table>
<thead>
<tr>
<th>PHASE</th>
<th>5 SYSTEM CONCEPT</th>
<th>6 PHYSICAL TRANSLATION</th>
<th>7 PROGRAM INTERPRETATION</th>
<th>8 PROGRAM ANALYSIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONTEXT</td>
<td>PROGRAM</td>
<td>SYSTEM DEVELOPMENT</td>
<td>INTERPRETATION</td>
<td>RESEARCH</td>
</tr>
<tr>
<td>* facility * nonfacility</td>
<td>* programs * facilities * administration * funding * operational * implementation</td>
<td>* system plan</td>
<td>* staff/inmate need * operational relationships</td>
<td>* administration * site planning</td>
</tr>
<tr>
<td>SYSTEMS COMPONENTS</td>
<td>* facilities * type * scale * location</td>
<td>* system descriptions</td>
<td>* inter-facility relationships</td>
<td>* design considerations</td>
</tr>
<tr>
<td>SYSTEM CONFIGURATION</td>
<td>* network</td>
<td>* site plan</td>
<td>* site alternatives</td>
<td>* facility layout</td>
</tr>
<tr>
<td>SYSTEM CONFIGURATION</td>
<td>* regional * composite</td>
<td>* treatment programs * alternatives</td>
<td>* site evaluation</td>
<td>* operational capacity</td>
</tr>
</tbody>
</table>

### OUTPUT

**CORRECTIONAL SYSTEM CONCEPT PLAN**
- definition of components

**SYSTEM DESCRIPTION**
- definitive design of components

**DEVELOP DESIGN (OBJECTIVES)**
- goals
- facility
- location

**DEVELOP DESIGN (PHYSICAL PARAMETERS)**
- definition
- interpretation
- evaluation

**DEVELOP DESIGN (SOLUTIONS)**
- alternatives
- schematic
- recommendations
- costs
- phasing

**DEVELOP DESIGN (TRANSLATION)**
- budget analysis
- presentation documents
- models
- specifications
- scheduling

**FINAL CONSTRUCTION DOCUMENTS**
- plan
- specifications
- scheduling

### ACTION

**PUBLIC REVIEW**
- legislative action
- funding

**PHYSICAL IMPLEMENTATION**
- facility construction
- staffing
- operation
- research

**COMPARE WITH TOTAL SYSTEM**
- goals and configuration

**DESIGN DETERMINANTS (DEFINITION)**
- priorities
- alternatives
- public participation
- agency participation

### TOTAL SYSTEMS PLANNING PROCESS

### FACILITY PLANNING PROCESS

### DESIGN DETERMINANTS

**SITE**
- location-site selection
- site development
- resource priorities

**FACILITY**
- space requirements
- functional relationships
- safe
- image
- character
- compatibility
- flexibility
- internal change
- budget analysis
- environmental impact

**DEVELOPMENT**
- staff/staffing needs
- operational relationships
- site/facility
- alternatives to site
- facility alternatives
- new or existing (remodel)
- shared-use agencies
- client needs
- characteristics
- numbers
- budget sources
- limits
- facilities
- operations

**DETERMINANTS**
- feasibility
- safety
- accessibility
- scale
- space
- functional
- economics
- combined use
- structural
- services
- safety
- security
- external change
- budget analysis
- environmental impact

**BIDDING-AWARD**
- construction
- occupancy
Community correctional centers will provide four types of residential care: services to persons awaiting pretrial release; services offering sentencing disposal alternatives to persons moving from major institutions; and services to short-term returnees. While many of the services offered and conditions required will apply to all residential services, there are certain distinctions.

Persons Awaiting Trial

 Adequate screening, referral, diversion and pretrial release programs should greatly reduce the number of persons detained pending trial. For that part of the accused population that is denied pretrial release, the best way to keep populations low and jail stays short is speedy trial. (See Chapter 4, Pretrial Release and Detention, and the Commission’s Report on Pretrial Release.)

Those detained should be housed separately from convicted offenders. Females and juveniles should be separated. With some adult men, this may not be feasible. Any persons received for detention who is mentally or physically disabled, or an alcoholic or drug addict should be routed to more appropriate facilities.

Every effort must be made to ensure that nothing in the treatment of pretrial detainees implies guilt and that the exercise of their rights is maximized to the extent possible. (See Chapter 2, Rights of Offenders.)

Sentenced Offenders

Elsewhere in this report, the need is stressed to restructure the penal system to provide for the least number of convicted offenders possible. Chapter 5, Sentencing, presents the numerous dispositional alternatives available to the courts that are preferable to incarceration. Traditionally misdemeanants have been sent to local jails, while felons were sent to State institutions. The reorganization of dispositional alternatives, local correctional facilities may be available to serve both types of offenders. Eventually, the community correctional center may replace the prison as the place of incarceration for felons who cannot be released immediately to the community.

At present, however, local correctional facilities can be expected to initially house misdemeanant offenders with relatively short sentences. Given the fact that very few of these individuals are perceived as "dangerous" to others, it is astonishing how little use has been made of work release, study release, "weekender" programs and similar programs that take advantage of community resources.

States should adopt work-release statutes such as Wisconsin’s pioneer Riker Law, which authorizes daily release for work, with return to jail in the evening. Earnings are used to finance the program and to meet the cost of the inmate’s room and board and supervision. Services to parolees are better being deposited in the inmate’s account. Such statutes should also extend to school or training programs, medical treatment, job hunting, and family visits.

"Weekender" programs, which enable offenders to remain in the community during the work week while returning to jail over the weekend for punishment, should also be used much more extensively. Judging from current practice, "weekender" sentences, which range from one to three days, are more appropriate to the needs of persons who seem less dangerous than those requiring more intensive forms of correction. States may wish to formally recognize the practice by law.

In addition, early release opportunities, such as parole or release to a small halfway house, which are generally available for felons in State institutions, should be offered to community correctional center inmates. Such programs are less costly than incarceration, can serve as incentives for inmates, and avoid the dangers of premature and unnecessary confinement.

For too long the local jail has been used as a place of total confinement for all who were sent there. Much more imagination and variety need to be employed. Release opportunities such as work release, study release, and "weekender" programs should be available to offenders in community programs on a voluntary basis as well. A model for such an arrangement exists in the community mental health field, where it has been found that major problems or recommitment can be avoided by opening up facilities to those who feel a temporary need for them. Such an openness would also greatly reduce the move to alleviate the abrupt transition from total confinement to freedom in the community.

COMMUNITY CORRECTIONAL CENTER PROGRAMS

The community correctional center not only should be located in a community but also should be part of it. The center should not duplicate the already available services from government or private sources. Psychotherapy, education, and skills training can be brought to the center, or residents can participate in programs being operated by other agencies. Increased community participation would improve the potential for reintegrating inmates.

Confinement individuals also can receive services from community organizations—Alcoholics Anonymous, family service organizations, legal aid, neighborhood centers, vocational rehabilitation agencies, and others. Such groups can work with the individual while he is in confinement and after release.

The overall goal of the community correctional center is to furnish physical and social environments conducive to the individual’s social reintegration. Central to this goal is the provision of a safe, positive environment in which the individuals have a chance to express and develop their innate abilities. The center’s philosophy is not on traditional training, instruction, or adjustment to institutional requirements but rather on:

• Accurate observation of the individual.
• Intensive staff-client interaction.

For frontality and reality confrontation and reality testing.


California Board of Corrections, Minimum Jail Standards (Sacramento, 1971), pp. 18-20.
correctional centers should perform. Numerous ob­
servers have commented that—more often than not—time, rather than need, is the factor which sig­
nals the end of correctional service. Thus, many in­
dividuals may be released from correctional custody
or supervision with no provisions being made to
help them in any way after their sentence has ex­
pired. While it is true that the vast majority of offenders today are only too glad to be free from
correctional control, some offenders may want or
need additional services. Community correc­
tional centers should be authorized to offer services
to ex-offenders for at least one year after the expire­
tion of their sentences. Employment assistance, fam­
fily counseling, aid in finding housing, or help in over-
coming or removing legal or other restrictions placed
on ex-offenders are examples of the kinds of services
that should be available through the community
correctional center.

Facility Design Suited to Program Goals

Facility design that separates residential from pro­
gram areas would not achieve program goals, and
design based mainly on security controls and surveil­
 lance functions is inappropriate and counterpro­
ductive. The physical setting supportive of contem­
porary program activities will not be found by exam­
ining past models. Replicating such models has
only produced failure and will continue to do so.
The physical environment is of profound signifi­
cance to the support and encouragement of program
goals. Only by provision of adequate and appropriate
space can a broad array of human activities essential
to correctional programming be realized.

More details on facility design are offered in
Standard 9.10.

Standard 9.1

Total System Planning

State and local corrections systems and planning
agencies should immediately undertake, on a cooper­
ative basis, planning for community corrections based
on a total system concept that encompasses the full
range of offenders' needs and the overall goal of
crime reduction. Total system planning for a partic­
ular area should include the following concepts.
1. While the actual methodology may vary, total
system planning should include these phases:
   a. A problem definition phase, including
      initial demarcation of the specific service area,
as determined by the scope of the problem to
      be addressed. Its identification results in a
      preliminary statement of the correctional prob­
      lem.
   b. Data survey and analysis designed to
      obtain comprehensive information on popula­
tion trends and demography, judicial practices,
offender profiles, service area resources, geo­
graphic and physical characteristics, and politi­
cal and governmental composition. Such infor­
mation is needed to assess service area needs
and capability and to determine priorities.
   c. A program linkage phase involving ex­
      amination of various ways to meet the prob­
      lems identified. The linkages should empha­
size service area resources that can be used to
provide community-based correctional programs
as alternatives to incarceration. Identification
and development of diversion programs by pro­
gram linkage will have significant implications
for a service area's detention capacity and pro­
gram requirements.
   d. A definition and description of the cor­
rectional delivery system for the service area
developed on the basis of results of the pre­
vious phases. Facility and nonfacility program
requirements should be included.
   e. Program and facility design, which pro­
ceed from delivery system definition. The re­
sulting overall community correctional system
design will vary with specific service area
characteristics, but it should follow either a
regional or a network approach.

(1) A network service delivery sys­
tem should be developed for urban service
areas with large offender populations. This
system should have dispersed components
(programs and facilities) that are inte­
grated operationally and administratively.
The network should include all compon­
ents necessary to meet the needs of clien­
tele and the community. Court intake,
social investigation, and pretrial release
and detention programs should be located
near the courts. Other residential and non-
residential components should be located in the clients' communities or neighborhoods and should use existing community resources.

2. A regionalized service delivery system should be developed for service areas that are sparsely populated and for a number of cities, towns, or villages. Such a system may be city-county or multicounty in composition and scope. Major facility and program components should be consolidated in a central area or municipality. Components should include intake and social investigations services, pretrial release services, pretiol and peastial residential facilities, special programs, and resource coordination. Extended components, such as prerelease, work/education release, alcoholic and narcotic addict treatment, and related program coordination units, should be located in smaller population centers with provision for operational and administrative coordination with the centralized components. The centralized system component should be located in close proximity to court services and be accessible to private and public transportation.

3. All planning efforts should be made in the context of the master plan of the statewide correctional planning body.

4. Individual program needs, such as detention centers, should not be considered apart from the overall correctional service plan or the relevant aspects of social service systems (health, education, public assistance, etc.) that have potential for sharing facilities, resources, and experience.

5. All community correctional planning should give highest priority to diversion from the criminal justice system and utilization of existing community resources.

Commentary

The need for a more coherent approach to correctional programs has long been recognized. Historically, correctional reform has been limited to minor variations on a discordant theme. Seldom have underlying concepts and assumptions been examined critically. "New" community-based programs sometimes are only institution-based activities with minimal ties to the community.

A new focus has significant implications for reorganization and the resulting correctional facilities. The physical environment contributes to program effectiveness and therefore should be adaptable to changing needs and flexible enough to foster innovation. Stereotyped or standardized institutions are obsolete. Facilities should provide a location for individualized programs, a normalized atmosphere, and resocialization. These factors imply conditions comparable to community living and minimal limitations on individuals' actions.

A correctional delivery system developed for the specific needs, resources, and priorities of each service area is required. Whatever its scale, the new correctional environment cannot be limited to a single program or facility. Rather, the planning emphasis should be on development of a network of alternative means of solving correctional problems in which facilities play a supporting but secondary role. The total correctional environment should include interconnected components designed to solve specific problems and provide varying levels of support.

More detailed information on total system planning may be found in the narrative of this chapter and the University of Illinois publication, Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults.

Related Standards

The following standards may be applicable in implementing Standard 9.1.

References

3. Law Enforcement Assistance Administration. Outside Looking In: A Series of Monographs In

3.1 Use of Diversification.
5. Classification for Inmate Management.
6. Community Classification Teams.
7. Development Plan for Community-Based Alternatives to Confinement.
8. Juvenile Detention Center Planning.
12. Planning and Organization.
16. Unifying Correctional Programs.
16. Regional Cooperation.
16.1 Community-Based Treatment Programs.
Standard 9.2

State Operation and Control of Local Institutions

All local detention and correctional functions, both pre- and postconviction, should be incorporated within the appropriate State system by 1982.

1. Community-based resources should be developed initially through subsidy contract programs, subject to State standards, which reimburse the local unit of government for accepting State commitments.

2. Coordinated planning for community-based correctional services should be implemented immediately on a State and regional basis. This planning should take place under jurisdiction of the State correctional system.

3. Special training and other programs operated by the State should be available immediately to offenders in the community by utilizing mobile service delivery or specialized regional centers.

4. Program personnel should be recruited from the immediate community or service area to the maximum extent possible. Employees' ties with the local community and identification with the offender population should be considered essential to community involvement in the correctional program. At the same time, professional services should not be sacrificed, and State training programs should be provided to upgrade employee skills.

Commentary

Traditionally, the need for provision of services to offenders has been recognized only after adjudication and sentencing to major State correctional institutions. The needs of an alleged offender or convicted misdemeanant have been seriously neglected. Communities should redirect their efforts to provide a full continuum of services throughout the criminal justice process.

Few local communities, particularly those in sparsely settled areas, can be expected to have sufficient resources to resolve the problem and provide appropriate services. Even in richer communities, local control has proved a miserable failure. Neither the regional nor the network solution (outlined in Standard 9.1) totally compensates for the general lack of funding and program innovation typical of local government. If total system planning is to be achieved, the State and Federal governments must increase funding for and guidance to local jurisdictions. In the interim, all planning should be at least regional in scope.

By late 1972, Alaska, Connecticut, Delaware, Rhode Island, and Vermont had 55


Related Standards

The following standards may be applicable in implementing Standard 9.2.

6.3 Community Classification Teams.  
9.1 Total System Planning.  
14.1 Recruitment of Correctional Staff.  
15.1 State Correctional Information Systems.  
16.4 Unifying Correctional Programs.  
16.6 Regional Cooperation.

References

Standard 9.3

State Inspection of Local Facilities

Pending implementation of Standard 9.2, State legislatures should immediately authorize the formulation of State standards for correctional facilities and operational procedures and State inspection to insure compliance, including such features as:

1. Access of inspectors to a facility and the persons therein.
2. Inspection of:
   a. Administrative area, including record-keeping procedures.
   b. Health and medical services.
   c. Offenders' leisure activities.
   d. Offenders' employment.
   e. Offenders' education and work programs.
   f. Offenders' housing.
   g. Offenders' recreation programs.
   h. Food service.
   i. Observation of rights of offenders.

3. Every detention facility for adults or juveniles should have provisions for an outside, objective evaluation at least once a year. Contractual arrangements can be made with competent evaluators.
4. If the evaluation finds the facility's programs do not meet prescribed standards, State authorities should be empowered to make an inspection to ascertain the facts about the existing condition of the facility.
5. The State agency should have authority to require those in charge of the facility to take necessary measures to bring the facility up to standards.
6. In the event that the facility's staff fails to implement the necessary changes within a reasonable time, the State agency should have authority to condemn the facility.
7. Once a facility is condemned, it should be unlawful to commit or confine any persons to it. Prisoners should be relocated to facilities that meet established standards until a new or renovated facility is available. Provisions should be made for distribution of offenders and payment of expenses for reinitialized prisoners by the detaining jurisdiction.

Commentary

Because existing jails and local short-term institutions are consistently deficient in meeting modern program standards, improved levels of performance must be sought. The objective of State operation and control of local facilities is a long-range objective that may take 10 years or more to accomplish. In the meantime, a system of State inspection, with effective procedures for enforcement, seems to be the only promising short-term method of stimulating improvement.

Standards for facilities and operational performance prevail in virtually every other public institutional sector. School systems are governed by a variety of codes and enforced standards. Regulations cover personnel qualifications and certification, program activities, and the health and safety aspects of facilities. Medical facilities are subject to compliance with recognized performance standards for both staff and facility. These institutions are inspected regularly. It should be no different in the area of corrections. Therefore, professional standards for program operations and environmental conditions should be legislated and enforced.

References


Related Standards

The following standards may be applicable in implementing Standard 9.3.

2.1-2.18 Rights of Offenders.
6.2 Classification for Inmate Management.
7.4 Inmate Involvement in Community Programs.
Standard 9.4

Adult Intake Services

Each judicial jurisdiction should immediately take action, including the pursuit of enabling legislation where necessary, to establish centrally coordinated and directed adult intake services to:

1. Perform investigative services for pretrial intake screening. Such services should be conducted within 3 days and provide data for decisions regarding appropriateness of summons release, release on recognizance, community bail, conditional pretrial release, or other forms of pretrial release. Persons should not be placed in detention solely for the purpose of facilitating such services.

2. Emphasize diversion of alleged offenders from the criminal justice system and referral to alternative community-based programs (halfway houses, drug treatment programs, and other residential and nonresidential adult programs). The principal task is identifying the need and matching community services to it.

3. Offer initial and ongoing assessment, evaluation, and classification services to other agencies as requested.

4. Provide assessment, evaluation, and classification services that assist program planning for sentenced offenders.

5. Arrange secure residential detention for pretrial detainees at an existing community or regional correctional center or jail, or at a separate facility for pretrial detainees where feasible. Most alleged offenders awaiting trial should be diverted to re­lease programs, and the remaining population should be only those who represent a serious threat to the safety of others.

The following principles should be followed in establishing, planning, and operating intake services for adult:

1. Intake services should be administratively part of the judiciary.

2. Ideally, intake services should operate in conjunction with a community correctional facility.

3. Initiation of intake services should in no way imply that the client or recipient of its services is guilty. Protection of the rights of the accused must be maintained at every phase of the process.

4. Confidentiality should be maintained at all times.

5. Social inventory and offender classification should be a significant component of intake services.

6. Specialized services should be purchased in the community on a contractual basis.

7. The following persons should be available to intake service programs, either as staff members or by contract:
   a. Psychiatrists.
   b. Clinical psychologists.
   c. Social workers.
   d. Interviewers.
   e. Education specialists.

Commentary

Appropriately administered intake screening serves the following purposes:

1. Diverts noncriminal and sociomedical problem cases and other individuals who can be better served outside the criminal justice system.

2. Reduces detention population to that required for community safety and to guarantee appearance for trial.

Intake services should offer nonresidential services to community-based programs for improved decisionmaking and system performance. They emphasize early investigation and reports as the basis for pretrial decisions and posttrial dispositions. Mis­meanant presentence reports provide screening services necessary to reduce jail populations. Intake services should include mobile teams that provide regular diagnostic services to outlying districts. For example, Community Corrections Research Center, Inc., Baton Rouge, Louisiana, serves a five-parish region.

Recognizing that the bail system as presently con­stituted is inherently discriminatory and hence under­utilized, intake services provide the mechanisms for improving its use. Information obtained through the initial intake interview and evaluation by the staff provide a more rational basis than the present system for decision about an individual's eligibility for bail, release on recognizance, daytime release, release to a third party, or other alternatives and referrals. Based on more complete information, periodic judicial review of detainees' eligibility for bail would accelerate case processing. Operating intake services on a 24-hour basis would be accompanied by expanded use of night courts and "on call" arrangements with lower court judges and magistrates and, consequently, would further reduce jail population. Intake services offer the potential for implement­ing community-based programs responsive to both individual and societal needs within a service area. They make possible a major redirection of offender flow and resource allocation.

References


Related Standards

The following standards may be applicable in implementing Standard 9.4.

2.1-2.18 Rights of Offenders.

3.1 Use of Diversion.

6.3 Community Classification Teams.

9.1 Total System Planning.

9.5 Pretrial Detention Admission Process.
Standard 9.5

Pretrial Detention Admission Process

County, city, or regional jails or community correctional centers should immediately reorganize their admission processing for residential care as follows:

1. In addition to providing appropriate safeguards for the community, admission processing for pretrial detention should establish conditions and qualities conducive to overall correctional goals.

2. Detention center admission staffing should be sufficient to avoid use of holding rooms for periods longer than 2 hours. Emphasis should be given to prompt processing that allows the individual to be aware of his circumstances and avoid undue anxiety.

3. The admission process should be conducted within the security perimeter, with adequate physical separation from other portions of the facility and from the discharge process.

4. Intake processing should include a hot water shower with soap, the option of clothing issue, and proper checking and storage of personal effects.

5. All personal property and clothing taken from the individual upon admission should be recorded and stored, and a receipt issued to him. The detaining facility is responsible for the effects until they are returned to their owner.

6. Proper record keeping in the admission process is necessary in the interest of the individual as well as the criminal justice system. Such records should include: name and vital statistics; a brief personal, social, and occupational history; usual identity data; results of the initial medical examination; and results of the initial intake interview. Emphasis should be directed to individualizing the record-taking operation, since it is an imposition on the innocent and represents a component of the correctional process for the guilty.

7. Each person should be interviewed by a counselor, social worker, or other program staff member as soon as possible after reception. Interviews should be conducted in private, and the interviewing area furnished with reasonable comfort.

8. A thorough medical examination of each person should be made by a physician. It should be mandatory that the physician’s orders be followed.

Commentary

With few exceptions, prevalent practice in urban, high-volume detention centers is no better than that in rural areas with much smaller workloads. In the urban setting, handling is typically perfunctory and mechanical, overly oriented to process and movement, with little differentiation between individuals and their particular problems or needs. In the rural setting, processing typically involves primitive procedures and few resources with which to assess individual problems. In either situation, there are compelling arguments in favor of humane treatment and the protection of individuals from exposure to a variety of life common to such places.

Increasingly, the courts are finding violations of constitutional rights in connection with handling and housing of pretrial detainees. Segregation is required on several levels. The typical jail population, which constitutes poverty-stricken and socially deprived members of society, presents a host of considerations that must be met in the admission process.

Protection of the individual, of society, and of individuals from one another while detained calls for recognition of these needs and their incorporation into improved admission and detention practices. Prearrest intake processing should be a series of judgments, actions, and decisions, which begins with consideration of diversion at the street level and proceeds to consideration of diversion at initial intake. For persons subsequently processed, these steps should include humane approaches to prisoner handling, keeping necessary records, efficient and sanitary processing, medical examination, and individual interviewing designed to humanize the entire process.

References


Related Standards

The following standards may be applicable in implementing Standard 9.5.

2.1-2.18 Rights of Offenders.

6.3 Community Classification Teams.

9.1 Total System Planning.

9.4 Adult Intake Services.
Commentary

"Of all the essentials for the operation of a jail, notoriety is more important than personnel." The percep­tiveness of this observation by the National Sheriffs' Association Manual on Jail Administration, (p. 3) is magnified when the needs of a community correctional center are considered. Current patterns of jail staffing are sadly deficient. Amelioration of the basic ills requires immediate action to provide enough trained and qualified staff oriented to corrections rather than law enforcement. As this is accomplished, staff roles must be restructured. The State should provide preservice training and ongoing staff development and participatory management program.

7. In instances where correctional personnel engage in counseling and other forms of correctional programming, professionals should serve in a supervisory and advisory capacity. The same professionals should oversee the activities of volunteer workers within the institution. In addition, they themselves should engage in counseling and other activities as needs indicate.

8. Wherever feasible, professional services should be purchased on a contract basis from practitioners in the community or from other governmental agencies. Relevant State agencies should be provided space in the institution to offer services. Similarly, other criminal justice employees should be encouraged to utilize the facility, particularly parole and probation officers.

9. Correctional personnel should be involved in screening and classification of inmates.

10. Every correctional worker should be assigned to a specific aspect of the facility's programming, such as the educational program, recreation activities, or supervision of maintenance tasks.

11. At least one correctional worker should be in the staff for every six inmates in the average daily population, with the specific number on duty adjusted to fit the relative requirements for shifts.

In choosing staff members, the objectives of the community corrections center should be the chief criteria. All levels of staff positions should be filled with residents of the community. Administrators should be persons who are, or are willing to become, integrated into the community. Salaries should be competitive and attractive enough to draw highly qualified individuals. The professional services of psychologists, psychiatrists, and medical doctors should be obtained from community practitioners on a contract basis.

The presence in the facility of personnel from State agencies providing employment, vocational training, mental health, and public welfare services should be encouraged. Where appropriate, their services should be purchased from the other agencies by the State department of corrections. This effort will help the facility become more aimed at providing services to residents and nonresidents.

The State should establish employment qualifications and provide for preservice and in-service training programs.

References


Related Standards

The following standards may be applicable in implementing Standard 9.6.

6.3 Community Classification Teams.
13.1 Professional Correctional Management.
14.2 Recruitment from Minority Groups.
14.3 Employment of Women.
14.4 Employment of Ex-Offenders.
14.5 Employment of Volunteers.
14.7 Participatory Management.
14.11 Staff Development.
Standard 9.7

Internal Policies

Every jurisdiction operating locally based correctional institutions and programs for adults should immediately adopt these internal policies:

1. A system of classification should be used to provide the basis for residential assignment and programs for planning for individuals. Segregation of special categories of incarcerated persons, as well as identification of special supervision and treatment requirements, should be observed.
   a. The mentally ill should not be housed in a detention facility.
   b. Since local correctional facilities are not equipped to treat addicts, they should be diverted to narcotic treatment centers. When drug users are admitted to the facility because of criminal charges not related to their drug use, immediate medical attention and treatment should be administered by a physician.
   c. Since local correctional facilities are not proper locations for treatment of alcoholics, all such offenders should be diverted to detoxification centers and given a medical examination. Alcoholics with delirium tremens should be transferred immediately to a hospital for proper treatment.
   d. Prisoners who suffer from various disabilities should have separate housing and close supervision to prevent mistreatment by other inmates. Any potential suicide risk should be under careful supervision. Epileptics, diabetics, and persons with other special problems should be treated as recommended by the staff physician.
   e. Beyond segregating these groups, serious and multiple offenders should be kept separate from those whose charge or conviction is for a first or minor offense. In particular, persons charged with noncriminal offenses (for example, traffic cases) should not be detained before trial. The State government should insist on the separation of pretrial and posttrial inmates, except where it can be demonstrated conclusively that separation is not possible and any alternative is being used to reduce pretrial detention.
   f. Detention rules and regulations should be provided by each new admission and posted in each separate area of the facility. These regulations should cover items discussed in Chapter 2, Rights of Offenders.
   g. Every inmate has the right to visits from family and friends. Each facility should have at least 14 regular visiting hours weekly, with at least five between 7 and 10 p.m. Visiting hours should be expanded beyond this minimum to the extent possible. The environment in which visits take place should be designed and operated under conditions as normal as possible. Maximum security arrangements should be reserved for the few cases in which they are necessary.
   h. The institution's medical program should obtain assistance from external medical and health resources (State agencies, medical societies, professional groups, hospitals, and clinics). Specifically:
      a. Each inmate should be examined by a physician within 24 hours after admission to determine his physical and mental condition.
      b. If the physician is not immediately available, a preliminary medical inspection should be administered by the receiving officer to detect any injury or illness requiring immediate medical attention and possible segregation from other inmates until the physician can see him.
   i. Every facility should have a formal sick call procedure that gives inmates the opportunity to present their request directly to a member of the staff and obtain medical attention from the physician.
   j. Every facility should be able to provide the services of a qualified dentist. Eye-glass fitting and other special services such as provision of prosthetic devices should be made available.
   k. Personal medical records should be kept for each inmate, containing condition on admission, previous medical history, illness or injury during confinement, and treatment provided, and condition at time of release.
   l. All personnel should be trained to administer first aid.
   m. Three meals daily should be provided at regular and reasonable hours. Meals should be of sufficient quantity, well prepared, served in an attractive manner, and nutritionally balanced. Service should be prompt, so that hot food remains hot and cold food remains cold. Each facility should also have a commissary service.
   n. The inmates' lives and health are the responsibility of the facility. Hence the facility should implement sanitation and safety procedures that help protect the inmate from disease, injury, and personal danger.
   o. Each detention facility should have written provisions that deal with its management and administration. Proper legal authority, legal custody, and charge of the facility, commissary and aid, percent rules, transfer and transportation of inmates, and emergency procedures are among the topics that should be covered.
   p. The use of an inmate trusty system should be prohibited.

Commentary

The residents of community facilities and programs, even those whose guilt has not yet been established, already are being punished through their involvement in the system. This punishment should be minimized in the policies governing their rights and privileges, rules of conduct, communication with the outside, and levels of sanitation and safety.

References


Related Standards

The following standards may be applicable in implementing Standard 9.7:
2.1-2.18 Rights of Offenders
6.3 Community Classification Teams
9.3 State Inspection of Local Facilities
16.3 Code of Offenders' Rights
Local Correctional Facility Programming

Every jurisdiction operating locally based correctional facilities and programs for adults should immediately adopt the following programming practices:

1. A decisionmaking body should be established to follow and direct the inmate's progress through the local correctional system, either as a part of or in conjunction with the community classification team concept set forth in Standard 6.3. Members should include a parole and probation supervisor, the administrator of the correctional facility or his immediate subordinates, professionals whose services are purchased by the institution, representatives of community organizations running programs in the area, such as mental health, vocational rehabilitation, alcohol rehabilitation, and employment security.

2. Educational programming which relates to the needs of the client and contributes to his ability to cope with community living is needed in local correctional facilities. Self-paced learning programs, packaged instructional materials, utilization of volunteers and paraprofessionals, are particularly desirable elements of such programming. Educational programming should be geared to the variety of educational attainment levels, more advanced age levels, and diversity of individual problems. The facility's population should be incorporated in the program jurisdiction of the local school district. Under this arrangement, maximum coordination of administrative and instructional effort and investment is more likely to be attained.

3. Vocational programs should be provided by the appropriate State agency. It is desirable that overall direction be provided on the State level to allow variety and to permit inmates to transfer among institutions in order to take advantage of training opportunities.

4. A job placement program should be operated at all community correctional centers as part of the vocational training program. Such programs should be operated by State employment agencies and local groups representing employers and local unions.

5. Each local institution should provide counseling services. Individuals showing acute problem will require professional services. Other individuals may require, on a day-to-day basis, situational counseling that can be provided by correctional workers supervised by professionals.

6. Volunteers should be recruited and trained to serve as counselors, instructors, teachers, and recreational therapists.

7. A range of activities to provide physical exercise should be available both in the facility and through the use of local recreational resources. Other recreation activities should be supported by access to library materials, television, writing materials, playing cards, and games.

8. In general, internal programs should be aimed only at that part of the institutional population able to take advantage of ongoing programs in the community.

9. Meetings with the administrator or appropriate staff of the institution should be available to all individuals and groups.

Commentary

Local correctional facility programs link the sentenced and pretrial offender to activities oriented to his individual needs—personal problem-solving, socialization, and skills development. To match individuals with the most appropriate programming and to monitor progress, a central decision-making group is required. Such a group is in operation in the State of Vermont's community correctional centers, and has been described in this way.

A classification team at each center develops an individual plan for every sentenced person. This team is made up of the center superintendent, a parole supervisor, and representatives of other public or private agencies in the area, such as mental health, vocational rehabilitation, alcohol rehabilitation, and employment security.

In coordination with the classification team and officers at the center, the probation-parole officer who later will be responsible for street supervision if the inmate is released as parole, implements the plan outlined by the classification team. He reports any difficulties or special problems and suggests necessary changes in the treatment plan to the classification team.

Educational programming which relates to the needs of the client and contributes to his ability to cope with community living is needed in local correctional facilities. Self-paced learning programs, packaged instructional materials, utilization of volunteers and paraprofessionals, are particularly desirable elements of such programming. Educational programming should be geared to the variety of educational attainment levels, more advanced age levels, and diversity of individual problems. The facility's population should be incorporated in the program jurisdiction of the local school district. Under this arrangement, maximum coordination of administrative and instructional effort and investment is more likely to be attained.

The building or rebuilding of solid ties between the offender and his community is served by vocational rehabilitation. Vocational deficiencies and training needs should be determined on the basis of thorough aptitude and skill testing. Individual strengths and weaknesses should be explored fully. Vocational counseling will be necessary to relate offenders' aspirations to aptitudes and abilities. The correctional administrator should provide training opportunities relating to real job potentials rather than requirements of institutional production or maintenance.

Well-planned recreational activities aid in the general adjustment process and are acknowledged essentials to mental and physical health. Recreational activities ranging from table games to athletics should form a program component of every local facility. Such activities assist in normalizing the physical and social correctional milieu. Maximum use of both staff and equipment of community resources should be sought.

References


Related Standards

The following standards may be applicable in implementing Standard 9.8:

4.8 Rights of Pretrial Detainees.
4.9 Programs for Pretrial Detainees.
6.3 Community Classification Teams.
7.4 Inmate Involvement in Community Programs.
9.3 State Inspection of Local Facilities.
9.7 Internal Policies.
Standard 9.9

Jail Release Programs

Every jurisdiction operating locally based correctional facilities and programs for convicted adults immediately should develop release programs drawing community leadership, social agencies, and business interest into action with the criminal justice system.

1. Since release programs rely heavily on the participant's self-discipline and personal responsibility, the offender should be involved as a member of the program planning team.

2. Release programs have special potential for utilizing specialized community services to meet offenders' special needs. This capability avoids the necessity of service duplication within corrections.

3. Weekend visits and home furloughs should be planned regularly, so that eligible individuals can maintain ties with family and friends.

4. Work release should be made available to persons in all offense categories who do not present a serious threat to others.

5. The offender in a work-release program should be paid at prevailing wages. The individual and the work-release agency may agree to allocation of earnings to cover subsistence, transportation costs, compensation to victims, family support payments, and spending money. The work-release agency should maintain strict accounting procedures open to inspection by the client and others.

6. Program location should give high priority to the proximity of job opportunities. Various modes of transportation may need to be utilized.

7. Work release may be operated initially from an existing jail facility, but this is not a long-term solution. Rented and converted buildings (such as YMCA's, YWCA's, motels, hotels) should be considered to separate the transitional program from the image of incarceration that accompanies traditional jail.

8. When the release program is combined with a local correctional facility, there should be separate access to the work-release residence and activity areas.

9. Educational or study release should be available to all inmates (pretrial and convicted) who do not present a serious threat to others. Arrangements with the local school district and nearby colleges should allow participation at any level required (literacy training, adult basic education, high school or general educational development equivalency, and college level).

10. Arrangements should be made to encourage offender participation in local civic and social groups. Particular emphasis should be given to involving the offender in public education and the community in corrections efforts.

Commentary

Work release, educational release, and other forms of program release are based on recognition that institutions can not replicate community living. The institutional setting offers only an overstructured environment for the custodial control of those representing a threat to others. Full adjustment to community living is served best by transitional programs that gradually decrease the level of supervision. Such programs are variously referred to as work release, day parole, work furlough, daylight parole, prerelease work, and day work.

Experience with these programs has revealed the importance of community acceptance. Accordingly, a significant portion of the planning should convey to the community the program's purpose and the need for active support. Successful work-release programs often have used citizen advisory boards or committees in selecting a work-release location, obtaining financial support, locating jobs, and linking the programs to the rest of the community.

References


Related Standards

The following standards may be applicable in implementing Standard 9.9.

6.3 Community Classification Teams
7.2 Marshaling and Coordinating Community Resources
7.3 Corrections' Responsibility for Citizen Involvement
7.4 Inmate Involvement in Community Programs
9.1 Total System Planning
15.5 Evaluating the Performance of the Correctional System
16.14 Community-Based Treatment Programs

References

Standard 9.10

Local Facility Evaluation and Planning

Jurisdictions evaluating the physical plants of existing local facilities for adults or planning new facilities should be guided by the following considerations:

1. A comprehensive survey and analysis should be made of criminal justice needs and projections in a particular service area.

a. Evaluation of population levels and projections should assume maximum use of pretrial release programs and postjudication alternatives to incarceration.

b. Diversion of sociomedical problem cases (alcoholics, narcotic addicts, mentally ill, and vagrants) should be provided for.

2. Facility planning, location, and construction should:

a. Develop, maintain, and strengthen offenders' ties with the community. Therefore, convenient access to work, school, family, recreation, professional services, and community activities should be maximized.

b. Increase the likelihood of community acceptance, the availability of contracted programs and purchased professional services, and attractiveness to volunteers, paraprofessionals, and professional staff.

c. Afford easy access to the courts and legal services to facilitate intake screening, pre-sentence investigations, post-sentence programming, and pretrial detention.

3. A spatial "activity design" should be developed.

a. Planning of sleeping, dining, counseling, visiting, movement, programs, and other functions should be directed at optimizing the conditions of each.

b. Unnecessary distance between staff and resident territories should be eliminated.

c. Transitional spaces should be provided that can be used by "outside" and inmate participants and give a feeling of openness.

4. Security elements and detention provision should not dominate facility design.

a. Appropriate levels of security should be achieved through a range of noninvasive measures that avoid the ubiquitous "cage" and "closed" environment.

b. Environmental conditions comparable to normal living should be provided to support development of normal behavior patterns.

5. Applicable health, sanitation, space, safety, construction, environmental, and custody codes and regulations must be taken into account.

6. Consideration must be given to resources available and the most efficient use of funds.

a. Expenditures on security hardware should be minimized.

b. Existing community resources should be used for provision of correctional services to the maximum feasible extent.

c. Shared use of facilities with other social agencies and nonconventionally associated with corrections should be investigated.

7. Facility design should emphasize flexibility and amenability to change in anticipation of fluctuating conditions and needs and to achieve highest return on capital investment.

8. Prisoners should be handled in a manner consistent with humane standards.

a. Use of closed-circuit television and other electronic surveillance is detrimental to program objectives, particularly when used as a substitute for direct staff-resident interaction.

b. Experience in the use of such equipment also has proved unsatisfactory for any purposes other than traffic control or surveillance of institutional areas where inmates' presence is not authorized.

c. Individual residence space should provide sensory stimulation and opportunity for self-expression and personalizing the environment.

9. Existing community facilities should be explored as potential replacement for, or additions to, a proposed facility.

10. Planning for network facilities should include as single component, or institution, housing more than 300 persons.

Commentary

The attitudes of this Nation toward the alleged or convicted criminal traditionally have been reflected in the facilities developed to hold him. As an expression of societal values, architecture has recorded this attitude throughout the country. Outmoded and archaic, lacking the most basic comforts, totally inadequate for any program encouraging socialization, these perpetuate a destructive rather than reintegrative process. Significantly it is in such facilities that the greatest number of persons have contact with the criminal justice system.

The poor quality of the jail environment is related only in small part to its age. Recent construction often has been based on outmoded concepts. Concern for complete control and surveillance and the withdrawal of decisionmaking from the residents are antithetical to the development of responsible law-abiding citizens. Excessive concern for costs and custodial convenience results in an emphasis on routines that thwarts any individualized approach to behavior change. Virtually no correctional programming or voluntary programs or services have been offered to pretrial detainees. The result has been an inefficient system, economical in its daily operation but tragically expensive in its ultimate effects. Not only has it failed to correct, but it actually has furthered criminal careers.

Goals of the criminal justice system will be served better by reserving incarceration for dangerous and persistent offenders who present a serious threat to others. Facility planning, therefore, will be most effective when based on maximum utilization of alternatives to incarceration for diverting the many minor offenders to more appropriate programs. Such planning is required particularly at the pretrial level, where innocence is presumed under the law. At the postjudication level, a broad range of alternative programs offers the potential for expanded nontreatment of most offenders.

Contemporary facility planning must recognize the requirement of security for the community as well as the need for the most efficient expenditure of limited public funds. At the same time, it must recognize that community safety is jeopardized whenever first offenders, misdemeanants, perpetrators of victimless crimes, and the accused are treated uniformly as dangerous individuals.

The processes of analyzing the need for and the program and architectural planning of new local facilities are discussed in greater detail in Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults.

References


Chapter 10

Probation

Extensive use of institutions has been giving way to expanded use of community-based programs during the past decade. This is true not only in corrections, but also in services for the mentally ill, the aging, and dependent and neglected children.

The movement away from institutionalization has occurred not only because institutions are very costly, but also because they have debilitating effects on inmates, who have great difficulty in reintegrating themselves into the community. Therefore, it is essential that alternatives to institutionalization be expanded in use and enhanced in resources. The most promising process by which this can be accomplished in corrections—probation—is now being used more as a disposition. Even greater use can be projected for the future.

Broad use of probation does not increase risk to the community. Any risk increased by allowing offenders to remain in the community will be more than offset by increased safety due to offenders’ increased respect for society and their maintenance of favorable community ties. Results of probation are good, if not better, than those of incarceration. With increased concern about crime, reduction of recidivism, and allocation of limited tax dollars, more attention should be given to probation, as a system and as a sentencing disposition.

Although probation is viewed as the brightest hope for corrections, its full potential cannot be reached unless consideration is given to two major factors. The first is the development of a system for determining which offenders should receive a sentence of probation. The second is the development of a system that enables offenders to receive the support and services they need so that ultimately they can live independently in a socially acceptable way.

Currently, probation has failed to realize either of these. Probation is not adequately structured, financed, staffed, or equipped with necessary resources. A major shift of money and manpower to community-based corrections is necessary if probation is to be adopted nationally as the preferred disposition, as this Commission recommends. The shift will require strengthening the position of probation in the framework of government, defining goals and objectives for the probation system, and developing an organization that can meet the goals and objectives. In this chapter, consideration will be given to what must be done if probation is to fulfill its potential as a system and as a disposition.

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Related Standards
The following standards may be applicable in implementing Standard 9.10.
6.2 Classification for Inmate Management.
6.3 Community Classification Teams.
7.1 Development Plan for Community-Based Alternatives to Confinement.
9.1 Total System Planning.
9.8 Local Correctional Facility Programming.
11.1 Planning New Correctional Institutions.
11.2 Modification of Existing Institutions.
15.5, Evaluating the Performance of the Correctional System.
EVALUATION OF PROBATION

Probation's origins go back to English common law and its functions include supervision, reporting, and the granting of status of either free citizen or confined offender. A sentence to probation should be treated as a final sentence in itself. Probation is a subsystem of corrections, itself a subsystem of the criminal and juvenile justice system. When used in this way, probation is found in the executive branch in some States and in the judiciary in others. As probation use increased, growing interest was shown in its effectiveness—especially after a Saginaw Project conducted in 1937 identified 795 probation cases as the father of probation in this country. As a voluntary concept it existed in the Middle Ages, was the precedent for the practice in the United States, and was in use by the 18th century in England. Recidivists, it was anticipated, would return to the correctional system only to find that failure rates of persons on probation were relatively low. Although many of these studies were conducted under controlled conditions, with desirable information about variables such as service rendered and matched groups of offenders, the gross results cannot be discounted.

GOVERNMENTAL FRAMEWORK OF PROBATION

The position of probation in the government framework varies among the States. The continuing controversy over the most appropriate placement of probation centers on two main issues: whether it should be a part of the judicial or executive branch of government; and whether it should be administered by State or local government. In all States, corrections components and subsystems, except probation and some juvenile detention facilities, operate within the executive branch. Probation is found in the executive branch in some States, in the judicial in others, and under mixed arrangements elsewhere.

State governments operate most subsystems of corrections. The exceptions are probation, jails, and some juvenile detention facilities. Juvenile probation usually developed in juvenile courts and thus became a local function. As adult probation services developed, they generally were combined with existing statewide parole services or into a unified corrections department that also included parole and institutions. The exceptions were in major cities that had already created probation organizations for the adult courts and States in which probation responsibilities were divided.

In the way probation has been organized and placed within the governmental framework have created differences between States as well as between juvenile and adult supervision.

1. Courts have a greater awareness of needed resources and may become advocates for their staffs in obtaining better branches.

2. Increased use of pretrial diversion may be furthered by placing probation in the judicial branch.

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4. Increased use of pretrial diversion may be furthered by placing probation in the judicial branch.

5. Courts have a greater awareness of needed resources and may become advocates for their staffs in obtaining better branches.

6. Increased use of pretrial diversion may be furthered by placing probation in the judicial branch.

The argument for keeping probation in the judicial branch, which center around the direct relationship between the courts and probation, are not pertinent. Subsystems of the criminal justice system in the executive branch are able to work effectively with the courts.

Those who oppose placement of probation within the judicial argue that...
1. Under this arrangement judges frequently become the administrators of probation in their jurisdictions—a role for which they usually are ill-equipped. The current trend toward use of court administration personnel reflects the belief that judges cannot be expected to have the time, orientation, or training to perform two such distinct roles.

2. When probation is within the judicial system, the staff is likely to give priority to services for the courts rather than to services for probationers. 

3. Probation staff may be assigned functions that should be performed by the court and are unrelated to probation, such as issuing summonses, serving subpoenas, and running errands for judges.

4. Courts, particularly the criminal courts, are adjudicatory and regulatory rather than service-oriented bodies. Therefore, as long as probation remains part of the court setting, it will be subservient to the court and will not develop an identity of its own.

Another class of arguments supports placement of probation in the executive branch of government, rather than merely opposing placement in the judicial branch.

1. All other subsystems for carrying out court dispositions of offenders exist in the executive branch. Close coordination and functional integration with other corrections personnel could be achieved by a central legal processing of the court and are unrelated to probation, such as issuing summonses, serving subpoenas, and running errands for judges.

2. Courts, particularly the criminal courts, are adjudicatory and regulatory rather than service-oriented bodies. Therefore, as long as probation remains part of the court setting, it will be subservient to the court and will not develop an identity of its own.

Furthermore, increased coordination and functional integration with correctional staff takes direction from the court and the establishment of policies, community-based supervision, and increased interaction and administrative coordination with corrections and allied human service agencies could be achieved by a court administration in establishment of policies, community-based supervision, and increased interaction and administrative coordination with corrections and allied human service agencies.

3. The ability to which local probation systems comply with State standards is dependent upon the rewards and sanctions used. As a reward for meeting specific standards, the State may provide either revenue sharing or manpower. Michigan assigns State-paid probation officers to work alongside local probation officers. The more common practice, however, is direct payment by State to local government for part of the costs of probation services. New York State reimburses local governments up to 50 percent of the operating costs for probation programs, provided that local governments meet State staffing standards. This subsidy has nearly doubled in the last 5 years and has resulted in an increase of probation staff in the State from 1,527 in 1965 to 1,956 in 1972.

4. The States of California and Washington use a different approach in providing revenue to local jurisdictions. These States attempt to resolve a problem that is inherent when probation is a local function: namely, that financing probation is a local responsibility. However, when juveniles or adults are committed to correctional institutions, these are usually administered and financed by the State. A consequence often is an increase in the separation of the operating costs for probation programs, and a decrease in the separation of the operating costs for correctional institutions.

5. This interaction and the administrative coordination that is inherent when probation is a local function; namely, that operating costs for probation programs, and a decrease in the separation of the operating costs for correctional institutions. This is, in the Commission's view, the administrative control of the courts. When probation is within the judicial system, priorities for allocating limited tax dollars, and the more common practice, however, is direct payment by State to local government for part of the costs of probation services. New York State reimburses local communities up to 50 percent of the operating costs for probation programs, provided that local communities meet State staffing standards. This subsidy has nearly doubled in the last 5 years and has resulted in an increase of probation staff in the State from 1,527 in 1965 to 1,956 in 1972.

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7. State administration of probation has had a similar experience with the probation subsidy program begun in January, 1970. Its purpose was to reduce the number of commitments to institutions from county juvenile courts. In the 2 years that the program has been in operation, there has been a marked reduction in the number of children and youth sent to State institutions. To illustrate, in 1971, the State received 55 percent fewer commitments than expected.

Advantages of State Administration

Even in those instances where the State provides financial incentives to local jurisdictions, as in California, participation of counties is discretionary. Uniformity in probation can be achieved only when there is a State-administered probation system, which also has a number of other distinct advantages. A State-administered system can more easily organize around the needs of a particular locality or region without having to consider local political impediments. It also can recommend new programs and implement them without requiring additional approval by local political bodies.

A State-administered system provides greater assurance that goals and objectives can be met and that uniform policies and procedures can be developed. Also, more efficiency in the disposition of resources is assured because all staff members are

*Smith, A Quiet Revolution, gives the background and experience under California's probation subsidy plan. Information supplied by Washington State Department of Social and Health Services.
Unfortunately, clearly defined objectives for probation systems are often lacking. The probation administrator has contributed to variations in philosophy, policy, and practice. Often staff members of the same agency have different perceptions, with top management having one view, middle management another, and line personnel reflecting some of each. Probation staff members bring to the organization their own ideas, values, and beliefs that they acquired before becoming employees. These in turn are modified by other staff members, judges, law enforcement officials, personnel of other parts of the correctional system, probationers, complainants and witnesses, lawyers, and the news media.

If an administrator has failed to define goals and policies for his organization, dysfunction within the organization must follow. Some dysfunction is rooted both in tradition and rapid growth.

Training for Probation Work

Since the 1920's there has been an emphasis on social work education as a prerequisite for entering probation. The preferred educational standard was a master's degree in social work. This emphasis was paralleled by the concept of professionalism. To achieve professionalism, staff members had to be provided opportunities to increase their knowledge and skills. A career path needed to be provided that they would have opportunity to use the increased knowledge and skills. However, as probation systems have grown, there has been a tendency to extend the characteristics of a bureaucracy that increase constraints on staff behavior which result in frustration. New graduates of schools of social work have been reluctant to enter probation. Newer staff members sent by probation agencies to graduate schools of social work often leave the agency as soon as they fulfilled any contracts to secure the educational training. Such workers are likely to express their reason for leaving as a frustration over the lack of opportunity for using their knowledge and skills.

Dysfunctions in Probation Operation

Training emphasis has been at a staff level, and this too can contribute to dysfunction. More emphasis has been placed on training probation officers than on equipping executives and middle-level managers with the skills to administer effectively. Organizational change must begin with the executives and middle management if probation officers are to have an opportunity to use increased knowledge and skills acquired through training. Another dysfunction may result from the change from one-to-one casework emphasis of the probation officer to the group emphasis needed for an administrative team. Many staff members are trained from the ranks of probation officer to supervisor and administrator. If effective organizations are to be developed, supervisors and administrators should meet and work with staff on a group basis. If the supervisors and administrators do not have the skills to do this effectively, they will revert to the pattern of one-to-one relationship.

Another form of dysfunction may stem from the operation of a probation officer to a supervisory or administrative position. Ideally a supervisor should receive training that enables him to create a supportive atmosphere for the probation officer, both inside and outside the agency. The probation officer who has been promoted but given no training for his new role has a natural tendency to see himself as doing his job well, which creates friction with his line superior. The supervising officer who has not been trained may create a situation where administrators believe they have to police the probation officer, both inside and outside the agency. The probation officer, who has been promised but given no training for his new role, will create a supportive atmosphere for the probation officer, both inside and outside the agency. The probation officer who has been promoted but given no training for his new role has a natural tendency to see himself as doing his job well, which creates friction with his line superior. The supervising officer who has not been trained may create a situation where administrators believe they have to police the probation officer, both inside and outside the agency.

SERVICES TO PROBATIONERS

The Current Service System

Many problems have prevented development of a mechanism for providing probationers with needed resources. For one thing, the goal of service delivery to probationers has not been delineated clearly and given the priority required. Services to probationers have not been separated from services to the courts. Generally, both services are provided by the same staff members, who place more emphasis on services to the courts than to probationers. Because the goal for service delivery to probationers has not been defined clearly, service needs have not been identified on a systematic and sustained basis. Priorities based on need, resources, and constraints have not been set. Measurable objectives for various target groups have not been specified. Moreover, monitoring and evaluation of services have been virtually nonexistent. One of the primary problems is the lack of differentiation between services to be provided by probation and those that should be delivered by such agencies as mental health, employment, housing, education, and private welfare agencies. Because of community attitudes toward offenders, social agencies other than probation are likely to be unequipped or uncomfortable about providing services to the legally identified offender. Probation offices usually lack sufficient influence and funds to procure services from other resources and therefore try to expand their own role. This leads to two results, both undesirable: identical services are procured by probation and one or more other public service agencies, and the effort to expand probation suffers from stretching already tight resources.

Some probation systems have assumed responsibility for handling matters unrelated to probation such as placement of neglected children in foster homes and operation of shelter facilities, both of which are the responsibilities of other public agencies. Probation also has attempted to deal directly with such problems as alcoholism, drug addiction, and mental illness, which must be handled through community mental health and other specialized programs.

These efforts to expand probation's role have not been successful because there is not enough money to provide even the traditional basic probation services.

Overemphasis on Casework

One result of the influence of social work on probation has been an overemphasis on casework. Development of child welfare clinics in the 1920's and 1930's influenced particularly the juvenile courts and their probation staff.

The terms "diagnosing" and "treatment" began to appear in social work literature and not long after in corrections literature. Those terms came from the medical field and imply illness. A further implication is that a good probation practitioner will understand the cause and be able to remedy it, just as the medical practitioner does. Essentially, the medical approach emphasizes the connection between crime and such factors as poverty, unemployment, poor housing, poor health, and lack of education. A review of the court system in the 1940's, 1950's indicates that the casework method became equated with social work, and in turn, casework for probation came increasingly to be associated with a therapeutic relationship with a probationer. As a study manual published by the National Probation and Parole Association in 1942 reflects this equation in the table of contents. The titles in the three sections of the chapter are: "Casework," "Case Study and Diagnosis," and "Casework as a Means of Treatment."

The literature is replete with the recommend that social work skills be interwoven, creating therapeutic relationships with clients, counseling, providing insight, and modifying behavior. When practitioners began to view themselves as therapists, one consequence was the practice of having offenders come to the office...
rather than workers going into the homes and the communities.

Similarly, the literature refers to probation officers working with employers, schools, families, and others in the probationer's life, the chief concern is the relationship between the probation officer and the probationer. Indeed, if probation staff members see case work as their model, it may well be asked how much contact the probationer has that kind of contact; they should have with persons other than probationers.

Recently a much broader view of social work practice has been developed, a view that social workers in corrections have taken an active role in developing. After a 3-year study of social work curriculums sponsored by the Council on Social Work Education in the 1950's, the report of the project on "Education for Social Workers in the Correctional Field" said:

"Social work in corrections seems to call for social workers rather than for caseworkers or group workers. All social workers in corrections work with individuals, groups and communities, with less emphasis on the use of one method than characteristic of many social work jobs."

A task force organized in 1963 by the National Association of Social Workers to study the field of social work practice in corrections suggested that the offender's needs and the service system's social goals should determine the methodology. The task force stated that social workers should have an array of professional skills—based on knowledge, understanding, attitudes, and values required for professional use of the skills—to draw on according to the private occasions to meet the offender's needs and the goals of the probation system.

When case work was applied to probation, a blurring of roles occurred between the probation officer and the probation agency. When such probation officers were solicited as a result of a number of cases, it implied that he has full responsibility for all individuals concerned. He is expected to handle all the problems that the offenders in his caseload present, and has all the counseling skills. The role of the agency in this arrangement is unclear.

No one person can possess all the skills needed to deal effectively with the multiplicity of human problems presented by probationers. This situation is complicated by the diversity of qualifications required by jurisdictions throughout the country for appointment to the position of probation officer. The requirements range from high school or less to graduate degree.

requirements for prior experience may be nonexistent or extensive.

The decision to promulgate standards pattern vary not only for staff but for the offender placed on probation. If the system views its task as surveillance of the probationer, he has low status in any decisionmaking. The decisions are made for and about him, but not with him. If the system is oriented toward service, using the social work model, his role in decisions still must remain to be seen.

The social work concept that the client has the right to be involved in what is happening to him, that is, self-determination.

This paradox exists because the probationer has an assigned status restricting his behavior. Probation conditions, essentially negative in nature although often expressed in a positive fashion, are imposed on him. The probationer may have to obtain permission to purchase a car, to move, to change a job, and this and other chores cannot be done without the cooperation of the probation officer, therefore, has the task of adapting to an assigned status while seeking to perform the normal roles of a self-sufficient individual. "Normal" participation in working, being a parent or a family member, paying taxes, obeying the law, meeting financial obligations, etc. Technical violations of probation conditions can result in revocation and commitment to a correctional institution.

If the client construes a noncorrectional social agency, he has the right to explain his problems and to terminate the relationship with that agency if he chooses. A probation client legally is required to appear but not legally required to ask for help. He may or may not be ready to receive help. He may be encouraged by staff to use resources of other community agencies, but the decision rests with the client.

He may, however, be required to utilize some services offered by probation, such as psychiatric examination or testing. He may have some goals, but they are accepted by the staff if they attempt to incorporate a consistent with the conditions of probation or with the philosophy of the probation agency, which usually tries to do what is best for the client, while the probation staff may not be.

Conversely, few professional personnel may be available to who can make what decisions and when certain criteria exist, that they are answerable for their decisions. Supervisors must develop a view that social work and related roles of a self-sufficient individual. The probation staff members see case load, not a formula for a caseload. The expectation that probation officers must know a probation officer quickly learns that he must possess more technical skills and knowledge, a view that social work is traditionally. If a probation officer is unfamiliar with his case load, the first question likely to be asked is when the probation officer last saw his client. The probationer is expected to account for what is known, or more specifically, for what is not known, about the probationer's activities. On the other hand, a probation officer quickly learns that he must possess more technical skills and knowledge, making it difficult to assess the degree to which any probation officer has been successful in positively influencing a probationer.

The expectation that probation officers must know what their probationers are doing is traditional. If a probationer is arrested, the first question likely to be asked is when the probation officer last saw his client. The probationer is expected to account for what is known, or more specifically, for what is not known, about the probationer's activities. The consequence is that a probation officer quickly learns that he must possess more technical skills and knowledge, making it difficult to assess the degree to which any probation officer has been successful in positively influencing a probationer.

To determine if the probationer is arrested, the first question likely to be asked is when the probation officer last saw his client. The probationer is expected to account for what is known, or more specifically, for what is not known, about the probationer's activities. The probation staff members recognize that a high level of visibility exists, that they are accountable for their actions, and that, if the matter comes to the attention of the court, the decisions will have to be justified.

The Caseload Standard

One impact of the casework model has been a standard ratio of probationers to staff. The figure of 50 cases per probation officer first appeared in the literature in 1917. It was the consensus of a group of educators and professional social workers. The recommendation later was modified to include investigations.

The caseload standard provides an excuse for officers with large caseloads to explain why they cannot supervise probationers effectively. It also is a valuable reference point at budget time. Probation administrators, who are more interested in how much money they spend than what they do, always make sure that their staff and reduce the size of the caseload without making any effort to define what needs to be done and by using any of the available tools. Caseload reduction has become an end unto itself.

When caseloads alone have been reduced, results may be hurt rather than helped by the personnel. In some cases, increases in violation probation results, undoubtedly due to increased surveillance or overreaction of well-meaning probation officers. Some gains were made if staff members were given special training in casework management, but this appears to be the exception. The comment has been made that with caseload reduction probation agencies have been unable to teach staff what to do with the additional time available.

The San Francisco Project described in a sub-

James Robison et al., The San Francisco Project, Research Report No. 14 (Berkeley: University of California School of Criminology, 1969).

Direct probation services should be defined clearly and differentiated from services that should be met by other social institutions. Generally the kinds of needs met by various agencies are not comparable. For older probationers who are unemployed or underemployed, probation staff may interest a university or college in developing special programs. These might include courses to provide remedial...
The offense has been the determining factor rather than the offender. While some probation officers still will have increased number of service days and evenings hours and on weekends without the usual office hours. The probation process is not only a determinant of the probation officer submitted orally to the judge for consideration. As a result, the probation system has undergone significant changes. The probation system, once described as the "farm to jail" system, is being reformed to meet the needs of today's criminals. The new system emphasizes rehabilitation and community service. The probation officer is no longer viewed as a judge's secretary, but as a key figure in the criminal justice system. The probation officer is responsible for assessing an individual's needs, developing a rehabilitation plan, and monitoring the progress of the probationer. The probation officer must also work closely with other agencies, such as the parole board, the department of corrections, and community service organizations, to ensure the success of the probationer. The probation officer is a key figure in the criminal justice system, and their role is critical in the rehabilitation of criminals. The probation system is an integral part of the criminal justice system, and it is essential that it continues to evolve and adapt to the changing needs of society.
Publications recommending what the contents of reports should be sometimes called for information not needed by the judge. The U.S. Courts Probation Division lists two categories of data—essential and optional. According to this publication essential data should appear in all reports while optional data would depend on the requirements of a specific case. Under "health" the following is listed as an example.

Identifying information (height, weight, complexion, eyes, hair, scars, tattoos, posture, physical proportions, tone of voice, etc.)

Defendant’s general physical condition and health problems based on defendant’s estimate of his health, current medical reports, probation officer’s observations.

Use of alcohol, narcotics, barbiturates, marijuana.

Some implications of defendant’s physical health (home, community, employment, association).

This distinction is made because some items are of value to the judge, but it is doubtful that the court requires the identifying information of the first item.

Essential and Nonessential Information

If the decisions to be made can be specified, the information required can be determined. The information actually required is what a person needs to know. Nonetheless other information invariably is obtained that is nice to know. This distinction was raised in a study which was made in the course of the San Francisco Project carried out by the United States Probation Office, Northern District of California and the School of Criminology, University of California at Berkeley.

The project staff selected cases previously referred for presentence reports. The contents of the reports were examined and items listed under 24 subheadings commonly used by the probation staff. The information for each heading was reproduced on a file card. Only those items were then selected which were visible so that all 24 titles could be shown at the same time to the probation staff. By selecting a card and turning the card, the probation staff could read the information on that particular subject. They were allowed to select any cards they wished for making disposition recommendation on that particular case and in due course.

The results upset some of the assumptions. Some probation officers used only one card in making recommendations. Cards used by any probation officer was 14. The average number of cards used to make a recommendation for disposition was

4.7. Significantly, only one card—the offense—was used in every case.

The study indicated that probation officers are using fewer pieces of information in recommending disposition than was previously assumed. The offense data, such as age, sex, religion, race, the delinquency act, family composition, school and church attendance, employment, marital status, and economic situation, were factors of moderate importance. It would appear that most data—traditional items, such as employment history, and marital history are factors of little or no value for presentence reports. The items most often referred to were, such as age, religion, race, the delinquency act, family composition, school and church attendance, and economic situation. Missing were such subjective items as personalities of child and parents as well as personal relationships within the family. Yet, according to the literature, that subjective material supposedly is the most important in understanding a child and his psychology and in developing a treatment plan.

The evidence suggests that written reports should contain only that information relative and pertinent to the decision to be made. Thus, probation agencies should first ask the judge to identify that information needed by the court. The evidence indicates judges do not need "old and now" or that of the offender, a detailed life history.

The American Bar Association project calls for two categories of written report. The first is a short-term report used for disposition or for screening to identify those cases requiring additional information. The second category is a more complete investigation, the latter report would be prepared in only a limited number of cases. The recommendation should be adopted. The use of the two reports has been discussed in Chapter 5, Sentencing.

Although correctional institutions and pardoning authorities may challenge the brevity of reports, those agencies have the responsibility to identify their actual informational needs. When that is done, the information gathered should be used to develop written reports which are adequate. In other words, probation officers are sometimes asked to do things for probation to have the report available readily after the plea is entered. The evidence suggests that written reports should contain only that information relative and pertinent to the decision to be made. Thus, probation agencies should first ask the judge to identify that information needed by the court. The evidence indicates judges do not need "old and now" or that of the offender, a detailed life history.

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The report in the actual courts has developed through the requirement that a defendant plead guilty or be in doubt about the desirability of making an investigation that includes questioning the defendant about the offense for which he has not yet been found guilty. The argument is that this practice enables the court to have the report available more readily after the plea is entered. While there may be strong reasons for conducting presentence investigations, especially when it increases the possibilities for diversion, the practice should be governed by the safeguards presented in Chapter 5, Sentencing.

Responsibility for Written Reports

At present probation officers do the investigation and prepare the written report. The judges may hold the probation officer accountable for the report’s accuracy and administrative practice dictates that both staff and judges understand that the agency, and not

the individual officer, is accountable for the written report.

Good administration would use other staff to collect basically factual information and thus free probation officers to deal with more complex and difficult material. For example, other employees could prepare the final report, police and court records, employment records, and school records. The probation officer’s time could thus be used for interviewing the defendant, the probation officer, complaining witness, and those persons significant in the defendant’s current situation.

Prepleading Investigations

In some criminal justice systems the investigation and written report are completed before an adult defendant pleads or is found guilty or before a juvenile has the first hearing. The practice for juveniles undoubtedly developed from the concept of a "preliminary investigation before the filing of a petition," the language contained in some statutes. This practice raises legal questions: a child is questioned about his acts, supposedly legitimate, before the court even has determined the allegations to be proved. The problem becomes complicated when the child or his family are questioned by intake staff, even though the allegations have been denied.

The practice in the adult courts has developed through the requirement that a defendant plead guilty or be in doubt about the desirability of making an investigation that includes questioning the defendant about the offense for which he has not yet been found guilty. The argument is that this practice enables the court to have the report available more readily after the plea is entered. While there may be strong reasons for conducting presentence investigations, especially when it increases the possibilities for diversion, the practice should be governed by the safeguards presented in Chapter 5, Sentencing.

Confidentiality

Influenced by the practice followed by doctors and lawyers, probation officers and staffs began operating on a principle of confidentiality. The purpose was to assure offenders and others that information given to probation staff would not be released indiscriminately and, accordingly, that the defendant might not be suspected of being guilty of an offense. However, the relationship in probation is different from that between a doctor or lawyer and his client, where the confidentiality is privileged. A probation officer receives information only because he is an employee of an organization. Thus the informa-

- Data from unpublished report on the study results.
tion belongs properly to the agency itself, not to the staff.

Confidentiality of written reports has been a sub­ject of debate for years and has been tested from time to time in the courts. The conflict is intensified by variations among States. For juveniles, there is often a provision protecting records or placing res­ponsibility on the judge to decide whether counsel or the state should be notified of the record for the social study. In some States, the law provides the judge with the option of disclosing the presentence report in whole or in part.

Many probation staff argue that disclosure will "dry up" sources of information who fear retaliation if the defendants learn the source of information. It is also alleged that the offender, his family, and the potential relationship with the probation officer; and, as a result, probation staff might be subjected to threats. Those advocating disclosure believe the defendant has the right to be aware of any and all information being used to decide his disposition. The point is also made that the offender has the right to refuse damag­ing information or to clarify inaccuracies or misstate­ments.

The arguments have been examined by the ABA project, the American Law Institute in drafting its Model Code, and the National Council on Crime and Delinquency Model Sentencing Act. All recom­mend disclosure.

The question has come before the court in various States as well as before the Federal courts. No de­cision ever has been rendered establishing any con­stitutional right for an offender to have access to the written report. Significantly, however, the Supreme Court of New Jersey in its decision, State v. Kunst, 55 N.J. 128, 259 A.2d 895 (1969), has mandated disclosure of the presentence report. The issue of disclosure is discussed in Standard 5.6 of Chapter 5, Sentencing.

Cases Requiring Reports

The written report is used according to statutes which generally establish one of three categories:

1. The judge can decide whether or not to have a report.

2. There must be a report in certain kinds of cases regardless of the disposition.

3. Probation as a disposition can be used only if a written report is used.

The first edition of the Standard Juvenile Court Act, published in 1926 by the National Probation Association, recommended a preliminary inquiry and investigation before the filing of a peti­tion. The comment was made that the court had an interest right to exercise discretion before accepting a case for an official jurisdiction, and that the practice of screening had grown so widespread that it should be recog­nized in law.

If the principle is adopted that probation should be used as an option of first choice and as a dispos­i­tional facility only as last choice, it becomes essential that a written report be required whenever a court contemplates a disposition involving commitment to an institution. That is, institutionalization should be justified.

Other potentials for the written report still are un­tapped. Greater use should be made of institutional alternatives such as fines. Information relevant to the defendant's potential for paying a fine could be pro­vided in the written report. Research should be done to identify reporting elements that would allow more differen­tiation among offenders as to appropriate­ness of various dispositions.

Juvenile Intake

The process of screening cases at the juvenile level and effecting adjustments within a formal court or intervention appeared almost as soon as the juvenile court was created. This process commonly is called "intake." It appeared in different forms as juvenile courts were created in different communities. Essen­tially it is involved discretion to look into a matter and resolve it informally.

Many factors are involved in the practice of adjusting ju­venile cases. Some matters were too trivial to warrant action other than a warning not to repeat the act. Parents_screen children away from detention. Many children are not detained. The contrast

...
released, the adult literally has to prove to the court he should not be jailed. Frequently, the only provision is a form of bail or bond. The number of people annually passing through the jails of this country is estimated at least 10 million a year, for four and a half million. The distinguishing feature about the jail inmate is that he is poor and cannot afford bail. Many studies have indicated that at least half of the inmates awaiting trial in jails are there only because they do not have enough money to post bail.2

As presently constituted, the jails in this country determine the outcome, and not the judge's decision. The judge's role is to decide if there is probable cause and to set bail. The judge's role has been described as an instrument for that purpose. The quickest way to expand ROR programs may be for probation personnel to collect information to help the judge for pretrial decisions. Probably the largest publicly administered release on recognizance program is that conducted by probation in New York City. Staff other than probation officers should be employed for ROR programs. In New York City a position of investigator, not probation officer, is used. The rationale for using an investigator is that only a limited amount of information is collected and discretion in using the information is quite limited. As the defendant has not been tried, informed about the crime, must be asked for any ROR investigatory information. The defendant's ability in the community is sought, including length of residence, employment, family, prior record, and references.

ROR programs could and should be expanded to include supervised release, in which the offender is accountable to an agency while he is awaiting hearing or trial. It would be more economical to supervise many defendants in the community than to jail awaiting trial. Certainly it would be less damaging.

MANPOWER FOR PROBATION

The Commission's general positions on manpower for probation are discussed in Chapter 17 of this report. Only those manpower issues which have special force for probation are considered here. The recommended shift of emphasis in sentencing to probation is not without problems, among others, a considerable expansion in the size of probation staff. Hence it is essential to take careful account of ways in which the manpower base may be expanded and how staff may most effectively be utilized.

Education for Probation Work

Since the turn of the century, social work education has been specified by hiring agencies as the preferred training for probation. By 1967, the President's Commission on Law Enforcement and Administration of Justice identified the master's degree in social work as the preferred educational qualification. In the course of a 3-year study, the Joint Commission on Correctional Manpower and Training found that the preferred standard was not being met by most agencies. Moreover, the evidence indicated that graduate schools of social work could not turn out enough graduates. Joint Commission studies indicated that persons with bachelor's degrees can do and are doing probation officer's work effectively. It therefore recommended the undergraduate degree as the standard educational requirement for entry-level professional work in probation.3

New Careers in Probation

Probation and other subsystems of corrections will need many more personnel than are likely to come to them from colleges and universities. And there are other good reasons why persons with less than college education should be employed for work in probation. Allied human services which have faced similar needs for more workers have come to realize that many individuals traditionally assigned to professionals can profitably well be handled by people with less than a college education, even some who have not graduated from high school. Moreover, these people often have a better understanding of the client's problems than professionals do. Hence progressive agencies, particularly those in education and health, have made concerted efforts to recruit people with less than a professional education and to set career lines by which these paraprofessionals may advance. Probation has lagged behind in this movement. But the shift from a caseload model to one based on offender identification should encourage the introduction of new career lines into the probation system. This would follow the Joint Commission recommendation that agencies set up career ladders that will encourage workers to continue the education a chance to advance to the journeyman level (probation officer) through combined work-study programs.

It has been amply demonstrated that paraprofessionals can be used in probation. The National Institute of Mental Health funded a program for the Federal Probation Office in Chicago, to employ paraprofessionals in both full-time and part-time capacities. The results were so promising that Congress has appropriated funds to include paraprofessionals as a regular part of the staff in fiscal 1973. A recent study identified four groups of tasks that can be carried out by staff other than probation officers. The tasks are related.

Direct service—for example, explain to the individual and family the purpose of probation.

Secure—such as accompanying probationer to an agency.

Data gathering—collect information, such as school progress reports, from outside sources and disseminate it to probation staff.

Agency and personnel development—as such, taking part in staff training for training and research activities.

Other tasks could be assigned; for example, accounting for the presence of the probationer in the community.

New Careers for ROR Reports

If probation is to provide the information judges need at arraignment to consider possible release on recognizance of adult defendants awaiting trial, new career opportunities should be introduced. For example, a separate staff group of members of whom need be probation officers could be trained to interview, investigate, and report to the judge on ROR investigations.

Use of Volunteers

Probation began through the efforts of a volunteer. More than a century later probation is turning once again to the volunteer for assistance. Many people are ready and willing to volunteer if asked and provided the opportunity. In addition to serving as probation officers, volunteers can perform many other tasks that do not extend the scope of current services to probationers. Many volunteers have special skills that are extremely helpful to probation services. For example, the fact that they are volunteers creates a sense of personal equality very different from the superior/inferior attitude usually characterized in relationships of probation officers and probationers. Volunteers can provide direct service to one probationer, to selected small groups of probationers, and to individuals or groups outside of probation. Tutoring a child is an example; offering advice on buying a car or borrowing money is another. Serving as recidivists is a predilection of many probationers and speaking before professional organizations are still other examples.

For specific programs involving the use of volunteers the reader is referred to Chapter 7 in this report entitled "Corrections and the Community." The reader should also consult the "Citizen Action."

**A Choice of Tracks for a Career**

At present, the only way to advance in a probation agency in terms of salary and status is to be promoted to an administrative or supervisory job. A more intelligent manpower policy would permit those employees who are doing a service job they like and are probably best qualified for, to continue in service to probationers, with the knowledge that they will receive salary raises in line with their performance there.

Employees should have the choice of two tracks in their career—direct services to probationers, or administration. Both tracks should offer the reality of advancement in terms of money, status, and job satisfaction.

Individuals desiring to go into administration should be able to do so on the basis that they are interested in management and have acquired the knowledge and skills necessary to carry management responsibilities. The fact that they have remained in a certain position (usually probation officer) for a specified period should not automatically qualify them for management positions. Nor should movement into management positions be restricted only to those in probation officer titles. Such a restriction limits recruitment of many competent individuals and screens out staff members in other titles. The system should not depend solely on promotion from within. For the most effective utilization of manpower, individuals with necessary education and experience should be able to enter the system at the level for which they are qualified, in services delivery or management.

**State Responsibility**

The State should be responsible for manpower planning and utilization, including staff development. Efforts to resolve manpower problems have been made, and the States have provided little leadership. Probation agencies have tried to solve the problem through such devices as increasing wages, reducing workloads, and providing more training. These devices, however, do not get at the root of the problem: designing a range of jobs directed toward supervisory and administrative work. A clear distinction should be made between these two fields of work for the probation system.

**Standard 10.1**

**Organization of Probation**

Each State with locally or judicially administered probation should take action, in implementing Section 16.4, Unifying Correctional Programs, to place probation organizationally in the executive branch of State government. The State correctional agency should be given responsibility for:

1. Establishing statewide goals, policies, and priorities that can be translated into measurable objectives by those delivering services.
2. Program planning and development of innovative service strategies.
3. Staff development and training.
4. Planning for manpower needs and recruitment.
5. Collecting statistics, monitoring services, and conducting research and evaluation.
6. Offering consultation to courts, legislative bodies, and local executives.
7. Coordinating the activities of separate systems to delivery of services to the courts and to probationers until separate staffs to perform services in the courts are established within the courts system.

During the period when probation is being placed under direct State operation, the State correctional background should be given authority to supervise local probation and to operate regional units in rural areas where population does not justify creation or continuation of local probation. In addition to the responsibilities previously listed, the State correctional agency should be given responsibility for:

1. Establishing standards relating to personnel, services to courts, services to probationers, and records to be maintained, including format of reports to courts, statistics, and fiscal controls.
2. Consultation to local probation agencies, including evaluation of services with recommendations for improvement; assisting local systems to develop uniform record and statistical reporting procedures conforming to State standards, and aiding in local staff development efforts.
3. Assistance in evaluating the number and types of staff needed in each jurisdiction.
4. Financial assistance through reimbursement or subsidy to those probation agencies meeting standards set forth in this chapter.

**Commentary**

The position of probation in the government framework varies among the States. A longstanding debate as to the most appropriate placement of probation continues. The controversy centers on two main issues: whether probation should be a part of the judicial or executive branch of government and...
whether it should be administered by State or local units.

Those who support placement of probation in the judicial branch contend that:
1. Probation would be more responsive to the courts.
2. Relationship of probation staff to the courts creates an automatic feedback mechanism on the effectiveness of dispositions.
3. Courts will have greater awareness of resources needed.
4. Courts might allow their own staff more discretion than they would allow to members of an outside agency.
5. If probation were incorporated into a department of corrections, it might be assigned a lower priority than it would have as part of the court.

On the other hand, placement of probation in the judiciary has certain disadvantages:
1. Judges are not equipped to administer probation.
2. Services to probationers may receive lower priority than services to the courts.
3. Probation staff may be assigned duties unrelated to probation.
4. Courts are adjudicatory and regulatory rather than service-oriented bodies.
5. Place in the executive branch has these features to recommend it:
   a. Allied human service agencies are located within the executive branch.
   b. All other corrections subsystems are located in the executive branch.

More coordinated and effective program budgeting as well as increased ability to negotiate fully in the resource allocation process becomes possible.

A coordinated continuum of services to offenders and better utilization of probation manpower are facilitated.

When compared, these arguments tend to support placing probation in the executive branch. The potential for increased coordination in planning, better utilization of manpower and improved services to offenders cannot be dismissed.

A State-administered probation system has decided advantages over local administration. A total system planning approach to probation as a subsystem of corrections is needed. Such planning requires State leadership. Furthermore, implementation of planning strategies requires uniformity of standards, reporting, and evaluation as well as resource allocation.

The other chapters in this report dealing with court intake services (Chapters 8 and 9) recommend that specialized intake units should be established under the administrative control of the court system. Until this recommendation is implemented, the probation system should be organized under a common administrator to reflect two distinct responsibilities: to provide services to the court and services to probationers. Different staffs should serve each sector, and each staff should be located near the sector it serves.

References

Related Standards
The following standards may be applicable in implementing Standard 10.1.

6.1 Comprehensive Classification Systems.
9.1 "Total System Planning.
13.2 Planning and Organization.
15.1 State Correctional Information Systems.
16.4 Unifying Correctional Programs.

Standard 10.2
Services to Probationers

Each probation system should develop by 1975 a goal-oriented service delivery system that seeks to remove or reduce barriers confronting probationers. The needs of probationers should be identified, priorities established, and resources allocated based on established goals of the probation system. (See Standards 5.14 and 5.15 and the narrative of Chapter 16 for probation's services to the courts.)

1. Services provided directly should be limited to activities defined as belonging distinctly to probation. Other needed services should be procured from other agencies that have primary responsibility for them. It is essential that funds be provided for purchase of services.

2. The staff delivering services to probationers in urban areas should be separate and distinct from the staff delivering services to the courts, although they may be part of the same agency. The staff delivering services to probationers should be located in the communities where probationers live and in service centers with access to programs of allied human services.

3. The probation system should be organized to deliver to probationers a range of services by a range of staff. Various modules should be used for organizing staff and probationers into workloads or task groups, not caseloads. The modules should include staff teams related to groups of probationers and differentiated programs based on offender typologies.

Commentary
A major problem facing probation today is that the purpose of service to probationers has not been defined clearly. In practice, services to probationers usually have been located in courthouses and provided by the same probation officers who provide services to a court. Each probation officer with a caseload in effect becomes the probation system to his probationers. He is placed in an untenable position because he does not have all the skills and knowledge to meet all their problems and needs.

The services needed by probationers have not been identified clearly. Probationers have not been asked regularly and systematically to identify their needs.

At present, probationers are assigned to caseloads of individual probation officers. Although this helps staff keep track of probationers, it does little to influence conditions in offenders' lives that make the difference between success and failure. Staff members
should give greater attention to the social institutions and barriers in the probationer's life.

The probation officer's role should shift from that of primarily counseling and surveillance to that of managing community resources.

To aid the probation officer as a community resource manager, the system must be organized to deliver certain services that properly belong to probation, to secure needed services from those social agencies already charged with responsibility for their provision to all citizens, such as schools, health services, employment, and related services; and to purchase special services needed by probationers. The relationships among staff, probationers, and the community should take many forms and not rely solely on the caseload.

References

Related Standards
The following standards may be applicable in implementing Standard 10.2.

1.12 Disciplinary Procedures.
6.3 Community Classification Teams.
7.2 Marshaling and Coordinating Community Resources.
8.2 Juvenile Intake Services.
9.4 Adult Intake Services.
12.6 Community Service for Parolees.
13.5 Planning and Organization.

Standard 10.3
Misdemeanant Probation

Each State should develop additional probation manpower and resources to assure that the courts may use probation for persons convicted of misdemeanors in all cases for which this disposition may be appropriate. All standards of this report that apply to probation are intended to cover both misdemeanor and felony probation. Other than the possible length of probation terms, there should be no distinction between misdemeanor and felony probation as to organization, manpower, or services.

Commentary
In many communities and even in entire States, probation cannot be used for persons convicted of misdemeanors. And where probation is authorized as a disposition for misdemeanants, it is not employed by the courts as often as it should be. Probation agencies dealing with misdemeanants are likely to have even less in the way of staff, funds, and resources than those agencies dealing with felons or juvenile offenders.

In terms of the cases processed by the criminal justice system, misdemeanants make up a larger group of offenders than felons and juvenile delinquents combined. The failure to provide probation staff, funds, and resources to misdemeanants results in the needless failing of those offenders and, in too many cases, their eventual graduation to the ranks of felony offenders.

Misdemeanant offenders have the same problems as felony offenders, and the probation services made available to them should be governed by the same standards, policies, and practices applying to felony probationers. No misdemeanor should be sentenced to confinement unless a presentence report supporting that disposition has been prepared. Misdemeanants placed on probation should receive the same priority and quality of services as those accorded felony probationers. The agencies responsible for felony probation should also have responsibility for misdemeanor probation.

References
4. President's Commission on Law Enforcement and Administration of Justice. The Challenge of...

Related Standards
The following standards may be applicable in implementing Standard 10.3.
2.12 Disciplinary Procedures.
5.4 Probation (Sentencing).
10.1 Organization of Probation.
10.2 Services to Probationers.
16.4 Unifying Correctional Programs.
16.11 Probation Legislation.

Standard 10.4
Probation Manpower

Each State immediately should develop a comprehensive manpower development and training program to recruit, screen, utilize, train, educate, and evaluate a full range of probation personnel, including volunteers, women, and ex-offenders. The program should range from entry level to top level positions and should include the following:

1. Provision should be made for effective utilization of a range of manpower on a full- or part-time basis by using a systems approach to identify service objectives and by specifying job tasks and range of personnel necessary to meet the objectives. Jobs should be reexamined periodically to insure that organizational objectives are being met.

2. In addition to probation officers, there should be new career lines in probation, all built into career ladders.

3. Advancement (salary and status) should be along two tracks: service delivery and administration.

4. Educational qualification for probation officers should be graduation from an accredited 4-year college.

Commentary
Although the number of persons employed in probation has risen continually, an even sharper increase should occur in the next 10 years. Use of probation as the primary disposition or sentence dictates an increase in staff. New career staff members can help meet the need of adult court judges for information at the time of arraignment. Paraprofessionals (individuals who do not have academic credentials for appointment as a probation officer) are being employed now in token numbers. These paraprofessionals should become part of every probation agency.

Efforts to resolve manpower problems have been piecemeal. Solutions have been sought through national studies, such as the one conducted by the Joint Commission on Correctional Manpower and Training. State and local governments have sought solutions through increasing wages, reducing workloads, and providing more training and education. A better approach would be the development of a manpower program in each State that includes effective job classification. A good plan would include recruitment of more young persons, recruitment and promotion of minority groups and women, and use of part-time and volunteer personnel.

A systems approach to manpower planning is required, which means probation goals and objectives must be specified by the State. Each objective must be analyzed and related to tasks that must be performed to achieve the objective. The tasks should be
examine in terms of performance standards, level of complexity of the task, and the education, experience, and training necessary to perform the task. Once identified, similar tasks can be grouped and organized into jobs; then different levels of jobs can be organized into careers.

After recruitment, there must be relevant training and educational opportunities for the staff. Persons employed at the entry level must be given the opportunity to acquire the knowledge and skills needed to advance. Staff members should have the choice of two tracks: direct service to probationers or administration. Each track should have sufficient salary and status to provide continuing job satisfaction.

References

Related Standards
The following standards may be applicable in implementing Standard 10.4.
1.2 Services to Probationers.
1.3 Planning and Organization.
1.4 Recruitment of Correctional Staff.
1.5 Recruitment from Minority Groups.
1.6 Employment of Women.
1.7 Employment of Ex-Offenders.
1.8 Employment of Volunteers.
1.9 Participatory Management.
1.10 Redistribution of Correctional Manpower Resources to Community-Based Programs.
1.11 Unifying Correctional Programs.

Standard 10.5
Probation in Release on Recognizance Programs

Each probation office serving a community or metropolitan area of more than 100,000 persons that does not already have an effective release on recognizance program should immediately develop, in cooperation with the court, additional staff and procedures to investigate arrested adult defendants for possible release on recognizance (ROR) while awaiting trial, to avoid unnecessary use of detention in jail.

1. The staff used in the ROR investigations should not be probation officers but persons trained in interviewing, investigation techniques, and report preparation.
2. The staff should collect information relating to the defendant's residence, past and present; employment status; financial condition; prior record if any; and family, relatives, or others, particularly those living in the immediate area who may assist him in attending court at the proper time.
3. Where appropriate, staff making the investigation should recommend to the court any conditions that should be imposed on the defendant if released on recognizance.
4. The probation agency should provide pretrial intervention services to persons released on recognizance.

Commentary
Bail historically has been used to assure the appearance of an adult defendant at the time of trial, although courts long have had the authority to release individuals on their own recognizance. When bail is used, the court really delegates the decision about release to a professional bondsman. Although bail may be set, the bondsman is not required to write the bond. If he refuses to do so, the defendant cannot be released.

The Vera Institute of Justice, through the Manhattan Bail Bond Project, demonstrated that information could be collected easily and provided to judges at the time of arraignment or shortly thereafter. The project showed that when this information was provided, the possibilities of releasing the individual on recognizance increased. The project and other studies have demonstrated that the release of the individual awaiting trial influences the outcome of the case and, when found guilty, the type of sentence imposed. Defendants released on recognizance are less likely to be sent to correctional institutions.

The American Bar Association through its project on Standards for Criminal Justice states that ROR should be considered in every case and unnecessary detention avoided.
Probation agencies can collect the information for the judge for these pretrial decisions and should be called upon to provide that service. It is the quickest means of expanding the practice of release on recognizance. Specially trained investigators or other persons should be used for the investigation, rather than probation officers. The information needed and its use are more limited than that which regular probation practice collects.

In addition to providing needed information to the court, the probation agency should assist the offender released on recognizance to find employment if he needs it, and provide other intervention services, utilizing community resources that will contribute toward his community reintegration. Such services are discussed further in several other chapters, including Chapter 12, Parole.

ROR programs should be expanded rapidly in urban communities that have not undertaken bail reform.

References

Chapter 11
Major Institutions

The term "major institutions" as used in this chapter does not refer to size but to State-operated penal and correctional institutions for juveniles, youths, and adults (as distinguished from detention centers, jails, work farms, and other types of facilities which in almost all States are operated by local governments). Names used for major institutions differ from State to State. Institutions for juveniles carry such names as youth development centers, training schools, industrial schools, and State homes. Institutions for adults variously are called prisons, penitentiaries, classification and reception centers, correctional institutions, reformatories, treatment centers, State farms, and others. Altogether there are about 200 major juvenile and 350 major adult correctional institutions in the United States.

This chapter also discusses maximum, medium, and minimum security institutions. It is difficult to make clear-cut distinctions, however, in view of the enormous diversity. Generally the terms refer to relative degrees in the use of security trappings and procedures. All three security classifications may be used, and usually are, in the same institution. Moreover, what may be considered maximum security in one State may be considered medium security in another. Some so-called minimum security institutions might actually be considered medium security by some authorities. The terminology—maximum, medium, minimum—is as imprecise as the wide variety of names that may be used formally to designate individual institutions. The terms indicate the rough classifications traditionally used.

HISTORICAL PERSPECTIVE

Institutionalization as the primary means of enforcing the customs, mores, or laws of a people is a relatively modern practice. In earlier times, restitution, exile, and a variety of methods of corporal and capital punishment, many of them unspeakably barbarous, were used. Confinement was used for detention only.

The colonists who came to North America brought with them the harsh penal codes and practices of their homelands. It was in Pennsylvania, founded by William Penn, that initial attempts were made to find alternatives to the brutality of British penal practice. Penn knew well the nature of confinement because he had spent six months in Newgate Prison, London, for his religious convictions.

In the Great Law of Pennsylvania, enacted in 1682, Penn made provisions to eliminate to a large extent the stocks, pillories, branding iron, and gal lows. The Great Law directed: "... that every county within the province of Pennsylvania and territories therunto belonging shall ... build or cause to be built in the most convenient place in each county..."
respective county a sufficient house for restraint, labor, and punishment of all such persons as shall be thereunto committed by laws.

In the time William Penn's jails, like those in other parts of the New World up to and including the present, became places where the untried, the mentally ill, the promiscuous, the debtor, and myriad petty offenders were confined indifferently.

In 1787, when the Constitutional Convention was meeting in Philadelphia and men were thinking of institutions based on the concept of the dignity of man, the Philadelphia Society for Alleviating the Miseries of Public Prisons was organized. The society believed that the sole end of punishment is to prevent crime and that punishment should not destroy the offender. The society, many of whose members were influential citizens, worked hard to create a new penal system in Pennsylvania, a penalology which to a large degree eliminated capital and corporal punishments as the principal sanctions for major crimes. The penalology was invented as a substitute for these punishments.

In the first three decades of the 19th century, citizens of New York, Pennsylvania, New Jersey, Massachusetts, and Connecticut were busy planning and building monumental penitentiaries. These were not cheap installations built from the crumbs of the public treasury. In fact, the Eastern State Penitentiary, which was the most expensive building ever built in the New World to that time, states were extremely proud of these physical plants. Moreover, they saw in them as almost utopian means to utopian ends. They were to become laboratories committed to the improvement of all mankind.

The principles of these new penitentiaries were being planned and constructed, practitioners and theorists held three factors to be the primary contributors to the inmates' behavior. The first was environment. Report after report on offenders pointed out the harmful effects of family, home, and other aspects of environment on the offender's behavior. The second factor usually cited was the offender's lack of aptitude and work skills. This quality led to indifference and a life of crime. The third cause was seen as the felon's ignorance of right and wrong because he had not been taught the Scriptures.

The social planners of the first quarter of the 19th century designed prison architecture and programs to create an experience for the offender in which (1) there would be no injurious influences, (2) the offender would learn the value of labor and work skills, and (3) he would have the opportunity to learn about the Scriptures and accept them as the principles of right and wrong that would then guide his life.

Various States pursued this triad of purposes in one of two basic methods. The Pennsylvania system was based on solitary confinement, accompanied by bench labor. In the other system, the offender was denied all contact with the outside world except that provided by the Scriptures, religious instruction, and visits from specially selected citizens. The prison was designed painstakingly to make this kind of solitary experience possible. The walls between cells were thick, and the cells themselves were large, equipped with plumbing and running water. In the cell was a work bench and tools. In addition, each cell had its own small walled area for solitary exercise. The institution was designed magnificently for its three purposes: elimination of external influence; provision of work; and opportunity for penitence, introspection, and acquisition of religious knowledge.

New York's Auburn system pursued the same three goals by a different method. Like the Pennsylvania system, it isolated the offender from the world outside and permitted him virtually no external contact. However, it provided small cells in which the convicts were confined only on the Sabbath and working hours. During working hours inmates labored in factory-like shops. The contaminating effect of the congregative work situation was eliminated by the use of alternate visual and auditory isolation from communicating in any way with other inmates or the jailers.

The relative merits of these two systems were debated throughout the century. The Auburn system ultimately prevailed in the United States, because it was less expensive and because it lent itself more readily to production methods of the industrial revolution.

But both systems were disappointments almost from the beginning. The awful solitude of the Pennsylvania system drove men to insanity. The rule of silence of the Auburn system became increasingly unenforceable despite regular use of the lash and a variety of other harsh and brutal punishments.

The first Auburn was at an early failure. This invention did, however, have some notable advantages. It rendered obsolete a myriad of sanguinary punishments, and its ability to separate and retrain offenders gave the public a sense of security. It also was thought to deter people from crimes by fear of imprisonment.

Improvement had many disadvantages, too. Principal among them was the phenomenon that so many of its "gradients" came ungranted. The prison experience often further atrophied the offender's capacity to live successfully in the free world. The prison nevertheless was a deterrent, partly because a civilised nation could neither turn back to the barbarism of an earlier time nor find a satisfactory alternative. For nearly two centuries, American penologists have been seeking a way out of this dilemma.

### TYPES OF INSTITUTIONS

#### Maximum Security Prisons

For the first century after invention of the penitentiary most prisons were built to be internally and externally secure. The early zealots who had dreamed of institutions that not only would reform the offender but also would cleanse society itself were replaced by a disillusioned and pragmatic leadership that saw confined time as a valid end in itself. Moreover, the new felons were seen as outsiders-Irishmen, Germans, Italians, and Negroes. They did not talk or act like "Americans." The prison became a dumping ground for those deemed to be non-Americans or those not adjusting could be held outside the mainstream of society's concern. The new prisons, built in the remotest parts of the States, became asylums, not only for the hardened criminal but also for the kept and unskilled "un-Americans." Although the rhetoric of reform persisted, the be-all and end of punishment is to prevent the new felons were seen as outsiders-Irishmen, Germans, Italians, and Negroes. They did not talk or act like "Americans." The prison became a dumping ground for those deemed to be non-Americans or those not adjusting could be held outside the mainstream of society's concern. The new prisons, built in the remotest parts of the States, became asylums, not only for the hardened criminal but also for the kept and unskilled "un-Americans." Although the rhetoric of reform persisted, the be-all and end of punishment is to prevent.

From 1830 to 1900 most prisons built in the United States reflected that ultimate value—security. Their principal features were high walls, rigid inter- 
Plexington, 1971, 343.

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</tr>
<tr>
<td>1890</td>
<td>21</td>
</tr>
<tr>
<td>1910</td>
<td>15</td>
</tr>
<tr>
<td>1930</td>
<td>21</td>
</tr>
<tr>
<td>Total</td>
<td>113</td>
</tr>
</tbody>
</table>

The prison invariably is surrounded by a masonry wall, gates, and a fence well manned towers. Electronic sensing devices and lights impart an unrelenting surveill ance and control. Inside the institution, the need for security has dictated that men live in windowless cells. Those who share a cell, which would afford privacy, are replaced by grilles of tool-resistant steel. Toiletts are unscreened. Showers are taken under supervision.

Control, so diligently sought in these facilities, is not limited to structural considerations. All activity is weighed in terms of its relationship to custody. Dining is no exception. Men often sit on fixed backed stools and eat without forks and knives at tables devoid of condiments.

Least secure is compromised by intrusions from outside, special devices are built to prevent physical contact with visitors. Relatives often communicate with inmates by telephone and see them through double layers of glass. Any contacts allowed are under the judge's watchful eyes. Body searches precede and follow such visits.

Internal movement is limited by strategic placement of bars and grilles defining precisely where an inmate may go. Areas of inmate concentration or possible illegal activity are monitored by correctional officers or by closed circuit television. "Blind spots"—those not capable of supervision—are avoided. Zones that may be too secure are institution. Places for the privacy or small group activity are structurally, if not operationally, precluded.

Maximum security institutions, then, may be, not room factories, which would afford high perimeter security, high internal security, and operating regulations that curtail movement and maximize control.

In his masterful description of penitentiaries in the United States, Touqueville wrote in 1833 that, aside from common interests, the several States "preserve their Individual independence, and each of them is sovereign master to rule itself according to its own pleasure. . . By the side of one State, the penitentiaries of which would serve as a model, we find another whose prisons present the example of everything which ought to be avoided." 2

And it was right in 1833. His words will ring true in 1972.

Table 11.2. Population of State Correctional Facilities for Adults, By Security Classification of Inmates

<table>
<thead>
<tr>
<th>Classification</th>
<th>Inmates</th>
<th>Percent of Total Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum</td>
<td>109,920</td>
<td>56</td>
</tr>
<tr>
<td>Medium</td>
<td>57,505</td>
<td>30</td>
</tr>
<tr>
<td>Minimum</td>
<td>28,485</td>
<td>15</td>
</tr>
<tr>
<td>Total</td>
<td>195,910</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: ACA, 1971 Directory and poll taken by the American Foundation's Institute of Corrections, which contains the latest of every State department of corrections.

have been explored. Developments in the behavioral sciences, increasing importance of education, dominance of the work ethic, and changes in technology have led to modified treatment methods.

Simultaneously, field service—parole and probation—increased. Institutions were set up to handle special inmate populations, men and women, youths and adults. Classification was introduced by employing psychological and sociological knowledge and skill. Potential holding centers, jails, were separated from those receiving convicted felons. Different levels of security were provided: maximum, medium, minimum, and open. Much of the major correctional construction in the last 50 years has been medium security. In fact, 51 of the existing 110 medium security correctional institutions were built after 1950. Today, over 57,000 offenders, percent of all State inmates, are housed in such facilities. (See Table 11.2.)

Today medium security institutions probably embody most of the ideals and characteristics of the early attempts to reform offenders. It is in these facilities that the most intensive correctional or rehabilitative efforts are conducted. Here inmates are exposed to a variety of programs intended to help them become useful members of society. But the predominant consideration was security.

These institutions are designed to confine individuals where they can be observed and controlled. All have perimeter security, either in the form of perimeter walls or double cyclone fences. In some cases electronic detecting devices are installed. Towers located on the perimeter are manned by armed guards and equipped with spotlights.

The nonprisonlike design permits it to be adapted for a variety of educational, mental health, or other human service functions.
One generalization about the future of minimum security facilities seems warranted. As society finds itself increasingly more oriented towards small, community-based solutions to its problems, the rural open institutions will become harder and harder to populate. Already they are operating farther below their rated capacities than any other type of correctional facility.

**Institutions for Women**

The new role of women may influence profoundly the future requirements of corrections. For whatever reasons, the treatment given to women by the criminal justice system has been different from that given men. Populations comprise smaller crimes. Certainly six men are arrested for every woman. The ratio is still higher for indictments and convictions, and 30 times more men than women are confined in State correctional institutions. Montana in 1971 incarcerated only eight women; West Virginia, 28; Nebraska, 44; Minnesota, 55. Even populous Pennsylvania incarcerated only 127 women.  

**One** may be different. As women increasingly assume more roles previously seen as male, their involvement in crime may increase. Or the increase in the use of corrections exclusively for women. Constitutional questions for women present a microcosm of American penal practice. In this miniature model, the absurdities and irrationalities of the entire system are magnified in State correctional institutions. In one State, the few women offenders are seen to be so dangerous as to require confinement in a separate wing of the medium security facility. In another, women approaching release live in their work or attending school in the city. These appear to be based upon a number of factors: the prison population is only a small percentage of the total population (in one State, less than one percent); the facilities are attractive apartments, each containing a living room, dining room, kitchen, two bedrooms, and a bath. Women approaching release live in them while working or attending school in the city. These apartments are often at a distance from a forum to which they can present themselves. The contrasts among women's institutions demonstrate our confusion about what criminals are like and what correctional responses are appropriate. In six States maximum security prison inmates are the correctional system's response to the female offender. At least 15 other States use open institutions exclusively for women.  

**Youth Correction Centers**

The reformatory movement started about a century ago. With the advent of the penitentiary, imprison-ment had replaced corporal punishment. The reformatory concept was designed to replace punishment with rehabilitation. The reformatory concept also copied the physical plant. Huge elaborate buildings, multi-level buildings, mass movements, and extensive building and extensive life support services were all part of the model. Several of these places are still in operation. Later, in the 1920's, youth institutions were established without the reformatory concept. These centers usually emphasize academic and vocational education and recreation. Some supplement these with counseling and therapy, including operant conditioning and behavior modification. The building itself is central to the program in providing incentives. At the Morganton center, for example, as a youth's behavior modifies he is moved from the 17th floor to the more desirable 16th, or from an open ward to a single room, etc.

Overall, plant, security, and housing, as well as education, vocational, and recreational space, are similar in youth centers to those provided in adult centers of comparable custody classification. The only major difference is that the center institutions are not designed to provide more programs. The amount of space, therefore, often exceeds that of adult centers. Some youth institutions have highly secured perimeters, and the center provides only one function—to increase educational levels and vocational skills. The effectiveness of such centers is highly dependent on inmate selection, placement, and heavy responsibility on the classification process.

**Facilities and programs in the youth correction center**. "The house" space beats the other two. In work camps, outdoor labs burn up youthful energies. But these camps are limited severely in their capacity to provide other important needs of youthful offenders. Moreover, they are located in rural America, which is usually white, while youthful offenders are more and more black.  

Even today the various States are finding it difficult to select from their youthful inmate populations persons who are stable enough for such open facilities. Many are operating, therefore, far below normal capacity. Walkaways present such serious problems that insidious internal controls, more irreplaceable, than the visible wire fence, have been developed. These open centers serve three important functions:

1. They bring the individual every day face to face with his impulse to escape life's frustrations by running away.
2. They remove youths temporarily from community pressures that have overwhelmed them.
3. They provide sophisticated programs opportunities usually not available otherwise.

In the near future, it is to be hoped, these three purposes will be achieved by means and means that are less expensive community correctional programs.

**Institutions for Juveniles**

Almost all human services in America have followed a similar course of development. When faced with a social problem we seek institutional solutions first. The problems presented by children have been no exception. Early in our nation's history, we had to face the phenomenon of child dependency, and we built orphanages. Children who would not stay put, and we established the "Children's Home" for runaways. When children stole we put them in jails, or we established the "House of Refuge." When children stole we put them in jalls, or we established the "Parole." When children stole we put them in jails, or we established the "Probation." When children stole we put them in jails, or we established the "Probation." When children stole we put them in jails, or we established the "Probation." When children stole we put them in jails, or we established the "Probation." When children stole we put them in jails, or we established the "Probation." When children stole we put them in jails, or we established the "Probation." When children stole we put them in jails, or we established the "Probation."
In the latter decades of the 19th century, attempts to minimize the massive institutional characteristics led to the adoption of the "cottage concept." Housing designed in groups, "family groups," "house par- tilets" aimed at simulating home-like atmospheres. This model has remained and today continues as a common reason for those who opt for independent, type of institutions for juvenile delinquents.

Institutions for the delinquent child usually have vastly different characteristics than those holding adults. Often they are located on a campus spanning over many acres. The housing units provide quarters for smaller groups, invariably less than 60 and fre- quently less than 50. Often, they also provide apart- ments for cottage staff. Dining frequently is a func- tion of cottage life, eliminating the need for the large central dining rooms. Grits (lunch and dinner) are served on the cottage doors and windows, although sometimes they are covered by detention screens. Security is not the staff's major preoccupation. Play fields dot the usually ample acreage. Other resources for athletics, such as gymnasiums and swimming pools, are common. Additional recrea- tional activities are undertaken in nearby towns, parks, stream, and resorts. Teams from youth institu- tions usually play in public school leagues and in community league leagues. Many current opponents emphasize that these children's centers quite naturally has been education, and many have fine, diversified school buildings, both academic and vocational.

Institutions for adult inmates, especially juvenile delinquents have no artificial barriers separating them from the community at large. Space frequently provides such a contrast. As many juvenile inmates spend long periods on farms, the emphasis is as these children's centers quite naturally has been education, and many have fine, diversified school buildings, both academic and vocational.

The structure of the cottage has no intellectual dominance to separate community life. The younger's presence on the campus is evident in the daily activities. In the cottages, the young adults can be found between the wards or on the streets. Often, there is a noticeable lack of the residents that the years are still unknown and therefore trustworthy. Moreover, their social milieu is a constant change. A notable exception is worthy of brief description. Opened in 1967, the Reception and Medical Center at Lake Butler serves the State of Florida. The plant is small, located on an island selected by the fact that the system is evolving. The main building is the largest single building on the campus. Its maximum capacity building accommodates the rest. The contrast between staff and inmates appears clear. The institution is not regulated. Morale appears high, and escapes are rare.

Reception and Classification Centers

Reception and classification centers are relatively recent developments. However, this is not the only major new concept. At times there were no State systems, no central depart- ments of corrections. Each prison was a separate entity, usually managed by its own board, which re quiries that the institution be a complex one. The nature of staffing, the need for additional classification systems and agencies for central control evolved. Still later, the need for reception and clas- sification systems was felt. Not all such centers operating today are distinct and separate facilities. Quite the contrary. In most States, the reception and classification function is performed by the institutional classification system, the classical system, or one classification system, which in some States, is institutional program. The State's major assumption is to separate the inmate's needs and the system's responsibility.

Today 13 separate reception centers for adult fel­ lions (most of which are new) are in operation. Their designers have assigned priority to security on the part of the inmate, without sacrificing the quality of the facility. Gener- ally these institutions are the most depressing and re- gressive of all recently constructed correctional facil­ ities in the United States, with the possible exception of county jails. Nowhere on the current correctional scene are there more bars, more barred wire, more electronic surveillance devices, more clinging items, more control. Catbird activity and personal space. All this is felt on the grounds that the residents are still unknown and therefore trustworthy. Moreover, their social milieu is a constant change.

The Future of Institutions

For Adults

From the standpoint of rehabilitation and reintegra- tion, the major adult institutions operated by the States represent the least promising components of corrections. This report takes the position that these offenders should be diverted from such adult institu- tions, that much of their present populations should be transferred to community-based programs, and that the construction of new major institutions should be postponed until such diversion and transfers have been achieved and the need for additional institutions is clearly established. Moreover, the need for some type of institution for adults cannot be denied. The problem is to develop a core of intractable, possibly unsalvageable offenders who must be managed in secure facilities, of which there are already more than enough to meet the needs of this foreseeable future. These institutions have and will have a difficult task indeed. Neverthe- less, the nature of imprisonment does not have to be as destructive in the future as it has been in the past.

With growth of community-based corrections, em- phasis on institutional programs should decline. However, the public has not yet fully supported the emerging community-oriented philosophy. An out- dated philosophy continues to dominate the adult in- stitution, thus perpetuating a number of contradic- tory assumptions and beliefs concerning institutional effectiveness.

One assumption is that the committed offender needs rehabilitation. This is not always true, as offenders can also be reformed, who then, can be reintegrated into society. The public has not yet fully supported the emerging community-oriented philosophy. An out- dated philosophy continues to dominate the adult in- stitution, thus perpetuating a number of contradic- tory assumptions and beliefs concerning institutional effectiveness.

Another assumption is that the correctional sys- tem wants to change. Even though research has demonstrated the need for new approaches, personal approaches have not been adopted. The system is based on the large, abiding society. But it seems doubtful that such a change really can take place in the institu- tion as it is now. Another assumption is that the correctional sys- tem wants to change. Even though research has demonstrated the need for new approaches, personal approaches have not been adopted. The system is based on the large, abiding society. But it seems doubtful that such a change really can take place in the institu- tion as it is now. Another assumption is that the correctional sys-
The major result was that skilled, smaller, and committed offenders be oriented to a job market 20 years hence? What should be done with a man who is capable of returning to society but must spend many more years in an institution.

Conversely, individuals sentenced to a minimum term often need a great deal of assistance. Little can be accomplished at the institutional level except to make the offender aware of his needs and to provide a link with community resources. For these offenders, the real assistance should be performed by community resources.

Correctional administrators of the future will face a different institutional population from today's. As a result, programs need to meet community-based programs, the committed offender can be expected to be older, more experienced in criminal activity, and more difficult to work with. The staff will have to be more skilled, and smaller caseload ratios will have to be maintained. Personnel standards will change because if a new type of institution is to be substituted for the prison, the legitimate needs of the society, the system, and the committed offender must be considered.

The major issues are discussed in detail and applicable standards formulated in several other chapters, particularly Chapter 2, Rights of Officers; Chapter 5, Skilled Offenders; Chapter 6, Offender Classification; Chapter 7, Corrections and the Community; Chapter 12, Parole; Chapter 13, Organization and Administration; Chapter 14, Research and Development, Information and Statistics; and Chapter 16, Statutory Framework of Corrections.

For Juveniles and Youths

Use of State institutions for juveniles and youths should be discouraged. The emerging trend in treatment of young offenders is diversion from the criminal justice system. When diversion is not possible, the focus should be on community programs.

This emphasis is based on the assumption that young offenders should be treated. Previously there was a heavy emphasis on the use of institutional settings. However, it is believed that young offenders should be sent to an institution only when it can be demonstrated clearly that retaining them in the community would be a threat to the safety of others. The reason for this is that there is considerable delay between a change in philosophy and a change in practice. Despite major redirection of manpower and money toward both institutional and community programs, progress is slow.

Use of major State institutions for juveniles obviously is declining, but it seems likely that these facilities will continue to be used for some offenders for some time. Therefore, standards for their improvement and operation must be required.

Arguments for diversion and alternatives to incarceration largely are negative, stemming from overwhelming disinterest in the institution as a setting for reducing criminal behavior. Many arguments for community-based programs meet the test of common sense on their own merits, but are strengthened greatly by the falling record of "institutional" institutions. As long as institutional "treatment" is a dispositional alternative for the court, there must be a continuing effort to minimize the inherent negativity and to maximize the positive features that distinguish community programs from institutionalization.

The failure of the adult and youth institutions to reduce crime is incontestable. Recidivism rates, impressive as they may be, are notoriously high. The younger the person when entering an institution, the greater the danger and the higher the chance that the individual will progress into the criminal justice system, the greater his chance of failure. It is important to distinguish some basic reasons why institutional programs have failed to reduce the commission of crime by those released.

Lack of clarity as to goals and objectives has had marked influence on institutional programs. Programs in youth institutions have reflected a marked emphasis on rehabilitation, education, and preparation for work. The emphasis on quantity and control of so many people resulted in heavy restrictions on visiting, mail, phone calls, and participation with community residents in various activities and programs. For reasons that are now archaic, many institutions have been totally segregated by sex for both residents and staff.

All these factors have worked together to create an environment within the institution totally unlike that from which the population comes or to which it will return. The youths, often the flower of society, who find themselves in such institutions, experience feelings of abandonment, hostility, and despair because they are removed by force and place in a delinquent subculture flourishes in the closed institution. This type of environment, reinstitutionalizes the offender and places them in a milieu of delinquency.

Large institutions are institutionally insulating. They foster an increased degree of dependency that is contrary to behavior expected in the community. They force youths to participate in activity of little interest or use to them. They foster resident-staff relationships that are superficial, transient, and meaningless. They try to change the young offender without knowing how to effect that change or how to determine whether it occurs.

With the shift in emphasis to changing behavior and reintegration, the major institution's role in the total criminal justice system must be reexaminied. Changing that role from one of merely housing society's failures to one of sharing responsibility for their reintegration requires an attitude change by the corrections profession. The historical inclination to accept total responsibility for offenders and the resulting isolation clearly are counterproductive.

The public must be involved in the correctional process. Public officials, community groups, universities, and planning bodies must be interested in developing an institutional program, development and execution. Such sharing of responsibility will be a new operational role for institutions. This refocus implies substantive changes in policy, program, direction, and organization.

The institution should be operated as a resource to meet specific needs. It should seek the trust and confidence of the community. Education, recreational, religious, therapeutic, and vocational programs must be involved with the inmate. The institution's role in the community for the community is being lost.

Community responsibility for offenders implies more than institutional tours or occasional parties. It implies participation in programs with institutional residents both inside the institution and in the community. Education, recreational, religious, civic, counseling, and vocational programs of which they are a part, should be both institutional and community participants. Public acceptance of community-based programs is necessary, especially when they operate near home.

The institution always has existed in a changing world, but it has been slow to react change. Correctional administrators require the impetus of com-
ministry development to respond and adapt to chang­
ing programs and needs. As diversionary and community programs expand, major institutions for juveniles and youthful offenders face an increasingly difficult task. These programs remove criminogenic influences and stabilize the most unstable individuals and volunteers. The ability to cope with this phenomenon in an environment isolated from the community has not been demonstrated. The aid of community residents must be enlisted in innovating, experimenting, and finding workable solutions.

Few treatment opportunities have been offered for the intractable offender. Common practice is to move such individuals from the general population and house them in segregation or adjustment centers. The concept of an ongoing treatment program for this group is recent but will become increasingly important as institutional populations change. The understanding and tolerance of the community will be essential to this opportunity.

It is no surprise that institutions have not been successful in reducing crime. The mystery is that they have not contributed even more to increasing crime. Meaningful changes can take place only by atten­tion to the factors discussed here. Concentrated effort should be devoted to long-range planning, based on research and evaluation. Correctional his­


THE CORRl:CTl0NAL DILEMMA

A major obstacle to the operation of an effective correctional program is that today's practitioners are forced to use the means of an older time. Dissatisfac­
tion with correctional programs is related to the per­


ear year for inmate to more than $12,000. Construction of new major institutions should be deferred until effective correctional programs to govern plan­


PLANNING NEW INSTITUTIONS

It cannot be overemphasized that unusually con­
sidering justification of need should be required as a
ingen percentage to planning new institution. Yet there are many impediments to recognizing this ra­


Number of States with Ratio

| Ratio of Prisoners in State Institutions to State Population |
|-------------------|-------------------|-------------------|-------------------|-------------------|
| 1 to 2,501        | 1                   | 1 to 1,501        | 1                   |
| 1 to 2,501-3,500  | 2                   | 1 to 1,501-2,000  | 3                   |
| 1 to 1,501-2,000  | 4                   | 1 to 1,001-1,500  | 5                   |
| 1 to 1,001-1,500  | 5                   | 1 to 501-1,000    | 6                   |

Sources: Data from 1970 Census and ACA 1971 Directory.

Conception

The correctional institution has been poorly con­
ceived, in that it is intended to hide rather than heal. It is punitive, repressive arm whose function is to do the system's "dirty work."

Design

The designers of most correctional institutions generally have been preoccupied with security. The result is that they create demoralizing and dehuman­
izing environments. The facility design precludes any experience that could foster social growth or behav­


Table 11.3. Comparative Use of State Correctional Institutions.

| Ratio of Prisoners in State Institutions to State Population |
|-------------------|-------------------|-------------------|-------------------|-------------------|
| 1 to 2,501        | 1                   | 1 to 1,501        | 1                   |
| 1 to 2,501-3,500  | 2                   | 1 to 1,501-2,000  | 3                   |
| 1 to 1,501-2,000  | 4                   | 1 to 1,001-1,500  | 5                   |
| 1 to 1,001-1,500  | 5                   | 1 to 501-1,000    | 6                   |

Costs of operation vary widely, from $1,000 per
Correctional institutions often are designed and constructed with little consideration of their place in society as a system. Too often the system needs are only defined in terms of the current inmate population, with may be duplicated, while others go unmet. Many administrators of maximum and medium security centers state that only a small percentage of their inmates need to be housed at that level of security. Yet centers offering community programs are extremely scarce or nonexistent.

Improper design may prevent an institution from fulfilling its social, educational, and psychological functions. One way architects and planners of prisons have to consider is the level of security.

Inmates must not be considered a threat to others may be housed in sing cells, with fixed furniture, security-type plumbing, and grilled windows and doors.

Institutions intended as "correction centers" may have no more than two or three classrooms and a small number of poorly equipped shops to serve as many as a thousand inmates. This is an inadequate use of space. Programs and facilities provided by "centers" that hold persons 24 hours a day from one year to many years may be totally inadequate for occupying the inmate's time. Time idleness is a way of life.

Lack of funds, haphazard planning, faulty construction, and inadequate preplanning and staffing all may account for failure to design and build institutions to serve their assigned functions adequately. Fund allocations may be insufficient because costs are rising faster than income. This is an important point to remember when selecting a particular security level. The design must be viewed in the context of the community in which the facility is located. The design must be flexible in order to meet the changing needs of its inmates.

The idea of reform or rehabilitation has been expressed no longer is quarantine but reintegration—the adjustment of the offender in and to the real world. In 1972 correctional institutions still are being built in some of the most isolated parts of the States. Political leaders may know little about "reintegration," but they know a pork barrel when they see one. Urbanites resist the location of prisons in the city. They may argue on the need for "reintegration," but this objective is often forgotten when city dwellers see a prison in their midst as increasing street crime and diminishing property values.

The serious disadvantages of continuing to construct correctional institutions in sparsely populated areas include:

1. The impossibility of using urban academic and social services or medical and psychiatric resources of the city.
2. The difficulty of recruiting professional staff members—teachers, psychologists, sociologists, social workers, researchers, nurses, dentists, and physicians.
3. The prolonged interruption of offers' contacts with friends and relatives, which are important to the reintegration process.
4. The impossibility of determining their needs of meaningful work and study-release programs.

5. Most importantly, the conclusion of correction to the status of a divided house dominated by rural white guards and administrators unable to understand or communicate with black, Chicano, Puerto Rican, and other urban minority inmates.

Other human services long since have moved away from dependence upon the congregate rural institution. A single building of old have been replaced with family assistance; workhouses, with employment insurance; orphanages, with foster homes and aid to dependent children; colonies for indigents, with shelters and workshops. Drugs have made obsolete the disgraceful penal facilities and the tuberculosis hospitals of yesteryear. Asylums are rapidly yielding to community mental health approaches.

Most of these humane services changed because isolated institutions proved to be unsuccessful, expensive, and embarrassing. The philosophy was that security programs should be developed around specific social problems. They also changed because newer treatment methods were developed, making it isolated institutions largely obsolete and treatable in the natural community setting feasible and advisable.

And so it should be with corrections.

Size

Traditionally, institutions have been very large, often accommodating up to two and three thousand inmates. The inevitable consequence has been development of an institutional and operational monolith. Separation of large numbers of people from society and mass confinement have produced a management problem of staggering dimensions. The tendency for institutional efforts to be regimented by the herd is not new to troubled people. Merely "keeping the lid on" has become the real operational ideal of reform, or rehabilitation. The solution has succumbed to that of sheer containment, a goal of limited benefit to society.

The usual response to the bigness has been regimentation and uniformity. Individuals become submerged to the needs generated by the institution. Uniformity is translated into depersonalization. A human being is reduced to a number, a number of referents, such as his name, his age, his job, or his family role. He becomes a number, identified by the cellblock in which he sleeps. The so-called "rehabilitation" retreats to minimum re-siting from size.

Almost every warden and superintendent states that his participating in an institution. This hugeness has been the product of many factors, including economics, availability, population of the jurisdiction, the influence of Parkison's Law, and an American fetish has been to believe that size makes the program better. In 1970 one State built the "world's biggest wall" only to be another institution that gleefully surpassed it 2 years later.

Any attempt to establish an optimum size is a meaningless exercise unless size is related directly to the institution's operation. The institution should be small enough to enable the superintendent to know every inmate's name and to relate personally to each person in his charge. Unless the inmate has contact with the person who has policy responsibility and who can assist him with his personal difficulties and with the system, the individual's inability to relate to the system needs is to serve the system and not him. The police state is also true: if the superintendent does not have contact with the inmates, his decisions will be determined by demands of the system and not by inmate needs.

The size of the inmate housing unit is of critical importance because it must satisfy several conditions. The size of the inmate housing unit is a property, and the demands of the system and not by inmate needs. The size of the inmate housing unit is a property, and the demands of the system and not by inmate needs. The size of the inmate housing unit is a property, and the demands of the system and not by inmate needs. The size of the inmate housing unit is a property, and the demands of the system and not by inmate needs. The size of the inmate housing unit is a property, and the demands of the system and not by inmate needs.

Informal counseling is easier in the small housing unit because the inmate-counselor ratio is not as threatening as in the massive cellblock and negative group pressure on the inmate is minimized.

Many institutions are poorly ventilated, inadequately heated, and ventilated. Lighting levels may be below acceptable limits. Bathroom facilities often are insanitary, too few, and too public. Privacy and personal space hardly ever are provided. Physical isolation is a constant threat. Inmates are highly concerned about personal privacy, and personal space, many of them have learned that they are vulnerable to society.

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corrections plan. The standards in this report can serve as possible guideposts for the advanced techniques and practices. This promise of corrections re-form will be met, and Part E funds can be used by States to implement the standards postulated in this chapter and this report.

The Constitution of the United States reserves to the States the power to promote the health, safety, morals, and general welfare of its citizens—the so-called police power—and in large part because of this power and the implications of Federalism, the legislative and executive branches of the national government have never been as active in establishing or enforcing correctional standards. The judiciary is becoming so. The Federal Judiciary, however, is drawing upon the "due process" and "cruel and unusual punishment" amendments to the Constitution to define new standards for corrections and, more importantly, in enforcing them. Judges see the Constitution as the ultimate source of certain correctional standards articulated in various court decisions. Thus in Holt v. Sarver, 309 F. Supp. 352 (E.D. Ark. 1970), affd. 442 F. 2d. 304 (8th Cir. 1971), the District Court, with the ultimate concurrence of the Federal Court of Appeals, held that imprisonment in the Arkansas State Prison System constituted "cruel and unusual punishment" and gave the State two years to correct the situation or release all prisoners then incarcerated in the State facilities. Sometimes a source of new major standards. Every jurisdiction has its own laws spelling out certain requirements for the correctional establishment. A few examples show they usually are explicit.

All persons who are suffering from any disease shall be segregated from the prisoners who are in good physical condition.

All prisoners who are found or considered to be habitual criminals, evil-inclined, shall be segregated, and not allowed to be amiable or mingle with those of opposite inclination. Every warden shall provide that each person shall have, at least, two hours daily to exercise in the open. No prisoner shall be confined in a cell occupied by more than one individual.

These and other standard-setting statutes are honored most frequently in the breach. In April, 1972, for example, the Court of Common Pleas in Philadelphia, Pennsylvania, held that a prison system 161 violations of State statutes. Together, and the court, these transgressions added up to the violation of those provisions of both State and Federal Constitutions dealing with cruel and unusual punishment.6

The United Nations also has developed policy statements that attempt to set standards for correc-tional practices. Usually they are broad, idealistic, and ignored.

Private groups have contributed richly to the elucidation of correctional standards. The objectives of these groups vary. An association of correctional professionals will have a different orientation than a group of civil libertarians or a manufacturer of security equipment. Each promotes those standards most in accord with its own objectives. The presence of so many interest groups, coupled with the lack of any specific enforceable legislation at the State level, has resulted in an unorganized profusion of standards that sometimes are helpful but often are confusing. None provides the comfort of unquestioned authority or substantiated research.

Currently existing standards seem to be more oriented to administration than to goals or to offenders. This is quite natural because neither inmates nor philosophers usually serve on principal standard-writing committees. Individuals who do serve have careers and professional fortunes tied up in the operation of institutions. Results are colored by the limits of vision individuals bring to the task. Fundamentals—essential changes at the goal level likely will come from a body not restricted by an operational orientation. Change, for a variety of reasons, seldom comes from within and hardly ever without resistance.

In view of the foregoing chapter it appears inappropriate to set forth formal standards applying to the creation of new major institutions. Despite such arguments, construction of additional institutions probably will continue to be considered by some jurisdiction. A standard applying to such planning, therefore, is suggested herein. But it can be no more than a statement of principles.

More appropriate is the standard for modification of existing lock-ups. It provides a more humane environment for persons who must be confined. If proof cannot be offered that these institutions are serving a rehabilitative purpose, they must at least be operated so that the damage they do to those confined. If the institutions can even be neutralized in this respect, it will be an accomplishment far exceeding any that has occurred so far in American penology. It also will be an essential landmark in the quest for a solution of the correctional riddle.7

Many of the standards that follow reflect the work of an intensive on-the-scene study of over 100 of the newest correctional institutions made in 1971 by the American Foundation Institute of Corrections. As an extension to this study with a multidisciplinary orientation, this project built upon the relationship of correctional architecture and program. The experience and opinions of architects, planners, correctional administrators, officers, counselors, and others who design, plan, build, staff, and operate such institutions were explored. A book based on the study is William G. Nagel, The New Red Book: A Critical Look at the Modern American Prison (Walker, 1973).

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Standard 11.1
Planning New Correctional Institutions

Each correctional agency administering State institutions for juvenile or adult offenders shall adopt immediately a policy of not building new major institutions for juveniles under any circumstances, and not building new institutions for adults unless in analysis of the total criminal justice and adult corrections systems produces a clear finding that no alternative is possible. In the latter instance, the analysis should conform generally to the "total system planning" discussed in Chapter 9. If this effort proves conclusively that a new institution for adults is essential, these factors should characterize the planning and design process:

1. A collaborative planning effort should identify the purpose of the physical plant.

2. The size of the inmate population of the projected institution should be small enough to allow security without excessive regimentation, surveillance equipment, or repressive hardware.

3. The location of the institution should be selected on the basis of its proximity to:

   a. The communities from which the inmates come.
   b. Areas capable of providing or attracting adequate numbers of qualified line and professional staff members of racial and ethnic origin compatible with the inmate population, and capable of supporting staff lifestyles and community service requirements.
Commentary

The facts set forth earlier in this chapter lead logically to the conclusion that no new institutions for adults should be built and existing institutions for juveniles should be closed. The primary purpose to be served in dealing with juveniles is their rehabilitation and reintegration, a purpose which cannot be served satisfactorily by State institutions. In fact, commitment to a major institution is likely to hinder the level of activity they generate. The number of inmates housed in a single spatially discrete unit should not exceed 26, and for special programs requirements, the maximum should be fewer. In States where it is feasible, a location for the institution not more than an hour's travel time from the homes of a majority of its inmates should be selected. The surrounding area should be able to support the community program emphasis of the institution and offer services and a lifestyle attractive to staff. The institution should not be located in a small, close living area with limited services and poor schools and recreational and cultural activities. It should be near enough to courts and auxiliary correctional agencies to facilitate the transfer of inmates to and from jails and courts and supporting programs. It should also be located on public transportation routes to facilitate visits to inmates by families and friends.

The design of the institution should provide for privacy and personal space by the use of single rooms with a floor area of at least 80 square feet per man, and a clear floor-to-ceiling height of 8 feet. Dormitories should not be used. All rooms should have solid front and solid doors with glazed observation panels. Toilets and showers should have glass or plastic panels. The furnishings provided should enable the inmate to personalize his room.

Noise should be eliminated by orienting sources, placing sound barriers between activity spaces, decreasing size of spaces, and using noise-absorbing materials. Noise levels should be low enough not to interfere with normal human activities—sleeping, dining, thinking, conversing, and reading.

Sensory deprivation may be reduced by providing variety in terms of space, surface textures and colors, and both artificial and natural lighting. The institution should be spatially organized to offer a variety of movement options, both enclosed and outdoor. Lighting in individual rooms should be occupant controlled as well as centrally controlled. All rooms should have outside windows with areas of 10 square feet or more. The setting should be “normal” and human, with spaces and materials as similar as possible to their non-institution counterparts.

Constructive inmate-staff relationships may be encouraged by designing activity spaces to accommodate only the number of inmates that can be appropriately supervised. (For example, dining halls holding more than 100 should be avoided.) Physical separation of staff and inmates should be minimized.

Utility services should furnish adequate heating, air conditioning, and ventilation for all areas including inmate housing. Temperatures should not exceed 80° at any time or 70° during normal sleeping hours. Adequate toilet facilities should be provided in all areas. Lighting levels should be 50-75 footcandles.

Program spaces should be designed to facilitate their special purposes. Visiting areas should be large enough to avoid undue restrictions on visiting hours and to provide dignified, private surroundings without undue emphasis on security. Separate areas should be provided for individual and group counseling, medical care, education, vocational training, and work areas. Space should be designed for small groups of inmates and furnished with modern equipment laid out to facilitate supervision. Outdoor recreation spaces should be provided for each housing unit, with larger spaces that will accommodate the entire inmate population.

Medical and hospital facilities should meet American hospital accreditation standards, even though they may not be large enough for formal accreditation (usually requiring more than 25 beds).

References


Related Standards

The following standards may be applicable in implementing Standard 1.1.

2.5 Healthful Surroundings.

2.6 Medical Care.

6.2 Classification for inmate Management.

7.4 Inmate Involvement in Community Programs.

9.1 Total System Planning.

9.8 Local Correctional Facility Programming.

9.10 Local Facility Evaluation and Planning.

13.2 Planning and Organization.
Standard 11.2

Modification of Existing Institutions

Each correctional agency administering State institutions for juvenile or adult offenders should undertake immediately a 5-year program of reexamining existing institutions to minimize their use, and, for those who must be incarcerated, modifying the institutions to minimize the deleterious effects of excessive regimentation and harmful physical environments imposed by physical plants.

1. A collaborative planning effort should be made to determine the legitimate role of each institution in the correctional system.

2. If the average population of an institution is too large to facilitate the purposes stated in paragraph 2 of Standard 11.1, it should be reduced.

3. Consideration should be given to the abandonment of adult institutions that do not fit the location criteria of paragraph 3 of Standard 11.1.

4. All major institutions for juveniles should be phased out over the 5-year period.

5. The physical environments of the adult institutions to be retained should be modified to achieve the objectives stated in paragraph 4 of Standard 11.1, as to:

a. Provision of privacy and personal space.

b. Minimization of noise.

c. Reduction of sensory deprivation.

d. Reduction in size of inmate activity spaces to facilitate constructive inmate-staff relationships.

e. Provision of adequate utility services.

6. Plant modification of retained institution should also be undertaken to provide larger, more dignified, and more informal visiting facilities; space for formal and informal individual and group counseling, education and vocational training, workshops, recreational facilities, and medical and hospital facilities; and such additional program spaces as may fit the identified purposes of the institution.

7. A reexamination of the purposes and physical facilities of each existing institution should be undertaken at least every 5 years, in connection with continuing long-range planning for the entire correctional system.

Commentary

Most existing major institutions were built with undue emphasis on custodial security and the control of large numbers of inmates. Experience has demonstrated that confinement under these circumstances is more destructive than rehabilitative and that substantial numbers of offenders can be handled more effectively in the community without endangering public safety.

The use of such facilities should be reexamined with a view toward reducing commitment rates and increasing parole release rates. The use of State institutions should be limited to adult offenders who must be incarcerated for immediate or long-range protection of the public. The use of State institutions for juveniles should be phased out, and the responsibility for these offenders transferred to local communities.

The adult institutions should be studied periodically to determine the specific purposes they should serve in the correctional system, and institutions that are badly located or cannot be modified should be abandoned. The remainder should be modified to fit the criteria of Standard 11.1.

The entire process of reexamination should be accomplished through the collaborative planning effort specified in paragraph 1 of Standard 11.1.

References


Related Standards

The following standards may be applicable in implementing Standard 11.2.

2.5 Healthful Surroundings.

2.6 Medical Care.

6.2 Classification for Inmate Management.

7.4 Inmate Involvement in Community Programs.

9.1 Total System Planning.

9.8 Local Correctional Facility Programming.

9.10 Local Facility Evaluation and Planning.

13.2 Planning and Organization.
Standard 11.3

Social Environment of Institutions

Each correctional agency operating juvenile or adult institutions, and each institution, should understand immediately to reexamine and revise its policies, procedures, and practices to bring about an institutional social setting that will stimulate offenders to change their behavior and to participate in their own initiative in programs intended to assist them in reintegrating into the community.

1. The institution's organizational structure should permit open communication and provide for maximum input in the decision-making process.
   a. Inmate advisory committees should be developed.
   b. A policy of participative management should be adopted.
   c. An autonomous independent of institutional administration should receive and process inmate and staff complaints.
   d. Inmate newspapers and magazines should be supported.

2. The correctional agency and the institution should make explicit their correctional goals and programs.
   a. Staff recruitment and training should emphasize attitudes that support these goals.
   b. Performance standards should be developed for programs and staff to measure program effectiveness.

   c. An intensive public relations campaign should make extensive use of media to inform the public of the agency's goals.
   d. The institution administration should be continuously concerned with relevance and change.

3. The institution should adopt policies and practices that will preserve the individual identity of the inmate and normalize institutional settings.
   a. Each offender should be involved in program decisions affecting him.
   b. Offenders should be identified by name and social security number rather than by prison number.
   c. Rules governing hair length and the wearing of mustaches and beards should be liberalized to reflect respect for individuality and cultural and subcultural trends.
   d. Where possible, uniforms should be eliminated and replaced with civilian dress, with reasonable opportunity for individual choice of colors, styles, etc.
   e. Institutional visits should be held in an environment conducive to healthy relationships between offenders and their friends.
   f. Home furlough should be allowed to custodially qualified offenders to maintain emotional involvement with families.
   g. Telephone privileges, including reasonable provisions for long-distance calls, should be extended to all inmates.
   h. No limitation should be imposed upon the amount of mail offenders may send or receive.

4. Each institution should make provision for the unique problems faced by minority offenders and relate these problems into consideration in practices and procedures.
   a. Subcultural groups should be formally recognized and encouraged.
   b. Ethnic studies courses should be provided.
   c. Staff members representative of minority groups in the institution should be hired and trained.
   d. Minority residents of the community should be involved actively in institution programs.

5. The institution should actively develop the maximum possible interaction between community and institution, including involvement of community members in planning and in intramural and extramural activities.

   a. Institutionally based work-release and study-release programs with an emphasis on community involvement should be adopted or expanded.
   b. Ex-offenders and indigenous paraprofessionals should be used in institutional programs and activities.
   c. Joint programming between the institution and the community should be developed, including such activities as drug counseling sessions, Alcoholics Anonymous meetings, recreation programs, theatre groups, and so on.
   d. Offenders should be able to participate in educational programs in the community, and community members should be able to participate in educational programs in the institution.
   e. Police officers should become involved, acquainting offenders with pertinent sections of the law and in general playing a supportive role.
   f. Offenders should have opportunities to travel to and to participate in worship services of local churches, and representatives of the churches should participate in institutional services.
   g. The institution should cultivate active participation of civic groups, and encourage the groups to invite offenders to become members.

6. The institution should apply only the minimum amount of security measures, both physical and procedural, that are necessary for the protection of the public, the staff, and inmates, and its disciplinary measures should emphasize rewards for good behavior rather than the threat of punishment for misbehavior.

   a. Committed offenders initially should be assigned the least restrictive custodial level possible, as determined by the classification process.
   b. Only those mechanical devices absolutely necessary for security purposes should be utilized.
   c. Institutional regulations affecting inmate movements and activities should not be so restrictive and burdensome as to discourage participation in program activities and to give offenders a sense of oppression.
   d. Standard 2.12 concerning Disciplinary Procedures should be adopted, including the promulgation of reasonable rules of conduct and disciplinary hearings and decisions respecting the rights of offenders.
   e. An incentive system should be developed to reward positive behavior and to reinforce desired behavioral objectives.
   f. Security and disciplinary policies and methods should be geared to support the objective of social reintegration of the offender rather than simply to maintain order and serve administrative convenience.

Commentary

The incarcerated person feels alienated, angry, and isolated in an environment which he does not understand and which does not understand him. Often staff members in rural institutions have little sensitivity concerning the problems of persons from large cities. Minority offenders feel that staff, predominantly white, do not understand minority cultures.

The principles governing institutional programs...
and operation must be used in coping with that alienation if there is to be success in recidivism of offenders. This is not to say that the recidivism is due to a lack of fairness, and self-determination. Without involvement in the necessary element of motivation to change is an impossible goal. Coercion may bring about conformity; it often does in institutions. However, high recidivism rates indicate that conformity often disappears in free society where individuals must make decisions about whether or not they wish to commit crime exist, and coercion is not so obvious.

Inmate advisory committees provide an opportunity for airing complaints and presenting suggestions and requests directly to administrators. Administrative policies, rules, procedures, and attitudes can be discussed directly. The committee's principal value lies in involving offenders in matters concerning their welfare.

Recent experience with institutional uprisings emphasizes the importance of an acceptable outlet for group tensions. Many disturbances arise over canteen privileges, laundry, and other ordinary matters. These could be avoided through direct involvement of inmates in administrative decisions regarding such matters. Many benefits can be derived. Inmates can observe responsible decisionmaking by administrators and provide an additional creative input for managers and administrators.

The entire institutional stay should be oriented toward the offender's return to the community and the problem of adjusting to it. At present, both inmates and staff are preoccupied with problems of daily routine and the technical requirements of the institutional process.

Closed institutions tend to close the minds of their captives—both offenders and staff. Institutionally oriented individuals are often reinforced by staff-sponsored values—encouraging repressive and regimented behavior. This repression and regimentation is irrelevant and counterproductive to the offender's problem of adjusting. Inmates are trapped in an institutional lifestyle in the community, where he must be able to make his own decisions.

Institutions must be opened up, and fresh points of view obtained in the decisionmaking process. Policies affecting the entire inmate body should be developed in consultation with representatives of that body. Decisions involving an individual should be made with his participation. Employees should also have a voice, and a participative management policy should be established. This policy could be implemented through committees, practices, and procedures suggests the establishment of an ombudsman office serving both inmates and employees. Open discussion should be encouraged in inmate newspapers and magazines.

A major decision for correctional administrators is whether the program objective is reintegration or punishment. Today correctional agencies generally formulates a single statement of purpose. In institutions, rules are by punitive laws, operate in spatial organized to carry out punishment, and perform their functions in ways that reinforce punitive attitudes.

The issue has been accepted, worked around, ignored, and hidden in a corner too long and is rarely open to public scrutiny. As discussed earlier, the institution currently has contributed to the ineffectiveness of correctional programs.

Without a clear and precise definition of goals, it is unrealistic to expect organizational structures, personnel practices, program resources, and decision-making procedures to accomplish a specific purpose. For this reason, a priority for institutional program must be a clear statement of purpose.

With the adoption of a reintegration philosophy and program, there will be a perceptible outburst and trained to perform accordingly. Effectiveness of staff and programs in implementing the reintegration objective should be measured by performance standards. The policy should be widely publicized to obtain public support and avoid misunderstanding as to institutional goals. The administration should continuously be alert to changes inside and outside the institution that affect the realization of objectives and that may require changes in personnel policies or programs.

A major consideration in institutions is the factor of time and its effects on a committed offender. The longer an offender is exposed to the negative institutional environment, the more likely he is to adjust negatively to the outside world when released. Institutional regimentation produces a loss of individual identity and skills, thus displacing the constructive role he was to play in society. Administrators presuppose that the offender is unable to make worthwhile and beneficial decisions for himself. Initiative and the will to change also are negotiated. Therefore, the offender loses hope, and his world generally revolves around a day-to-day existence based on surviving in the institution until release.

Since self-concept, the way an individual perceives himself, is an essential element in human behavior, it must be considered in the operation of any correctional system. Through the years, prison standards of living, extreme regimentation—inevitably is an effort to equalize appearance and reduce institutional role to a routine that will cause the fewest problems and the least work for the institution. It also serves as an incentive—most aimed at normalizing the institution.

The institution by its very nature interrupts the relationship between the committed offender and his family and friends. The institution helps to destroy these relationships by excessive restrictions on mail and visitation. While serving positive relationships, these restrictions have virtually forced the offender to develop strong ties with other committed offenders in substitute relationships.

A result of this isolated situation is institutional alienation, affecting staff as well as offender. Although staff members leave the institution at the end of their shifts, their lives continue to revolve around it. This creates a narrow view of the values of human existence.

Minority groups have consistently been disproportionally represented in correctional institutions as compared to their enrollment representation in society. Typical of this situation are figures such as those for California (Youth Authority figures, for example, December 31, 1971; 48 percent in institutions are white, 30 percent black, 19 percent Mexican-American, and 3 percent other.

Many correctional institutions do not respond constructively to the social and behavior patterns of minority residents. Most staff members are white, and they are not exposed to the urban or rural life of the groups they are responsible for and the institutional program may be of little value to them. The correctional community must not allow the offender to be cut off from his community. Recent prison disturbances related to the integration of the California prison system are related to a negative self-image.

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Correctional administrators are responsible for what takes place in their institution and are under pressures for the inmates. They must protect the security of the institution and society as well as the prisoners' rights. They often interpret their role in security and discipline as a attainment of uniform compliance with a set of official rules, policies, and regulations regimenting staff and inmate behavior.

Custody, discipline, and security have been recognized as the primary duties of a correctional officer and have taken precedence over other functions. The custodial officer sees his role as guardian of order in the immediate environment through strict and swift enforcement of clear-cut formal rules of behavior. However, corrections experts generally agree that the correctional officer can be the most significant factor in an inmate's attitude toward "treatment." Daniel Glaser believes the correctional officer has the greatest potential of any staff member for positive channels available through which to direct the institution. When security is increased, inmates are under pressure to produce unwillingness on the part of the offender shows an attitude or behavior indicative of a need for increased security. Mechanical devices are placed under a high degree of security, should be tightly controlled.

This destructive cycle should be reversed. Newly committed offenders, instead of automatically being placed under a high degree of security, should be assigned the least restrictive level feasible. Increased custody classification should be imposed only when the offender shows an attitude or behavior indicative of a need for increased security. Mechanical devices for security, now used greatly in excess of actual requirements, should be eliminated wherever possible. Buildings can be modified to incorporate security in less obvious ways. When technical security is necessary, it should not be overpowered and should not be substituted for personal contact between security staff and offender.

Institutional regulations often tightly control the movements of inmates within the institution, as well as placing severe limitations on the hours at which movement may occur. These restrictions may be tightened still further as an official reaction to isolated incidents. The net result in time is an atmosphere of repression reinforced by other practices that accompany such rigid restrictions. This not only arouses feelings of resentment among inmates but also effectively discourages their willingness to participate in institutional programs.

Both security and disciplinary measures in the institution should be designed to support the development of a social environment as normal as possible. This involves the development of positive incentives for inmates to comply with necessary security restrictions and behavioral requirements. The traditional objective of administrative convenience should be a subordinate consideration. When infractions occur, they should be dealt with under the procedures prescribed in Standard 2.12, which are intended to ensure fair decisions arrived at with due respect to the rights of offenders.

References

15. Oswald, Russell G. "What are the Implications for Corrections of the Increasing Proportion of Minority Group Persons among Sentenced Offenders?" in We Hold These Truths, report of the National Conference on Corrections, Williamsburg, Richmond: Virginia Division of Justice and Crime Prevention, 1972.

Related Standards

The following standards may be applicable in implementing Standard 11.3.

2.1-2.18 Rights of Offenders.
6.2 Classification for Inmate Management.
7.2 Marriotting and Coordinating Community Resources.
7.3 Corrections' Responsibility for Citizen Involvement.
7.4 Inmate Involvement in Community Programs.
13.3 Employee-Management Relations.
14.2 Recruitment from Minority Groups.
14.4 Employment of Ex-Offenders.
14.5 Employment of Volunteers.
14.7 Participatory Management.
Standard 11.4  

Education and Vocational Training  

Each institution for juveniles or adults should be equipped with a comprehensive, continuous educational program for inmates. This appraisal should be repeated at least every 3 years.

a. The educational curriculum should be developed with inmate involvement. Individualized and personalized programming should be provided.

b. The educational department should have at least one learning laboratory for basic skill instruction. Occupational education should be correlated with basic academic subjects.

c. The educational institution should provide an opportunity to meet their individual needs and not the needs of the instructor or the institution. Individual programs should be developed in cooperation with each inmate.

d. Individuals should be given a portion of the inmate population.

e. The institution should seek active cooperation in the vocational program.

f. Vocational programs should be selected on the basis of the following factors related to increasing offenders' marketable skills:

(1) Vocational needs analysis of the inmate population.

(2) Job market analysis of existing or emerging occupations.

(3) Job performance or specification analysis, including skills and knowledge needed to acquire the occupation.

(4) Occupational education and training programs should be made relevant to the employment world.

(5) Programs of study about the work world and job readiness should be included in prevocational or orientation courses.

(6) Work sampling and tool technology programs should be completed before assignment to a training program.

(7) Use of vocational skill clusters, which provide the student with the opportunity to obtain basic skills and knowledge for job entry into several related occupations, should be incorporated into vocational training programs.

b. All vocational training programs should have a set of measurable behavioral objectives appropriate to the program. These objectives should comprise a portion of the instructor's performance evaluation.

c. Vocational instructors should be licensed or credentialed under rules and regulations for public education in the State or jurisdiction.

d. Active in-service instructor training programs should provide vocational staff with information on the latest trends, methods, and innovations in their fields.

e. Class size should be based on a ratio of 12 students to 1 teacher.

f. Equipment should require the same range and level of skills to operate as that used by private industry.

g. Trades advisory councils should involve labor and management to assist in the ongoing growth and development of the vocational program.

h. Private industry should be encouraged to establish training programs within the residential facility to meet certain numbers of jobs to graduates from these training programs.

i. The institution should seek active cooperative programs and community resources in vocational fields with community colleges, federally funded projects such as Work Corps, Neighborhood Youth Corps, and Manpower Development Training Act programs, and private community action groups.

j. On-the-job training and work release or work furloughs should be used to the fullest extent possible.

k. An active job placement program should be established to help residents find employment related to skills training received.

l. Features applicable to both educational and vocational training programs should include the following:

(1) Emphasis should be placed on programmed instruction, which allows maximum flexibility in scheduling, enables students to proceed at their own pace, gives immediate feedback, and permits individualized instruction.

(2) A variety of instructional materials— including audio tapes, teaching machines, books, computers, and television—should be used to stimulate individual motivation and interest.

(3) Selected offenders should participate in instructional roles.
d. Community resources should be fully utilized.

e. Correspondence courses should be incorporated into educational and vocational training programs to make available to inmates specialized instruction that cannot be obtained in the institution or the community.

A credit should be awarded for educational and vocational programs equivalent to or the same as that associated with these programs in the free world.

Commentary

The role, quality, and relevance of educational programs in major institutions have not kept step with the social, economic, political, and technological changes and expectations of society. Traditionally, education is only one part of a larger program in the correctional setting. The role, quality, and relevance of educational programs in this setting have been shown to be crucial for offender success after release.

Inmates typically lack marketable skills for social, economic, and employment reasons. In institutions they are trained the same as that associated with these general categories of elementary or high school classes. Their employment and success in the community would depend on the availability of community resources such as employment, training, and other representatives of business and labor. Vocational training resources of the community should be used whenever possible.

A job placement service should help inmates find jobs in the community related to the training they have received. A furlough or work-release program should be established to place inmates in outside employment that they can keep while in prison.

Both educational and vocational training programs should be modernized. A widespread technique is the use of individually programmed instruction allowing the student to progress at a suitable pace and providing immediate feedback. This approach has been tested by the Rehabilitation Research Foundation in Alabama, with apparently successful results.

A variety of instructional materials should also be used. Additional flexibility should be provided by the use of classroom and correspondence, and other media.

For offenders lacking skills in clerical work, the use of individually programmed instruction, supplemented by in-person instruction given in the institution, would be beneficial.

Credit for the completion of educational and vocational programs should be considered as part of the educational opportunities. The use of selected offenders in instructional roles, such as the preparation of educational and training materials, can give them a sense of personal satisfaction and self-esteem. Their empathy with fellow offenders can create an effective bond that facilitates the learning process.

Development of cooperative programs involving community resources should be characteristic of programs that prepare for a job in the future. A model for such a program has been designed and tested in the state of Georgia. A cooperative arrangement between the Department of Community Colleges and colleges and others should be established to allow offenders and ex-offenders a wide variety of academic, technical, and vocational opportunities.

References


Related Standards
The following standards may be applicable in implementing Standard 11.4.
2.9 Rehabilitation.
6.1 Comprehensive Classification Systems.
7.4 Inmate Involvement in Parole procedures.
12.6 Community Services for Parolees.

Standard 11.5
Special Offender Types

Each correctional agency operating major institutions, and each institution, should reexamine immediately its policies, procedures, and programs for the handling of special problem offenders—the addict, the recalcitrant offender, the emotionally disturbed, and those associated with organized crime—and implement substantially the following:

1. The commitment of addicts to correctional institutions should be discouraged, and correctional administrators should actively press for the development of alternative methods of dealing with addicts, preferably community-based alternatives. Recognizing, however, that some addicts will commit crimes sufficiently serious to warrant a formal sentence and commitment, each institution must experiment with and work toward the development of institutional programs that can be related eventually to community programs following parole or release and that have more promise in dealing effectively with addiction.

a. Specially trained and qualified staff should be assigned to design and supervise drug offender programs, staff orientation, involvement of offenders in working out their own programs, and coordination of institutional and community drug programs.

b. Former drug offenders should be recruited and trained as change agents to provide program credibility and influence offenders' behavior patterns.

c. In addition to the development of social, medical, and psychological information, the classification process should identify motivations for change and realistic goals for the reintegration of the offender with a drug problem.

d. A variety of approaches should provide flexibility to meet the varying needs of different offenders. These should include individual counseling, family counseling, and group approaches.

e. Programs should emphasize "alternatives" to drugs. These should include opportunities to affiliate with cultural and subcultural groups, social action alliances, and similar groups that provide meaningful group identification and new social roles which decrease the desire to rely on drugs. Methadone and other drug maintenance programs are not appropriate in institutions.

f. The major emphasis in institutional programs for drug users should be the eventual involvement of the users in community drug treatment programs upon their parole or release.

g. Because of the inherent limitations and past failure of institutions to deal effectively
with drug addiction, research and experimentation should be an indispensable element of institutional drug treatment programs. Priorities include:

1. Development of techniques for the evaluation of correctional therapeutic communities.
2. Development of methods for surveying inmates to determine the extent of drug abuse and treatment needs.
3. Evaluation of program effectiveness with different offender types.

2. Each institution should make special provisions other than mere segregation for inmates who are serious behavior problems and an immediate danger to others.

a. The classification process should be used to attempt to obtain an understanding of the recalcitrant offender and to work out performance objectives with him.

b. A variety of staff should be provided to meet the different needs of these offenders.

Staff selections should be made through in-depth interviews. In addition to broad education and experience backgrounds, personal qualities of tolerance and flexibility are needed.

2. Continuous on-the-job staff evaluation and administrative flexibility in staff selection are mandatory.

3. Training programs designed to implement new knowledge and techniques are mandatory.

c. Recalcitrant offenders who are too dangerous to be housed in the general institutional population should be housed in a unit of not more than 26 individual rooms providing safety and comfort.

- Good surveillance and perimeter security should be provided to permit staff time and attention to be concentrated on the offenders' problems.

- No individual should remain in the unit longer than is absolutely necessary for his security.

- Wherever possible the inmate of the special unit should participate in regular recreation, visiting, and other institutional programs.

4. Tranquillizers and other medication should be used only under medical direction and supervision.

5. Procedures should be established to monitor the programs and services for recalcitrant offenders and evaluation and research should be conducted by both internal staff and outside personnel.

6. Each correctional agency should provide for the psychiatric treatment of emotionally disturbed offenders. Psychotic offenders should be transferred to mental health facilities. Correctional institution treatment programs must attempt to deal with the under supervision and direction of psychiatrists.

a. Program policies and procedures should be clearly defined and specified in a plan outlining a continuing line of diagnosis, treatment, and aftercare.

b. A diagnostic report including a physical examination, medical history, and tentative diagnosis of the nature of the emotional disturbance should be developed. Diagnosis should be a continuing process.

c. There should be a program plan for each offender based on diagnostic evaluation, assessment of current needs, priorities, and strengths; and the resources available within both the program and the correctional system. The plan should specify use of specific activities for the particular group, growth and family therapy. Need for medication, educational and occupational approaches, and recreational therapy should be identified. The plan should be evaluated through frequent interaction between diagnostic and treatment staff.

d. All psychiatric programs should have access to a qualified neuropathologist and essential radiological and laboratory services, by contractual or other agreement.

e. In addition to medical services, psychiatric programs should provide for education, occupational therapy, recreation, and psychological and social services.

f. On transfer from diagnostic to treatment status, the diagnostic report, program description, and all case material should be reviewed within 2 working days.

Within 4 working days of the transfer, case management responsibility should be assigned and a case conference held with all involved, including the offender. At this time, treatment and planning objectives should be developed in concert with the diagnostic program prescription.

h. Cases should be reviewed each month to reassess original treatment goals, evaluate progress, and modify program as needed.

i. All staff responsible for providing services in a living unit should be integrated into a multidisciplinary team and should be under the direction and supervision of a professionally trained staff member.

j. Each case should have one staff member (counselor, teacher, caseworker, or psychologist) assigned to provide casework services.

The psychologist or caseworker should provide intensive services to those offenders whose mental or emotional disabilities determine the treatment.

k. Reintegration of the offender into the community or program from which he came should be established as the primary objective.

l. When an offender is released from a psychiatric treatment program directly to the community, continued involvement of a trained therapist during the first 6 months of the patient's reintegration should be provided, at least on a pilot basis.

3. Each correctional agency and institution to which convicted offenders associated with organized crime are committed should adopt special policies governing their management during the time they are incarcerated.

a. Because of the particular nature of organized crime and the overriding probability that such offenders cannot be rehabilitated, primary recognition should be given to the incapacitative purpose of incarceration in these cases.

b. Convicted offenders associated with organized crime should not be placed in general institutional populations containing large numbers of younger, more manageable offenders.

c. Education and vocational training would appear inappropriate for these offenders, and their "program" should involve primarily assignment to prison industries or institutional maintenance, particularly where they are unlikely to have contact with impressionable offenders.

4. As long as drug users are sentenced and committed to institutions, correctional agencies and institutions must attempt to devise programs that will deal with the problem and provide the basis for later treatment in a more appropriate community setting. Staff, including ex-offenders, should be especially selected and trained to work in drug programs. Every institutional resource with potential usefulness should be brought to bear. An effort must be made to align drug users with general programs wherever they can substitute for the drug subculture. Because no solutions have yet been developed that provide effective treatment, in corrections, the correctional agency and institution should encourage initiative and innovation on the part of persons operating these programs. Research and experimentation should be a fundamental feature of every drug treatment program.

The Recalcitrant Offender

This offender may be found in virtually every major institution. He poses a constant danger to other inmates and the staff, and also to the public, because of repeated attempts to escape from the institution. While no effort is made to attempt to control or influence him. He reacts with exceptional hostility to the slightest request for reasonable behavior. He frequently encourages other inmates to behave rebelliously and resorts to physical intimidation to achieve his own ends.

Physical control of these offenders is essential because they are a threat to themselves and others. The belligerence and hostility that these offenders manifest must be diluted as much as possible. This can be done by breaking down the larger group of recalcitrant offenders into smaller groups, instituting one-to-one counseling, and increasing the staffing level. Some form of reality therapy may be appro
prise because it is more easily understood by the offender. It may be necessary to place such individuals on varying amounts of medication, either tranquilizers or stimulants. This action should be taken only on a very selective basis by a qualified psychiatrist. As treatment progresses, medication should be withdrawn gradually, although privately administered medication may continue when the individual returns to the community.

Higher staff ratios, intensive counseling services, and special individual housing will involve much higher costs. The principal effort must be to improve all programs so that these individuals can be handled in the general institution population. This may involve reassignment of staff functions throughout the institution and reallocation of resources.

Emotionally Disturbed Offenders

These offenders are found in most institutions for juveniles or adults but in much fewer numbers than is popularly thought. They are committed to correctional rather than mental institutions because of a diagnosis or finding that they are not sufficiently disturbed to require commitment to a mental hospital. Although these offenders are expected to receive psychiatric treatment (and this often is a factor in court's decision to commit), such facilities and resources have been nonexistent in correctional facilities until the past two decades and still are so in most institutions.

As psychiatric services for diagnostic purposes became available in some correctional systems, the response of the correctional systems was to transfer the most seriously disturbed offenders to mental institutions. When this was motivated by the belief that a large proportion of highly disturbed offenders were prone to violent and destructive behavior and highly oriented toward escape. However, as State mental hospitals developed “open institutions,” they began to discourage admission of disturbed offenders for whom more secure facilities were required. The result was that few offenders in need of psychiatric treatment were accepted or satisfactorily treated by mental hospitals. Attempts to share treatment responsibility for mentally disturbed offenders between corrections and mental health agencies have seldom been satisfactory.

These factors led many State correctional systems to develop their own diagnosis and treatment resources. Two patterns developed. The first approach was to identify a discrete living unit within a larger institution as an intensive treatment center. The second was to develop a single-purpose institution for all offenders deemed in need of special psychiatric services. The single psychiatric facility was more efficient in terms of pooling psychiatric resources, maintaining a hospital treatment theme, and providing clear program direction. It suffered because of isolation.

Experience has shown that both the specialized treatment unit and the single-purpose psychiatric institution have disadvantages. Some basic principles must be recognized.

1. High-level administrative support is necessary.
2. The program must be able to handle disturbed offenders who display aggressive or assaultive behavior.
3. Specific policies and procedures must assure close contact between the psychiatric program and the larger system it serves.
4. Costs related to the severely disturbed offender may range from $30 to $75 per day. Unfortunately, the alternative is inadequate service or none at all. Provision of adequate services means that there is a large investment of staff time in these offenders with a consequent loss of service to other offenders. The additional cost is a continual recycling of untreated, disturbed individuals in and out of the system.

The correctional institution should not attempt to treat the psychiatric but must persist in efforts to persuade mental health agencies to accept him for care and treatment. The institutional program for the emotionally disturbed should be under the direct supervision of psychiatric personnel, and the usual standards and procedures of that field should be adopted. Associated treatment personnel should be organized into teams and particularly intensive services be provided. Arrangements for the continued treatment of the disturbed offender after his release into the community should be a primary consideration.

Offenders Associated with Organized Crime

Chapter 5, Sentencing, provides for extended terms up to 25 years for the convicted offender who is associated with organized crime, for the primary purpose of incapacitating him for the commission of further crimes. Because of the particular nature of organized crime and the substance it represents, it is highly improbable that such offenders can be rehabilitated, and this circumstance must be recognized realistically in institutional policies and practices.

Such persons sentenced to confinement should be placed in institutions or institutional housing with older, more confirmed criminals. They should not be placed among younger, less sophisticated, and more impressionable men. Educational and voca-

tional training programs, as well as most related services, would appear inappropriate. Instead, offenders who come from the world of organized crime should be assigned to prison industries or to institutional maintenance assignments where they can be kept occupied constructively. They should not be considered eligible for community-based programs or other activities taking them into the community.

The problem of structuring the incarceration of such offenders so that they will not have communication with their outside affiliations is inherently difficult and probably impossible. This would require that they be kept in total isolation so that they could not send messages out through inmates being released, corrupt employees, or correspond or visit with family, friends, or attorneys. This would mean a denial of the constitutional rights to which they have the same entitlement as other offenders. In this respect, communication between the incarcerated criminal and his outside associates will continue to be a problem to institutions and society.

References


Related Standards

The following standards may be applicable in implementing Standard 11.5.

2.1–2.18 Rights of Offenders.
5.3 Sentencing to Extended Terms.
6.1 Comprehensive Classification Systems.
6.2 Classification for Inmate Management.
14.11 Staff Development.
15.3 Evaluating the Performance of the Correctional System.
Standard 11.6
Women in Major Institutions

Each State correctional agency operating institutions to which women offenders are committed should reexamine immediately its policies, procedures, and programs for women offenders, and make such adjustments as may be indicated to make them more relevant to the problems and needs of women.

1. Facilities for women offenders should be constructed as an integral part of the overall corrections system, rather than an isolated activity or the responsibility of an unrelated agency.

2. Comprehensive evaluation of the women offender should be developed through research. Each State should determine differences in the needs between male and female offenders and implement differential programming.

3. Appropriate vocational training programs should be implemented. Vocational programs that promote dependency and exist solely for administrative ease should be abolished. A comprehensive research effort should be initiated to determine the capabilities and abilities of the female institutional population. This information should be coordinated with labor statistics predicting job availability. From data so obtained, creative vocational training should be developed which will provide a woman with skills necessary to allow independence.

4. Classification systems should be investigated to determine their applicability to the female offender. If necessary, systems should be modified or completely restructured to provide information necessary for an adequate program.

5. Adequate diversionary methods for female offenders should be implemented. Community programs should be available to women. Special attempts should be made to create alternative programs in community centers and halfway houses or other arrangements, allowing the woman to keep her family with her.

6. State correctional agencies with such small numbers of women inmates as to make adequate facilities and programming uneconomical should make every effort to find alternatives to imprisonment for them, including parole and local residential facilities. For those women inmates for whom such alternatives cannot be employed, contractual arrangements should be made with nearby States with more adequate facilities and programs.

7. As a 5-year objective, male and female institutions of adaptable design and comparable populations should be converted to coeducational facilities.

b. Programs within the facility should be open to both sexes.

c. Staff of both sexes should be hired who have interest, ability, and training in coping with the problems both male and female offenders. Assignments of staff and offenders to programs and activities should not be based on the sex of either.

Commentary

The problem of female offenders has reached critical proportions. The neglect that has characterized female corrections becomes more alarming and more visible in light of the rapidly changing role of women in our society.

The criminal justice system no longer should ignore the inequities providing differential sentencing of women on certain charges, inadequate institutional programming, and lack of available research.

Women's institutions, owing to their relatively small population and lack of influence, have been considered an undifferentiated part of the general institutional system and therefore have been subjected to male-oriented facilities and programming. Special requirements of the female offender have been totally ignored. Male domination often extends to administration of the institution.

Movement toward integrating men's and women's institutions has been very slow. There is, however, a change in the administration. Twenty-four of the 54 State women's facilities operating in 1966 were headed by women. In 1971, only 8 of the 34 State institutions for women offenders listed in the American Correctional Association's directory were headed by men.

The majority of women imprisoned are still incarcerated for crimes such as larceny, forgery, fraud, prostitution, embezzlement, drunkenness, and drug violations. Therefore, it is alarming that attempts at differential programming have concentrated almost solely on male offenders. The need for alternatives to incarceration for women is essential.

A female offender often must allow her children to be placed in foster homes or child care agencies. A survey of 41 Pennsylvania county correctional services for women conducted by the American Association of University Women indicated that approximately 8 percent of institutionalized women have children for whom they are responsible. In most institutions, the woman offender is not allowed to participate in the decision-making process that determines the custody of her children.

Women in American society are taught to define themselves in terms of men and therefore depend on assistance. In institutions, intensive group counseling should focus on self-definition and self-realization. Included in such an approach should be the acquisition of social and coping skills—including family life education and consumer training—that will prepare the woman to deal with society without reliance on a welfare system or a temporary male guardian.

Of primary concern in this national study is the almost total lack of meaningful programming. Work assignments serve institutional and systemswide needs.

Women do the laundry, sewing, and other "female" tasks for the correctional system. Such programming does nothing to prepare a woman for employment and in fact actually increases her dependency. According to Edith Flynn:

Rehabilitative programs aimed at the achievement of personal and vocational self-sufficiency would seem to be a better bet for the development of an effective operational treatment theory than futile attempts to produce a more successful adjustment in terms of the woman's dependency on significant others.

Institutional programs that provide a single-sex social experience contribute to maladaptive behavior in the institution and in the community. In sexually segregated facilities it is very difficult for offenders, particularly juveniles and youths, to develop positive, healthy relationships with the opposite sex. A coeducational institution would provide a more normal situation in which inmates could evaluate their feelings about themselves and others and establish their identity in a more positive way.

The correctional objectives, methodology, programs, and needs essentially are no different for females than for concerns in men's prisons is the almost total lack of meaningful programming. Work assignments serve institutional and systemswide needs.

Cocohuman programs such as those in the Ventura and Los Guillucos schools of the California Youth Authority have demonstrated clearly that a fully integrated system based on all offenders' needs. The Greenland program can be an invaluable tool for exploring and dealing with social and emotional problems related to identity conflicts that many offenders experience.

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Such States should consolidate their requirements and programs for women prisoners through inter-
state or regional contracts. Several States are now using such arrangements.

One major problem in corrections is the relatively small proportion of women employed in the field. It will be difficult to change staffing patterns as long as institutions are planned and operated for only one sex. Developing coeducational institutions are planned and operated for only one state or regional contracts.

It will serve to improve programs, but also will require using such arrangements.

References

Related Standards
The following standards may be applicable in implementing Standard 11.6.

2.1.2.18 Rights of Offenders.
6.1 Comprehensive Classification Systems.
14.3 Employment of Women.
16.4 Unifying Correctional Programs.

Standard 11.7
Religious Programs

Each institution should immediately adopt policies and practices to insure the development of a full range of religious programs.

Program planning procedures should include religious history and practices of the individual, to maximize his opportunities to pursue the religious faith of his choice while confined. The chaplain should play an integral part in institutional programs.

To prevent the chaplain from becoming institutionalized and losing touch with the significance of religion in free society, sabbaticals should be required. The chaplain should return to the community and participate in religious activities during the sabbatical. Sabbatical leave also should include further studies, including study of religions and sects to the chaplain but existing in his institution. Funds should be provided for this purpose.

The chaplain should locate religious resources in the civilan community for those offenders who desire assistance on release.

The correctional administrator should develop an adaptive attitude toward the growing numbers of religious sects and beliefs and provide all reasonable assistance to their practice.

Community representatives of all faiths should be encouraged to participate in religious services and other activities within the institution.

Commentary

Religion in the institutional setting has suffered from a lack of interest and participation by staff and offenders.

A review of recent corrections literature reveals virtually no information on innovative religious programs. Brief attention is given to the number of chaplains and the physical facilities necessary for worship, but no attempt is made to grapple with the changing role of the chaplain in the institution. With the reintegration philosophy, the need for change becomes apparent.

Long ago, the issue of a possible conflict in institutions with the principle of "separation of church and state" was resolved. The constitutional right to freedom of religion requires that those denied free access to the religious worship of their choice by virtue of their confinement by the state must be afforded all reasonable assistance in pursuing their faith while confined. In fact, the principle has been established that the state must maximize the exercise of individual rights in this regard because of the involuntary restrictions on movement and association it enforces.

Traditionally institutions have provided the services of three chaplains, Protestant, Roman Catholic, and Jewish. Owing to the difficulty in providing chaplains for every faith that might be represented in
an institutional population, the chaplains were directed to provide ecumenical services so that all individuals could worship in their own way. Until recently, this resolution proved to be reasonably satisfactory.

An increase in the number of confined persons identifying with religious groups or sects associated with ethnic, cultural, or subcultural groups and not affiliated with the three major faiths has raised questions about the efficacy of this traditional resolution. While having chaplains for all faiths probably still is not feasible, the increased diversity increases the responsibility of existing chaplains and administrators to provide all reasonable assistance to satisfy this diversity. Purchase of religious materials, food selection, and other practices must reflect existing needs to the extent possible. Inclusion of community representatives of various faiths in institutional programs should be pursued. In short, all reasonable efforts must be made to accommodate varying religious practices and beliefs.

References


Related Standards

The following standards may be applicable in implementing Standard 11.7.

2.16 Exercise of Religious Beliefs and Practices

6.1 Comprehensive Classification Systems

7.4 Inmate Involvement in Community Programs

Standard 11.8

Recreation Programs

Each institution should develop and implement immediately policies and practices for the provision of recreation activities as an important resource for changing behavior patterns of offenders.

1. Every institution should have a full-time trained and qualified recreation director with responsibility for the total recreation program at that facility. He also should be responsible for integration of the program with the total planning for the offender.

2. Program planning for every offender should include specific information concerning interests and capabilities related to leisure-time activities.

3. Recreation should provide ongoing interaction with the community while the offender is incarcerated. This can be accomplished by bringing volunteers and community members into the institution and taking offenders into the community for recreational activities. Institutional restriction in policy and practice which bars use of community recreational resources should be relaxed to the maximum extent possible.

4. The range of recreational activities to be made available to inmates should be broad in order to meet a wide range of interests and talents and facilitate the development of the constructive use of leisure time that can be followed when the offender is reintegrated into the community. Recreational activities to be offered inmates should include music, athletics, painting, writing, drama, handicrafts, and similar pursuits that reflect the legitimate leisure-time activities of free citizens.

Commentary

Historically recreation activities in major institutions served only an incidental purpose. Usually most forms of play were prohibited. And prior to World War II, with punishment as the predominant function of the institution, prison administrators found it difficult to justify recreation programs. Prisons offered essentially three forms of recreation: the yard, the library, and the auditorium.

In more recent years committed offenders have been allowed to participate in a variety of recreational activities. Such activities have been accepted as a means of alleviating the monotony of prison life and as a safety valve to release pent-up emotions. Recreation has gained added significance as a potential resource for helping offenders face personal problems and learn new behavior patterns. Dr. Karl Menninger, in The Crime of Punishment, has stated:

The proper direction of recreation and play is both corrective and preventive as far as mental health is concerned. We do not understand play scientifically, but we
know it is very important and must be taken seriously. A balance of work and play is what men live by, it makes it possible for us to live, love and control our aggressive tendencies and thus enables us to have good mental health.

Correctional institutions have an obligation to assist inmates by providing programs that will enable them to develop skills and attitudes conducive to creative use of leisure time.

References

Related Standards
The following standards may be applicable in implementing Standard 11.8:
2.5 Healthful Surroundings.
6.1 Comprehensive Classification Systems.
6.2 Classification for Inmate Management.
7.4 Inmate Involvement in Community Programs.
13.5 Evaluating the Performance of the Correctional System.

Standard 11.9
Counseling Programs
Each institution should begin immediately to develop planned, organized, ongoing counseling programs in conjunction with the implementation of Standard 11.3, Social Environment of Institutions, which is intended to provide a social-emotional climate conducive to the motivation of behavioral change and interpersonal growth.

1. Three levels of counseling programs should be provided:
   a. Individual, for self-discovery in a one-to-one relationship.
   b. Small group, for self-discovery in an intimate group setting with open communication.
   c. Large group, for self-discovery as a member of a living unit community with responsibility for the welfare of that community.

2. Institutional organization should support counseling programs by coordinating group living, educational, work, and recreational programs to maintain an overall supportive climate. This should be accomplished through a participative management approach.

3. Each institution should have a full-time counseling supervisor responsible for developing and maintaining an overall institutional program through training and supervising staff and volunteers. A bachelor's degree with training in social work, group work, and counseling psychology should be required. Each unit should have at least one qualified counselor to train and supervise nonprofessional staff. Trained ex-offenders and paraprofessionals with well-defined roles should be used.

4. Counseling within institutions should be given high priority in resources and time.

Commentary
The term "counseling" has been used to describe a wide range of correctional activities. It is used here to mean planned use of positive, interpersonal relationships through which verbal techniques can be applied to promote adjustment. Activities leading to interpersonal maturity of the offender should be differentiated from routine advice. Conditions in which this growth may take place should be established.

More specifically, counseling programs should provide a variety of opportunities for offenders based on their individual needs as determined by the individual himself and competent differential diagnosis. Any counseling experience should offer the opportunity to ventilate troublesome feelings verbally and to develop feelings of self-esteem by being treated as a worthwhile person whose opinions are respected. Such an experience may help alter stereotyped perceptions of all authority figures as cold, hostile, rejecting, demanding, and autocratic.
Group counseling experiences give offenders the chance to observe that others share similar problems and that these problems can be resolved. Group sessions also allow experimentation with new social behaviors and roles in a nontreatment setting. They provide feedback to the individual on how he is perceived by his peers and how his own comments and behaviors affect the way in which others view and treat him. Finally, all offenders should be given the opportunity to interact in counseling situations with members of the outside world, including family, friends, and volunteers, to humanize and normalize the institutional experience as much as possible.

Offenders' social and emotional adjustments frequently suffer from very limited and often damaging interpersonal experiences. Conflicts in the struggle to resolve problems of identity and interpersonal relationships with others result in frustration and stress. These pressures frequently produce anger, hostility, and aggressive behavior and are major contributing factors to delinquency and crime.

The cost of implementing a good counseling program can be kept low by selecting a highly competent and motivated staff for counseling duties. Minor alterations can convert portions of living units to counseling rooms. Some equipment such as tape recorders and videotape for feedback purposes also would be helpful.

References

Related Standards
The following standards may be applicable in implementing Standard 11.9.

6.2 Classification for Inmate Management.
6.4 Employment of Ex-Offenders.
14.4 Employment of Volunteers.
14.7 Participatory Management.

Standard 11.10
Prison Labor and Industries

Each correctional agency and each institution operating industrial and labor programs should take steps immediately to reorganize their programs to support the reintegrative purpose of correctional institutions.

1. Prison industries should be diversified and job specifications defined to fit work assignments to offenders' needs as determined by release planning.
2. All work should form part of a designed training program with provisions for:
   a. Involving the offender in the decision concerning his assignment.
   b. Giving him the opportunity to achieve on a productive job to further his confidence in his ability to work.
   c. Assisting him to learn and develop his skills in a number of job areas.
   d. Instilling good working habits by providing incentives.
3. Joint bodies consisting of institution management, inmates, labor organizations, and industry should be responsible for planning and implementing a work program useful to the offender, efficient, and closely related to skills in demand outside the prison.
4. Training modules integrated into a total training plan for individual offenders should be provided. Such plans must be periodically monitored and flexible enough to provide for modification in line with individuals' needs.
5. Where job training needs cannot be met within the institution, placement in private industry on work-furlough programs should be implemented consistent with security needs.
6. Inmates should be compensated for all work performed that is of economic benefit to the correctional authority or another public or private entity. As a long-range objective to be implemented by 1978, such compensation should be at rates representing the prevailing wage for work of the same type in the vicinity of the correctional facility.

Commentary

Work in prisons serves a variety of purposes that often are in conflict with each other. Its functions have been to punish and keep the committed offender busy, to promote discipline, to maintain the institution, to defray some operating costs of the prison, and to provide training and wages for the offender. To accomplish any one function, it has been necessary to sacrifice one or more of the others. Unfortunately, the job training function has not had the highest priority.

Until 30 years ago American prisons were busy places. In the late 1920's and early 1930's Federal
and State laws were passed to eliminate alleged unfair competition arising from the sale of prisonmade goods. From this blow the prisons have not recovered. The result has been that only a few offenders in institutions have productive work, while the others are idle or engaged in trying to look busy at routine housekeeping tasks.

The most prevalent system of prison industries today is state use. Under this system, the use or sale of prisonmade products is limited to public agencies. This system is designed to avoid direct competition with free enterprises and labor. It often is inefficient. Machinery is not modern, and the plant is overstaffed with inmate workers who produce inferior goods at excessive costs.

Recent developments indicate that organized labor and other business interests may no longer be concerned about prison products competing in the free market. There is evidence that free labor and industry are willing to become involved in planning, updating, and evaluating prison industry programs as well as cooperating in work release, job training, and job placement. Such cooperation should be pursued actively.

Prison industrial and employment programs should be reorganized to provide skills and work experience related to the kind of work offenders will do after they are released. This involves upgrading the training involved in these programs and modernizing the machinery. Institutional industries should undertake the manufacture of products that are also manufactured outside by companies that might be expected to hire offenders when they are released. Such companies may be persuaded to establish factories branches in institutions and thus provide a continuum of employment from institution to free community.

Eventually, hopefully by 1978, inmates performing work of economic benefit to the State or to another public or private entity should be compensated at prevailing wages for the same work in the area surrounding the institution. The ability of correctional agencies to implement this objective will depend on the development of more efficient institutional industries, better training for inmates, more skilled supervision, and motivational techniques. Achievement of this goal might be accompanied by the establishment of an obligation on the part of the inmate to reimburse the State for a reasonable share of its cost in maintaining him.

References

Related Standards
The following standards may be applicable in implementing Standard 11.10.
6.2 Classification for Inmate Management
7.4 Inmate Involvement in Community Programs
13.1 Professional Correctional Management
13.2 Planning and Organization
15.5 Evaluating the Performance of the Correctional System
16.13 Prison Industries

Chapter 12
Parole
Almost every offender who enters a correctional institution is eventually released. The only relevant questions are: When? Under what conditions?

Most offenders released from a correctional institution re-enter the community on parole. In 1970, the latest year for which complete data are available, almost 83,000 felons left prison; 72 percent of them were released by parole. Nineteen percent were released by discharge and 9 percent by other forms of conditional release. Parole is the predominant mode of release for prison inmates today and it is likely to become even more so. This trend can be highlighted by comparing the figures for 1970 above with those from 1966, when 88,000 felons left prison; 61 percent were released by parole, 34 percent by discharge, and 5 percent by other forms of conditional release.

A 1965 study by the President's Commission on Law Enforcement and Administration of Justice (the Crime Commission) showed that slightly more than 112,000 offenders were then under parole supervision. By 1975, the Commission estimated, this number would be more than 142,000.

These figures include only those offenders sentenced to State prisons. They do not include youth committed to juvenile institutions, virtually all of whom are released under some form of supervision at the rate of about 60,000 a year.

None of these figures include persons sentenced to jail, workhouses, and local institutions. More than one million persons were released from such facilities in 1965, according to the Crime Commission. It is in these facilities that some of the most significant gaps in parole services exist.

The National Survey of Corrections made for the Crime Commission found that almost all misdemeanants were released from local institutions and jails without parole. Of a sample of 212 local jails, the survey found, 62 percent had no parole programs at all. In the 81 jails that offered parole, only 8 percent of the inmates actually were released through this procedure.

There is little reason to believe the situation has changed radically since 1965, although efforts have been made in several jurisdictions to examine parole service policies. By 1975, the Commission estimated, this number would be more than 142,000.

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None of these figures include persons sentenced to jail, workhouses, and local institutions. More than one million persons were released from such facilities in 1965, according to the Crime Commission. It is in these facilities that some of the most significant gaps in parole services exist.

The National Survey of Corrections made for the Crime Commission found that almost all misdemeanants were released from local institutions and jails without parole. Of a sample of 212 local jails, the survey found, 62 percent had no parole programs at all. In the 81 jails that offered parole, only 8 percent of the inmates actually were released through this procedure.

There is little reason to believe the situation has changed radically since 1965, although efforts have been made in several jurisdictions to examine parole service policies. By 1975, the Commission estimated, this number would be more than 142,000.
tend parole services to jail populations. The need for parole services is acute at the misdemeanor level.

Parole has been attacked as leniency, but its proponents argue that it is both humanitarian and desirable. In addition, it is a necessary evil. It allows the public to be protected from parolees who pose a threat.

Delinquency occurs largely as a result of the circumstances surrounding the offender. In the past, parole boards have made decisions based on the circumstances of the crime and the nature of the offender. However, recent studies have shown that parole decisions are often based on the characteristics of the offender himself.

Arguments on two grounds. First, virtually everyone who is sentenced to prison is expected to serve most of his sentence. Thus arguments are made that the parole system is a way of releasing prisoners back into society. Second, parole boards have the power to make decisions about when an offender is released.

Parole has been attacked as leniency, but its proponents argue that it is both humanitarian and desirable. In addition, it is a necessary evil. It allows the public to be protected from parolees who pose a threat.

Table 12.1. Number and Types of Releases in 1964 and Median Time Served

<table>
<thead>
<tr>
<th>Type of Release</th>
<th>Number</th>
<th>Median Time Served</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discharge</td>
<td>22,883</td>
<td>20.1 months</td>
</tr>
<tr>
<td>Parole</td>
<td>42,538</td>
<td>21.1 months</td>
</tr>
</tbody>
</table>


The history of parole for juvenile offenders is different from that for adults. For juveniles, parole is usually defined as the release of a juvenile from prison. In general, juvenile parole is granted by a parole board, usually composed of judges and other professionals. The criteria for parole are often based on the juvenile's progress in prison and the likelihood of his behavior in the community.

Recent developments in juvenile parole procedures have included the use of parole officers in the community to monitor parolees and the use of parole boards to make decisions about parole.

Juvenile parole officers are responsible for ensuring that parolees comply with the terms of their parole. They are also responsible for providing support and guidance to parolees as they return to their communities.

DEFINITION AND HISTORY

The classic definition of parole was provided in the Attorney General's Survey of Release Procedures in 1939 as "release of an offender from a penal or correctional institution, after he has served a portion of his sentence, under the continued custody of the state and under conditions that permit him to return to the community."

The procedure is called "conditional" parole. Although some jurisdictions impose limitations on parole, offenders generally can be released on parole if they meet certain criteria. The advantages of parole are that it allows an offender to serve in the community and to receive services to help him adjust.

Inmates released on parole in the United States in 1964 varied in the type of parole. In some cases, parolees were released on conditional parole. In other cases, parolees were released on parole with the condition that they report regularly to a parole officer.

The history of parole for juvenile offenders is different from that for adults. For juveniles, parole is usually defined as the release of a juvenile from prison. In general, juvenile parole is granted by a parole board, usually composed of judges and other professionals. The criteria for parole are often based on the juvenile's progress in prison and the likelihood of his behavior in the community.

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of the adult offender. School attendance and vocational training programs are much more likely to be a central feature of programs for juveniles, while employment is the major concern for adult offenders. The two concerns might be curiously related. But no one may be legally required to work, while school attendance is compulsory for juveniles. In fact, chronic truancy is a juvenile "crime." Juvenile and adult parole services usually are not organized similarly. The National Survey of Correctional Facilities showed that in 1965 parole boards decided on the release of juveniles in only two States, although such boards released adults almost everywhere in the country.

SENTENCING STRUCTURES

Any parole system and set of standards designed to improve its functioning can be understood and evaluated only in terms of the structure in which it exists. All parole systems, no matter how autonomous, are part of a larger process—not only of corrections generally, but also of a complex sentencing structure involving trial courts and legislative mandates. The structure and functions of parole systems and their relative importance in the jurisdiction's total criminal justice picture all depend largely on the sentencing structure's authority and limits on sentencing alternatives and lengths.6 In most jurisdictions, for most offense categories, the sentences that can be imposed and the proportion of sentences actually served are determined by a balance of decision-making powers among legislatures, trial courts, and parole authorities. As is described in Chapter 5, there is no sentencing structure common to all jurisdictions. The relative importance and power of parole determinations vary markedly from one jurisdiction to another and from one offense category to another.

Variations in Structure

Throughout the history of American criminal jus-
tice, there have been various models of "ideal" sentencing structures that the authorities in each jurisdiction might emulate. Some have been tried, all have been debated, many must have been modified. But there is still no uniform sentencing structure. The Model Penal Code adopted by the American Law Institute, the Model Sentencing Act proposed by the National Council on Crime and Delinquency, suggestions of the Crime Commission, and the American Bar Association's Minimum Standards for Sentencing recommend models of sentencing structures suitable for all offenders in all jurisdictions. Because there have been no common standards for sentencing structures and no national standards for parole functions are extremely complex.

It might be possible to reach agreement on me-
to such as structure and composition of parole boards released adults almost everywhere in the country. But it must be remembered that the meaning and importance of the paroling function vary from one conviction system to another. For example, in jurisdictions where legislatures set long determinations that trial judges cannot modify, where good-time laws are stringent, or where parole is almost unheard of, parole becomes not only an important means of control but virtually the only method. Furthermore, where sentences are long, it may mean that parolees must be supervised for decades. The situation is different in systems that have relatively short legislative limits on sentences, with judges empowered to fix upper terms less than statutory maximums, and with liberal good-time allowances or frequent use of parole. In such cases parole determinations may play a relatively minor part in overall time served. In short-sentence jurisdictions, parolees terminate supervision fairly quickly. In jurisdictions in which minimum sentences are set by legislation, parole authorities have wide discretion to release inmates at any time. In jurisdictions where the parole existence among jurisdictions in regard to institutionalized juvenile delinquents, but they are not nearly as disparate as in the case of adults. The extent of controls over the juvenile offender generally is fixed by age rather than by offense. Most jurisdictions juvenile commitments do not have fixed minimum terms, so that release authorities had by either legislation or court determination. But laws relating to juveniles are by no means uniform in all jurisdictions. For example, the National School Discipline Act of 1967 allows that State systems only with the committing judge's approval. In three States, the time a parolee must serve before release is fixed in advance by the court. In effect, these are minimum sentences.

The sentencing system facility adopted is crucial to the parole function, for it fixes the amount of the character of discretion a parole system can exercise. Seeking to eliminate the abuses that lurk in role eligibility requirements should remain roughly the same in these cases. A system of this kind would give parole authori-


Purposes of Parole

The objectives of parole systems vary widely. Without clearly stated and understood objectives, the administrator cannot make the basic decisions regarding effective resource allocation. Even a casual attempt to clarify the purposes of parole will reveal that objectives frequently set by the parole administrator's chief task is to minimize this conflict.

A Basic Purpose: Reduction of Recidivism

Few things about parole evoke consensus, but there is some agreement that one objective and measure of success is reduction of recidivism. Even this consensus quickly becomes less firm when two special functions are examined: (1) provision of supervision and control to reduce the likelihood of criminal acts while the offender is serving his sentence in the community (the "surveillance" function), and (2) provision of assistance and services to the parolee, so that noncriminal behavior becomes possible (the "helping" function).

To the extent that these concerns can be integrated, conflicts are minimized, but in the day-to-day activity of parole administration they frequently clash. Decisions constantly must be made between the relative risk of a law violation at the present time and the probable long-term gain if a parolee is allowed freedom and opportunity to develop a legally approved life style. Resources are needed to clarify the choices and risks involved. Key requirements for this kind of assistance are the demonstration of clear definiti
tions of recidivism and creation of information systems that make data available about the probability of various kinds of parole outcome associated with alternative decisions. (These requirements are discussed in some detail in Chapter 15.)

Varied Concerns of Parole Boards

Reducing the risk of further criminality is not the sole concern. In fact, it actually may be secondary in

6 See Struggle for Justice: A Report on Crime and Punish-

ment in America, Prepared for the American Friends Servic


7 See American Bar Association Project on Minimum Stan-
dards for Criminal Sentencing, Alternatives to Incarceration

and Probation (Institute for Judicial Administration, 1967), Sec. 3, § 129-129.
A wider variety of concerns was expressed in a questionnaire completed by nearly half the parole board members in the United States in 1965, who were asked to indicate what they considered the five most important factors to be weighed in deciding on parole. Table 12.2 shows the items selected by at least 20 percent of those responding as being among the five most important considerations. The first three items selected as being the most important were related to the risk of violation. However, the next four related to other concerns: equitable punishment, impact on the system, and considerations of persons outside the correctional organization.

Table 12.2. Items Considered by Parole Board Members to be Most Important in Parole Decisions

<table>
<thead>
<tr>
<th>Percent Including Items as One of Five Most Important</th>
<th>Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>92.8</td>
<td>1. My estimate of the chances that the prisoner would or would not commit a serious crime if paroled.</td>
</tr>
<tr>
<td>87.1</td>
<td>2. My judgment that the prisoner would become a worse risk if confined longer.</td>
</tr>
<tr>
<td>79.1</td>
<td>3. My judgment that the prisoner would become a worse risk if confined longer.</td>
</tr>
<tr>
<td>3.5</td>
<td>4. My judgment that the prisoner would become a worse risk if confined longer.</td>
</tr>
<tr>
<td>3.8</td>
<td>5. My judgment that the prisoner would become a worse risk if confined longer.</td>
</tr>
<tr>
<td>20.9</td>
<td>6. My feelings about how my decision in this case would affect the feelings of the parolee's relatives or dependents.</td>
</tr>
<tr>
<td>21.6</td>
<td>7. My thoughts about the reactions of the parolee's relatives or dependents.</td>
</tr>
</tbody>
</table>


A number of other studies have noted the same phenomenon. Most parole board members consider risk a paramount concern, but other factors assume such importance in certain cases that risk becomes secondary. A well-known inmate convicted and sentenced for violation of a public trust may be denied parole repeatedly because of strong public feeling even though he might be an excellent risk. In another type of case, an offender convicted of a relatively minor crime may be paroled even though the parole board may feel that, as long as he has served to some extent, he has satisfied the offense committed. To some analysts these other-than-risk considerations are viewed simply as contingencies that arise from time to time; to others they involve objectives central to parole decisionmaking. In either case, considerations other than risk assessment figure prominently in parole decisionmaking and may be accounted for in any discussion of objectives. To judge from questionnaires returned by parole board members, the most cited criterion involves interpersonal factors: the prisoner's reaction to parole.

Parole programs are part of larger systems of criminal justice. They are governed by concepts of propriety and modes of conduct arising from American culture and law. Especially in recent years, parole boards have been expected to adopt practices that enhance the ideals of fairness and reflect hallmark practices of American justice such as procedural regularity, precedent, and process.

Most recently these issues have been reflected in the increased sensitivity to inmates' or revokers' rights to counsel, the right of a hearing on parole grant and revocation, the adequacy of information used in parole decisionmaking. Reflecting this emphasis, some parole board members may even refuse to consider a parole violation hearing evidence that might have been secured by questionable search procedure. Comparable issues also arise in establishing conditions for parole supervision, which are expected to meet tests of relevance, reasonableness, and fairness.

Appropriate Sanctions and Public Expectations

Though it seldom is stated openly, parole boards often are concerned with supporting a system of appropriate and equitable sanctions. This concern is reflected in several ways, depending upon a jurisdic- tion's sentencing system. One of the most common elements involved in parole decisionmaking is the impact of the system on the public, the parolee's family, and the community.

Of course, parole is being assigned increasingly to the young offender--often a young offender who has committed an offense for the first time. In the adult parole system, parole is being directed more towards the needs of the reoffender who has been recidivist.

Parole systems, therefore, are in the process of redefining the roles of parole officers. Although the parole officer is still expected to perform the same functions as in the past, he is expected to reflect the ideals of fairness and to counsel, the right of a hearing on parole, and the right to public supervision staff by the board.

In either case, considerations other than risk assessment figure prominently in parole decisionmaking and may be accounted for in any discussion of objectives. To judge from questionnaires returned by parole board members, the most cited criterion involves interpersonal factors: the prisoner's reaction to parole.
The Independent Authority

In the adult field, a good deal of reform was associated with removing parole decisionmaking from institutional control to an independent authority. Unquestionably much of the basis for this reform came from the view that parole authorities were being swayed too easily by institutional considerations or were not being objective enough. The change was so complete that today no adult parole releasing authority is controlled directly by the operating unit of a penal institution.

The Consolidation Model

While these arguments and their rebuttals continue, an alternate system has gained considerable support in recent years to the extent of institutional considerations, rather than individual or community needs, influencing the decisions. Overruling in the institution, desire to be rid of a problem, to avoid certain relatively petty rules, or other concerns of institutional management easily become the basis of decisions. This holistic approach in which the inmate is seen as a part of the institution. The parole board holds daily meetings, acts as the board of parole members who have little training or experience in corrections.

The basis of decision systems is crucial to improving parole decisions. A criterion for parole must be specified before they can be validated. For example, 75 percent of 150 board members quizzed in 1965 by the National Council on Crime and Delinquency, a task force on parole, received a score of 1 or 2 on the criterion of sensitivities, which is the maximum score a parole decision could receive.

Articulating the basis of decision systems is crucial to improving parole decisions, and the basis must be specified before they can be validated. For example, 75 percent of 150 board members quizzed in 1965 by the National Council on Crime and Delinquency, a task force on parole, received a score of 1 or 2 on the criterion of sensitivities, which is the maximum score a parole decision could receive.
to establish self-regulation systems, including internal appeals procedures.18 When the volume of cases warrants it, a parole board should concentrate its major attention on policy development and appeals. The bulk of case-by-case decisionmaking can be done by hearing examiners responsible to the board and familiar with its policies and knowledgeable as to correctional problems.

Hearing examiners should have statutory power to grant, deny, or revoke parole, subject to parole board rules and policies. In cases of offenders serving long sentences, those involved in cases of high public interest, or others designated by the parole board, two or more parole members personally should hear the case and make decisions. Hearing examiners operating in teams of two should handle the large part of parole hearings and each parole board. Inmates and parolees should be entitled to appeals decisions to the parole board, which could hear cases in panels or on an individual basis. As action is taken on these cases and the system of appeals refined, the board should further articulate its policies against which unwarranted uses of discretion could be checked.

Instead of spending his time routinely traveling from institution to institution hearing every type of case, the board member should be designated to hearing cases of special concern. He should be developing written policies and using monitoring systems by which decision outcomes could be observed and strategies for improving them developed. The use of the board for all types of appeals from correctional decisions (loss of good time, denial of privileges) also should be broadened.

In smaller systems, many of these activities would have to be carried out by the same persons. However, procedures can and should be developed to assure thrust to the system—education, hearing, and appeals. Only a few of these crucial activities now are carried out by the average parole board. They are critically needed, and the kind of system described here would greatly facilitate their attainment. Parts of such a system have been used successfully by the California and Florida parole boards and other governmental agencies.

An advisory group, broadly representative of the community and specifically including ex-offenders, should be established to assist the parole board by reviewing policies and helping shape and implement improvement strategies developed. This kind of link to the public is critically needed if sensible policies are to be developed and support for their adoption is achieved.

**PAROLE AUTHORITY PERSONNEL**

The most recent data available on members of juvenile parole releasing authorities indicate that the largest number of full-time staff of juvenile correctional institutions.19 In several States, such as California and Minnesota, youth parole boards are responsible for parole juveniles as Wisconsin and Illinois, the same board is responsible for release of both juveniles and adults.20 The issues of appointment, qualifications, and training raise precisely the same questions for juvenile parole authority members as they do for board members responsible for adult parole.

In 41 States, adult parole board members are appointed by the governor. In seven jurisdictions, they are appointed in whole or in part by the department of correction.

A similar problem exists with any part-time member of a parole authority. In 18 States, parole board members responsible for the parole of adult males are part-time employees. In six States only the chairman is a full-time employee. Part-time board members tend to be located with a staff of several smaller States, but there are exceptions. Tennessee and South Carolina, for example, with part-time boards, have in most cases taken the part-time parole officers longer than smaller States that have full-time boards. If parole services were extended to local jails and one board was made responsible for jail training for delinquents and adults, a full-time board would be needed in virtually every State.

For larger States the relevant question is, What is the optimum number of parole decisionmaking authority? Almost half of parole boards for adult offenders consist of three members; have five members; have seven members; and one parole board, New York's, consists of 12 members. Some parole authorities argue that could grow indefinitely. But with a system toward policy articulation and appeals, the tasks involved require a rubber stamp decisionmaking body.

Some type of device must be employed if competent board personnel are to be selected. Each State should have a law that requires parole board members for their qualifications, and the law should be used to strike the balance between the need to have members who have the experience and qualifications that allow them to understand programs, to relate to people, and to make sound and reasonable decisions. These board members must be elected by the people, which serves not only to provide better trained personnel, but also to provide better trained personnel, which serves not only to provide better trainers for parole boards, but also to provide a wider range of public opinion and expertise.

**Qualifications of Board Members**

Two dilemmas that are common to most paroling authorities exist: the appointment of knowledgeable parole board members and the fearful lest the board becomes a tool of the political machine. Two dilemmas that are common to most paroling authorities exist: the appointment of knowledgeable parole board members and the fearful lest the board becomes a tool of the political machine.
A matter of particular importance in attracting well-qualified persons to parole positions is the compensation. According to the most recent data available, salaries for full-time parole board members is $19,000 a year. This is not a salary which in 1972 can attract the type of personnel needed for parole decisionmaking. The salary for such positions should be equivalent to that of a judge of a court of general jurisdiction.

Training for Board Members

Improvement in the performance of parole members depends heavily on the availability of a training program. The National Probation and Parole Institutes have undertaken to provide biennial training sessions for new members. But much more needs to be done in this area. Ongoing training is needed by both new and experienced board members.

An effective ongoing program would inform board members of parole decisions and advances in technology and acquaint them with current correctional practices and trends. Because of the relatively small number of parole board members in each State, such a program would have to be national in scope. An exchange program of parole board members may be a possible way to achieve this goal.

THE PAROLE GRANT HEARING

The parole hearing is a critical moment for inmates. At this point they may be legally "eligible" for release, but before they are actually granted parole, they are interviewed, and the decision is made. In all States except Texas, Georgia, and Hawaii, adult felony offenders may be released on parole before the term of their sentences is completed. In some States parole board members are split into smaller working panels, or the entire board conducts the hearing. In the Federal system and in California, the parole boards appoint "hearing officers" to assist in some hearings. The number of cases considered in a single day by boards or panels for adult offenders ranges from 15 to 60.

Information Base

Information available to the parole board at the time of a hearing typically is prepared by institutional staff. It is usually based on reports of the offender's adjustment to prison life. Some parole boards require reports on all inmates, while others prefer to wait until they make a tentative decision that parole is indicated. A few States have reports prepared by professional personnel. Since these professionals are scarce, most reports prepared for parole boards are written by caseworkers who actually have relatively little opportunity to observe inmates.

Glaser has suggested use of revised reporting systems, wherein staff members who have the most contact with inmates involved most directly in providing data for the board's decisions. With the increasing stress on reintegration, most parole board members need a great deal more information about community services available to released offenders, as well as on feasible programs that might be undertaken. To the extent that the basic problem is that community resources are meager.

Right to a Hearing

In most jurisdictions the offender has no statutory right in the parole consideration process, except it some instances the right to a personal appearance before the parole board. Yet at all parole hearings, the inmate's presence is required, even in some States there is no requirement that the inmate be notified or that any information be provided to him. In some States parole grant hearings are conducted by criteria fixed in advance, rather than by parole board members.

A particularly critical determination during this initial interview is scheduling another interview or parole hearing. If, for example, the parole board decides to reject an application for parole, the inmate must be informed and a new hearing scheduled. On the other hand, if the parole board determines that the inmate is not ready for parole, the inmate should be given a time line as to when he might be considered for parole.

Procedural Guidelines

In the past few years there has been a noticeable increase in complexity of procedural requirements in parole hearings. Of those jurisdictions holding personal interviews, for example, 21 now permit the "assistance" of attorneys in behalf of the inmate. Seventeen allow the inmate to be represented at the hearing by persons other than counsel whom he feels will help him present his case for granting parole. A verbatim record of proceedings is made in 11 jurisdictions.

Procedures vary widely among the 29 jurisdictions that require parole hearings. In most jurisdictions, the hearing is conducted by a parole board or by a parole officer. In some jurisdictions parole hearings are conducted by criteria fixed in advance, rather than by parole board members.

In the Federal system and in California, the parole boards appoint "hearing officers" to assist in some hearings. At this point the inmate and his attorney, if any, are present. Any course of action taken during the hearing is recorded in writing. The hearing is conducted by a parole board or by a parole officer. In some jurisdictions parole hearings are conducted by criteria fixed in advance, rather than by parole board members.
In such instances, a new hearing date would be fixed after the initial interview. In no case should more than a year transpire between hearings.

Under this plan, the parole board would function more to monitor the decisions of others than to make detailed judgments in individual cases. The plan should also reduce the number of individual release hearings required. This is particularly important since there is a practical limit on the number that can be conducted in a day. An efficient way of combating the large backlog of parole cases demands a reduction in the number of parole hearings. This is particularly important since there is a practical limit on the number that can be conducted in a day.

Prompt Decision and Notification

If this system is to work, it requires involvement of all parole board officials. The authority who are empowered to grant parole in all but the most exceptional cases. A current problem in a number of parole jurisdictions is that only a single representative of the parole authority actually hears offenders’ cases. He is not able to take final action on any parole case that is not referred to him for decision. Other parole officials also have the power to deny parole. The job that was lost by the inmate and answer any questions he has.

Written Decisions

Also critical in this respect is the necessity for parole board decisions to spell out in writing the reasons for their decision and to specify the behavior that they have in mind. Currently about 12 parole boards release offenders directly after formal hearings conducted by board representatives. This is particularly important since there is a practical limit on the number that can be conducted in a day. An efficient way of combating the large backlog of parole cases demands a reduction in the number of parole hearings. This is particularly important since there is a practical limit on the number that can be conducted in a day.

Due Process Requirements

Provisions for sharing the bases of decisions with offenders, making a written record of proceedings, requiring written reasons for decisions, and allowing an appeal to a different action result not only are good administrative practice but also are consistent with legal requirements of procedural due process. They serve to make delayed decisionmaking less inevitable, but also available parole resources may deteriorate and no longer be open to the inmate when the parole board has already acted. The job that was lost by the inmate and answer any questions he has.

Representation

The issue of inmate representation by lawyers or other spokesmen causes different reactions among parole board members because it seems to create an unnecessary adversarial system out of essentially a “clini cal” decision process. However, several arguments for representation can be advanced. The offender’s representative has the freedom to pursue information, develop resources, and rules that determine how he chooses to conduct his responsibilities. The extent to which the information base can be enlarged by representatives and issues sharpened and focused is likely to be improved in the whole process of parole board decision-making. Equally important, however, is the impression of fairness given to the inmate who is represented. Indeed in many cases it is more than simply a feeling of fairness. It is clear that, in too many situations, the lack of ability to communicate well, to participate fully in the hearing, and to argue a case of full and careful consideration, is extremely detrimental.

Representation also can contribute to opening the correctional system’s procedures to the public, to scrutiny. It is important that more people become personally involved in the correctional process, not only to further the integration movement but also to involve community resources and representatives. Involvement of persons from the outside also provides opportunities for remedying any abuses in parole decisions, a system of providing, or at least allowing, representation for the offender at parole hearings should be sponsored by parole officials. Because of the diversity in parole eligibility and program administration among parole systems, the precise interviews with inmates at which representation is appropriate or feasible will vary. This principle has been applied in representation when crucial decisions regarding the offender’s freedom are made should guide the board in fixing policies,” parole officials. Because of the diversity in parole eligibility and program administration among parole systems, the precise interviews with inmates at which representation is appropriate or feasible will vary. This principle has been applied in representation when crucial decisions regarding the offender’s freedom are made.

Model for the Parole Grant Hearing

The hearing examiner model can be easily adapted to parole systems from administrative law. Hearing examiners play a central role in an administrative agency’s treatment of controversy. Matters are schedule before the examiner who conducts a full hearing and then prepares a report which contains findings of fact, conclusions of law, and recommendations in that order. The examiner’s recommendation is a public document. If the evidence introduced constitute the exclusive basis for decision. The hearing examiner models the initial decision. The examiner, not the agency, or Commission, becomes the decision of the agency.

A party dissatisfied with the recommendations or findings of the hearing examiner can appeal his decision to the full agency board which, being charged with the responsibility for decision, may overturn the findings of the examiner. The full board does not hear the matter de novo, but on briefs and arguments. The final order of the board can then be appealed to court by a dissatisfied party. Court re
view would determine whether there is substantial evidence on the record as a whole to support the agency decision, or whether it is erroneous as a matter of law.

Adaptation of the administrative law model for use of hearing examiners in parole grant hearings is represented in Figure 12.1.

When a parole grant hearing is scheduled, a hearing examiner should conduct a full personal hearing with the inmate, his representative, and appropriate institutional staff members. Contents of any written reports supplied to the hearing examiner should be openly disclosed and become a part of the record, except that the parole board may establish guidelines under which certain sensitive information could be withheld from the inmate with notation of this fact on the record.

A verbatim transcript of the proceedings should be made. The hearing examiner should make his decision on the basis of transcript and evidence established by the parole board and specify his findings in writing. He should personally inform the inmate of his decision and provide him a copy of the full report.

If the decision of the hearing examiner is not accepted by the inmate or the correctional authority within five days after the hearing, the decision of the hearing examiner should be final. If the decision is not accepted by the inmate or the correctional authority, appeal should be made to the parole board.

The full parole board should review the case on the record to see if there is substantial evidence to support the finding or if it is erroneous as a matter of law. The order of the parole board should be final.

**REVOCATION HEARINGS**

Until the late 1960's, procedures in many jurisdictions for the return of parole violators to prison were so informal that the term "hearing" would be a misnomer. In many instances revocation involved almost unfettered discretion of parole authorities. In addition to minimal procedural formality, the grounds for revocation also were non-legal, involving such assessments as "generally poor attitude" or allegations of "failure to cooperate," rather than specific breaches of conditions or commission of new offenses.

This was particularly true in revocation of the aftercare of juveniles, where the decision to revoke was viewed primarily as a casework determination. Ostensibly, it did not involve a breach of conditions but was simply an action for the youth's welfare.

This general stance of casual and quick return of both adults and juveniles rested primarily on the "privilege" or "grace" doctrine of the parole grant. To many parole officials, revocation did not warrant such costly and procedural regularity, or matters of proof, hearing, and review.

In 1964 a study of parole board revocations showed that there was no hearing at all in at least several instances. In those hearings, the alleged violator frequently was returned to prison directly from the field on the allegation of the field agent or on a warrant issued by the board. An actual hearing or review of this return by the parole board did not take place until weeks, sometimes months, after the parolee had been returned to the institution. In most cases, when a parole violation was found, the parole board issued a revocation order and officially declared the parolee a violator.

In a small minority of cases, board members canceled the warrant and permitted the parolee to return to parole. However, since the parolee had been moved to the institution, employment and family relationships already were disturbed. In effect a canceled revocation order meant that the parolee again had to be transported to his local community and begin the readjustment process all over again. Counsel rarely was permitted to represent the alleged violator at such hearings. Any witnesses to the alleged violation almost always were present outside the hearing at the parole board office, rarely subject to confrontation or cross-examination by the parolee. While at the time of the survey some states allowed parolees to have "assistance" of lawyers, no jurisdiction assigned counsel to indigent parolees.

**Intervention by Appellate Courts**

Since the 1960's there have been considerable appellate court intervention in the parole process generally and in revocation procedures specifically. This vigor is consistent with a general distinction in administrative law between granting a privilege (as a parole) and taking it away once it has been given (in revocation). Courts generally have held that initial granting or denial of a privilege can be done much more casually and with fewer procedural safeguards than taking away a privilege once granted.

Development of court-imposed requirements for procedural due process in parole revocation has been somewhat erratic. One of the important leading cases in the Federal jurisdiction was *Hysler v. Reed*, decided in the D.C. Circuit in 1963 (318 F.2d 225, 235). The decision in this case generally supported the common position that revocation was strictly a discretionary withdrawal of a privilege not requiring adversarial hearings at which inmates are represented by counsel and so forth. This part of the decision was consistent with both the law and the general sentiment of most parole authorities at the time. What *Hysler* did do, however, was to deal with the critical question of where the revocation hearing should take place.

The court supported the U.S. Parole Board practice of conducting a fact-finding hearing on the site of the alleged offense or violation of condition, with review at the institution only if the first hearing determined the offender should be returned. This decision was sensible, particularly in those cases involving a mistake or failure to find an infraction. If in fact the parolee did not commit the alleged infraction he could continue his parole uninterrupted.

Subsequent to the *Hysler* decision, appellate courts in some Federal and State jurisdictions reversed the first part of the decision; namely, the lack of any right, constitutional or otherwise, for due process to be applied at revocation proceedings. Most courts that departed from *Hysler* in this regard did so on the basis of the Supreme Court decision in a case involving "deferred sentencing" or probation revocation.

In *Mempa v. Rhay*, 389 U.S. 128 (1967), the Supreme Court held that a State probationer had a right to a hearing to counsel upon allegation of violations of probation. A number of courts interpreted the principle of *Mempa* to apply to parole as well.

The extension of *Mempa* procedural requirements to parole revocation was fairly common in both State jurisdictions and in various Federal circuits. In almost all cases, conformity with *Mempa* requirements meant a reversal of former legal positions and a major change in administrative practices. For example, the New York Court of Appeals, restating its decision on the *Mempa* case, reversed its former position and declared the parole board's right to a hearing to counsel upon allegation of violations of probation. A number of courts interpreted the principle of *Mempa* to apply to parole as well.

Therefore, while a prisoner does not have a constitutional right to parole, once parole he cannot be deprived of his freedom by means inconsistent with due process. The minimal right of the parolee to be informed of the charges and the nature of the evidence expected to be heard at the revocation hearing is inviolate. Statutory deprivation of this right is manifestly inconsistent with due process and is unconstitutional; nor can such right be
that the subjective determination of the executive that the case for revocation is "clear." 

By and large parole officials have resisted attempts by courts, or others, to introduce procedural due process into parole revocation and at other stages of parole. Resistance has rested not only on encroachment of authority but also on the self-interest of parole officials in the conceptualization of parole as a device for the "loaning" of liberty, a pseudo-bail to society, and in an informal and effective way to protect society against parolees who have violated their parole. Furthermore, many parole officials believe that a parolee's liberty is a "right" or a "privilege." By whatever name, "right" or "privilege," parole revocation must be seen as within the discretion of the Fourth Amendment. Its termination calls for some exercise of discretion, however informed.

In considering the question of the nature of the process that is due, the Court delineated two important stages in the typical process of parole revocation: the arrest and preliminary hearing; and the revocation hearing. While the Court stated it had no intention of creating an inflexible structure for parole revocation procedures, making a distinction between a preliminary and a revocation hearing was an important clarification, since otherwise parole hearings grant only one. The Court also laid out a number of important points or steps for each of the two stages which will undoubtedly apply to future parole departments.

In regard to the arrest of the parolee and a preliminary hearing, the Court indicated that due process would seem to require some minimal prompt inquiry at or reasonably near the place of the alleged parole violation or arrest. Such an inquiry, which in some parole jurisdictions must be conducted by a preliminary hearing, must be conducted to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions. It specified that the hearing should be conducted by someone not directly involved in the case.

In interpreting the rights of the parolee in this process, the Court held that the parolee should be given notice of the hearing, the place, and the nature of the alleged violation. At the hearing, the parolee may appear and speak in his own behalf. He may bring letters, documents, or individuals who can give relevant information to the hearing officer. On request of the parolee, persons who have given adverse information on which revocation is based are made available for questioning in his presence unless the hearing officer determines that the informant would be subjected to risk of harm if his identity were disclosed.

The Court also specified that the hearing officer should have the duty of making a summary or digests of what transpired during the adversary hearing, as would be mandated in a criminal proceeding. In reversing the Court of Appeals decision, the Supreme Court held that...

... the liberty of a parolee, although indeterminate, includes many of the core values of qualified liberty and its termination inflicts a "grievous loss" on the parolee analogous to that which occurs in the context of a criminal conviction. This is so because the parolee's liberty is more than a

the final decision on revocation by the parole author-

ity must be based on the basis for more than a
determination probable cause; it must lead to a final eval-

uation of any contested relevant facts as determined by the parole officer, or his lawyer. The parole officer must have an op-

portunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that cir-

cumstances in mitigation suggest the violation does not warrant revocation. The revocation hearing must be tendered within a reasonable time after the parolee is taken into custody. The minimum requirements of due process for such a revocation hearing, as set by the Court, include (a) written notice of the alleged violation of parole; (b) disclosure to the parolee in evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a hearing officer who is not a member of the parole board, or a local parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinder as to the evidence relied on for revoking parole.

Issues Still Unresolved

The Court left several questions unresolved. The extent to which evidence obtained by a parole officer in an unauthorized search can be used at a revoca-

tion hearing was not considered. Nor did it reach the question whether the parolee is entitled to the assistance of retained counsel or to appointed counsel if the parolee is indigent.

While the Court did address certain features of the parole revocation process, it did not specify requirements for the process by which offenders are taken and held in custody. Present law and practice in many jurisdic-

tions empower the parole officer to revoke the parole of an alleged offender, and to hold them in custody for extensive periods. It is a power that needs careful control because it is easy to abuse, especially in those cases in which parole does not lead to a hearing, in which there is no review, and in which the parole simply is held for a while in jail and then released back to parole status.

This problem is the subject of "jail therapy" by the parole officer "punishing" the parolee briefly; if he is a drunk, for example, he may be held in protective custody" over New Year's Eve", then re-

leases him back to community status. While this short-term confinement may not be undesirable in all cases, the lack of administrative control over its use...

The use of all arrest and hold powers should be carefully narrowed. The parole officer should be able to arrest and hold only when an arrest warrant has been secured from a representitive of the parole board on the basis of sufficient evidence. The warrant must be granted only when the parole commissioner approval of adminis-

trative arrest should be universally used. At present, only about half of the State jurisdictions require such a warrant; in the remainder the parole officer can pick up an alleged violator on his own initiative and have him detained by signing a "holding" order. Initial two-

step review of administrative arrest should be estab-

lished, with appropriate provisions for emergency situations but with no application to law enforcement officer arrests for new offenses.

It must be remembered that taking no action and returning the parolee to the institution is not the only two courses open. The parolee would undoubtedly be subjected to an administrative arrest if parole revocation

program shows that the avail-

ability of alternative measures—short-term confine-

ment or special restrictions—can be extremely useful in dealing with parolees instead of causing them a long-term return to an institution. Likewise, the Model Penal Code arguments that jurisdictions develop measures, such as parole revocation, is a necessary evil. Such alternative modes need to be developed and formalized and used much more extensively.

ORGANIZATION OF FIELD SERVICES

Transfer of Adult Parole to Correctional Departments

One of the clearest trends in parole organization in the last few years is the consolidation of formerly au-

tonomous agencies or functionally related units into expanding departments of corrections. Some of the State departments have been made part of still larger units of State government, such as human resources agen-

cies, which embraces a wide range of programs and services. One clear indication of this trend is the number of States that have shifted administrative re-

sponsibility for parole officers from independent pa-

role departments to centralized correctional agen-

cies.

Most recently the States of Oregon, New York, and Georgia have recently made such a change. A number of smaller States still have parole supervision staffs re-

sponsible to an independent parole board. Practically every large State now has at least one field staff or office re-

porting to the same administrative authority as the personnel of the State penal institutions. Today, the majority of parole officers at the State level work for unified departments of correction.

The emergence of strong and autonomous correc-

tional agencies represents an important step toward the
now must work in such a way that heavy expen
tures of field staff energy in the community and dig
t the offender are made for many months prior to his
declaration by parole. This requires a high degree of inte-
terdependence between parole and field staffs.

Linking Institutional and Field Staffs

The lack of continuity and consistency of services
between institutional and field services has been a
very real problem for many jurisdictions. This prob-
lem is complicated by what could be described as rural
vs. urban perspective. Institutions generally are lo-
cated miles from population centers. The manpower
they tend to recruit is drawn largely from small towns
and rural areas. The result is that institutional staff
may have little contact with the surrounding urban
ghetto life. In contrast, most field workers live in
or near the large population centers in which most
offenders reside, so that when offenders transfer to
institutional counselors they are thrust into new groups. This
natural difference contributes to feelings of mistrust,
hospitality, and incredulity that handicap communica-
tion between institutional and field staffs.

A number of steps are needed to overcome the
communication breakdown. An ongoing series of
conferences among parole officers, institutional counselors,
and local volunteer workers can help in achieving mutual
understanding. Promotions from institutional services to
field services and vice versa also can have some effect in building communication channels.

Most important is that institutional and field staff be
under common administrative direction. It is not
enough that they be simply linked administratively
at the top; linking must be at the program level as
well. This can be done in several ways. One is to
regionalize and placed under common admini-
strators in each area. Obviously, in States where there
are only one or two institutions, problems are
reduced for the whole community-based thrust. But
even here some program consolidations are posi-
tive. Power to develop an educational program, for ex-
ample, could be vested with the parole office, allowing
prompt reports showing compliance with agency pol-
ICies. Power must be open rather than
controlled, and that allocates power to persons
on the basis of their position in the hierarchy. The
parole, being the lowest, is the least powerful.

Flexibility in Organizational Structure

A correctional policy that assumes paroles are
 capable of making a major contribution toward set-
ting their own objectives and sees the parole agen-
cy's main task as helping the parolee realistically test
and attain those objectives also must place a pre-
ferred emphasis on the management of manpower that
promotes flexibility. This means that managers must learn how to administer a decentralized organization that
must adhere to broad policies and yet allow for a
great degree of individual autonomy.

The dilemma that arises when a manager tries this style of administration is many. Their resolution re-
quires a sophisticated knowledge of administration and organizational techniques. One of the
highest priorities for effective development of community-based programs is providing managers with
precisely this kind of skill.

Nelson and Lovett summarize the issues well:

The correctional field must develop more collaborating, less hierarchical administrative regimes in order to implement its reintegration programs. The hierarchical format was designed to achieve the ends of economy and orderly task performance. When individual change is the prime pur-
pose, the organizational structure may work only if people cannot be ordered to change strongly patterned at-
titudes and behavior. Nor is change apt to come about through the ritualized structures of the hierarchies. Power must be shared rather than hoarded. Communications must be kept open.

Although the rhetoric of the organization is
couched in such phrases as "helping the offender" and "developing a positive relationship," organiza-
tional controls tend to be attached to activities de-
signed largely to foster the surveillance work of the
agency or protect the rigid hierarchical structure. (The
officer performance most often is judged by the num-
ber of contacts that have been made with parolees,
only with little regard for the kind or quality of those
transpired during these contacts. Complete and
prompt reports showing compliance with agency pol-
icies, such as written travel orders, are valued highly and require a major investment of pa-
role officer time.

The result of this kind of administration is a rigid chain of command that is regimented, standardized,
and predictable and that allocates power to persons
on the basis of their position in the hierarchy. The
parole, being the lowest, is the least powerful.
lance, head-counting, and maintenance of order. Management says the job is best accomplished by a new set of techniques—including relaxed, open and free communication, and delegation involving parolees. Staff members should perceive themselves less as policemen than as counselors. It is highly likely in such a case that some staff will resist the change.

Persons who see themselves as professionals also can be major obstacles to change. The trend toward a reduced role of parole officers is, in many cases, a result of the increasing amount of discretion that parole officers are given to manage parolees. This discretion was less in the past, and may be perceived by the officers as a loss of status and power. The trend is also a result of changes in parole policies and procedures. For example, in the past, parole officers had more say in determining parole dates and conditions, whereas now these decisions are made by a board or other agency. The trend is also a result of changes in the parolee population, with more parolees being released to the community on early release programs and more parolees being released with less supervision.

COMMUNITY SERVICES FOR PAROLEES

A significant number of parolees can do very well without much official supervision, according to repeatedly validated research. Other parolees can be handled in relatively simple community services as possible through community resources. Those parolees probably should be released from any form of supervision to changes that are "untested" and that have strayed from the "tried and true." It is not surprising that parole officers identified the need for service delivery system. It avoids creation of additional specialized bureaucracies on State payrolls that respond more readily to their own survival efforts than to the needs of parolees. The community as a whole probably should be responsible for delivering ser- vices as close as possible to the needs of parolees. Most of these services are in the hands of those who work with parolees directly, including parole officers and their superiors. The emphasis in recent years, and one worthy of much more frequent use, is on helping parolees to develop skills and persevere in the face of change. The service delivery system is highly dependent on community agencies and their staff, who constitute a significant portion of the parole officer population in many areas of the country, the officers is to make certain that opportunities in the day-by-day existence of parolees, lack of funds is a critical problem. A number of solutions to this problem have been tried, the most common being a loan fund arrangement. Although there are several difficulties in administering such a fund, it is a practical necessity in every parole system until arrangements for sufficient "gate money" or other subdivision can be provided.

The most practical and direct way to meet the problem is to provide offenders with opportunities to earn funds while they are incarcerated. For those who are unemployed, funds should be provided, much in the manner of compensation, when they are first released until they are gainfully employed. The State of Washington recently has adopted precisely such legislation. It should be adopted in every jurisdiction.

Employment

Closely related to the problem of finances is that of gaining and holding employment. While it is difficult to demonstrate experimentally a precise relationship between unemployment and recidivism, the parolee's record shows a fairly consistent link between unemployment and crime. Hence every parole system should maintain its own measures of unemployment rates among its populations. For the offender already on the street, the most critical skill required of a parole officer is directing him to a wide variety of services available in the community. A prime resource is the State employment service. Almost everywhere such services have commitments at the policy level to extend special assistance to parolees.

However, the test of these programs is found in the day-by-day working relationships between local parole officers and female and male parolees. How well they cooperate is colored by the attitudes of local employment department staff but more importantly by the skill of the parole officer in the handling of relationships. A wide variety of other programs exist; for example, those sponsored by the Office of Economic Opportunity, the Office of Vocational Rehabilitation, and the large number sponsored by the Department of Labor. The key issue in using these programs is good communication at the local operational level.

The most common problem immediately confronting offenders released from adult correctional institutions is the need for money for the most basic needs—shelter, food, and clothing. Most States provide new releases with transportation, some clothes, and modest gate money totaling perhaps $50. Inmates fortunate enough to have been assigned to programs in which money can be earned in prison frequently are much better off financially than those who were not. Those who have participated in work-release programs have saved a portion of their salary for the time of their release.

Data that show parole failure rates clearly related to the amount of resources made available during the first months of release can be explained in a number of ways. Nevertheless, it is a consistent finding and, in the day-by-day existence of parolees, lack of funds is a critical problem.

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sent and the network of "relationships they possess in the free community.

Residential Facilities

Another major need of many newly released offenders is a place to live. For some, the small, communally oriented residential facility is extremely useful in a time of crisis.

Young persons particularly need to have a place to go when events begin to overwhelm them. Such centers also can be useful for dealing with offenders who may have violated their parole and require some control for a short period, but for whom return to an institution is unnecessary.

To the extent that such facilities can be obtained on a cost basis, the flexibility and, most probably, the quality increase. For young offenders especially, bed space in small group facilities can be secured through many private sources. This is less true for adults, and development of State operated centers may be required.

Differential Handling

Making all programs work requires a wide variety of resources, differential programming for offenders, and a staff representing a diversity of backgrounds and skills such as are already handled by specialized teams. Drug users of certain types may be dealt with by staff who have considerable familiarity with the. drug culture and close connections with various community drug treatment programs. Other offenders may require intensive supervision by officers skilled in handling those who have violated their parole and require extended supervision over their charges. While the latter may be vested in the company and association of vicious people and shall at least once every Sunday attend some religious service or institution of moral training.

In the 1950's many rules of this type were replaced by more specific conditions such as requiring the parolee to obtain permission to purchase a car. Until the late 1960's almost every State had a long list of parole conditions. 36 As "tools of the parolee's skill" and planning, those of the reverse policy would occur often although official action would not be taken unless the parole officer felt the case warranted it. Problems of differential enforcement were bound to occur, and did. A great deal of ambiguity developed for both parolees and parole officers as to which rules really were to be enforced and which ignored. Studies have demonstrated that parole officers must develop their own norms of behavior that should result in return to prison. These norms among parole officers became very powerful forces in shaping reintegration policies. 37

The recent trend has been toward reducing rules and making them more relevant to the facts in a specific parole case. Part of this move undoubtedly has been stimulated by the interest of the courts in parole conditions. Conditions have been struck down by the courts as unreasonable, impossible of performance, or unfair. Additional principles constantly being developed, as when a Federal court recently restrained the use of the parolee's car during community service projects drawn from the neighborhood, is an excellent example. Because of their intimate knowledge of the community, such workers are able to perform the activities of their charges without the necessity of using tactics normally associated with police agencies.

MANPOWER

Problems of manpower for corrections as a whole are discussed in Chapter 14 of this report. Here the discussion will be limited to special manpower problems of parole systems.

Recruitment and Personnel Practices

New things indicate more starkly the relatively low priority that parole officers have received in governmental services than parole officers' salaries. The National Survey of Corrections indicated that in 1965 the median starting parole officer salary in the United States was approximately $6,000 a year. Although the studies of the Joint Commission on Correctional Manpower and Training three years later showed this salary base had risen, most of the gain could be accounted for by a national upswing in salary levels. It did not represent a real gain compared to other positions in government and industry.


California Youth Authority. The program involved classification of offenders by an elaborate measure of interpersonal maturity or "level" and use of treatment, which was specifically designed for each "level" type. Treatments ranged from firm, controlling programs for manipulative youths to supportive and relatively permissive approaches for those assigned randomly to a category that included neurotic and anxious youngsters. With certain exclusions, offenders were assigned to one of three man caseloads manually, each of which was designed to carry out treatments consistent with a particular classification, or to a term in a training school followed by regular parole supervision. 

The results of the project were impressive. After 24 months, those assigned to special caseloads had a regular parole success rate of 56 percent compared with 30 percent for offenders in the regular program who had a 61 percent failure rate. Of interest also was the variation in success rates among the "level" types. For example, that the research results might be attributed to differences in official reaction to the behavior of those in special caseloads as opposed to those in regular ones, rather than improvements in the offenders. Yet results in the context of other research efforts described by Stuart Adams make the argument for differentials less strong.  

The Work Unit Parole program in effect in the California Department of Corrections since 1964 divides parolees into several classifications (based in part on their prior record and actuarial expectancy of parole success). It requires certain activities from the parole officer for each classification of parolees and thereby is able to control the work demands placed on an individual officer. In this system, the ratio of officers to parolees is approximately 1 to 7. Two facts about the program should be noted.  

1. The ratio of 1 to 7 does not express a constant load. Officers are assigned to a variety of tasks that are quantifiable. These task-related workloads are the basis for staff allocation.  

2. The number assigned for a specific agency would depend on the kinds of offenders they have to supervise and the administrative requirements of the agency.  

The important point is that the concept of a caseload as a measure of workload is outmoded, esp. in an era stressing a variety of skills and team supervision. The task is to spell out the goals to be accomplished and the activities associated with their attainment, and to assign staff on that basis. Re-search, information, and training inform the judgment by which these allocations are made.

Education and Training Needs  

Both the Corrections Task Force in 1967 and the Joint Commission in 1969 agreed that a baccalaureate degree should be the basic education require- ment for a parole officer, and persons with graduate study might be used for specialized functions. Both also stressed the need to create opportunities for further education with less than baccalaureate training. Many tasks carried out by a parole officer can be executed just as easily by persons with much less education. For example, parole agency personnel are possessed by those with limited education. As observed earlier, persons drawn from the areas to be served are good examples of staff with needed spe-cialized skills. Ex-offenders also are an example of a manpower resource needed in parole agencies. A growing number of agencies have found such persons to be an immensely useful addition to their staffs.  

Ways of recruiting, training, and supervising these relatively untapped sources of manpower for parole and other elements of corrections are discussed in Chapter 14.

MANPOWER REQUIREMENTS  

The problems of trying to determine staffing needs for parole are extensive. The active parole supervision program is complicated tremendously by lack of agreement on objectives and knowledge of how to reach them. Within any correctional policy, a variety of alternative styles are needed, ranging from no treatment at all to a variety of specific and carefully controlled programs. Perhaps the most discouraging factor is that the supervision were that sought to test the thesis that reducing caseloads to provide more intensive services would include nothing more than a coincidence.
so that the experiences of parolees who have been classified according to a set of reliable factors can be checked. Attempts to use the usual criminal identification record alone to describe the results of parolee performance and the factors that might lead to such gross inadequacies as to be almost completely useless. The careful definitions built into the Uniform Parole Report System, however, with access to criminal data, this would enable tracing of subsequent parolee histories and could be a powerful tool for parole decision making. A comprehensive system for releases from juvenile institutions also is needed. Information on misdeeds released on parole is almost nonexistent. Development of statewide statistical services in corrections is the key for such misdeed record-keeping.

Uses and Limitations of Statistics in Parole

Thus far the stress on statistical development has been on its utility as a national reporting system. But equally needed is a basic statistical system in each parole jurisdiction to help it address a variety of concerns related to parole decision making. There are a number of ways such data can be used. Since the 1920's a number of researchers have concerned themselves with developing statistical techniques for increasing the precision of recidivism forecasting, as noted in Chapter 15. Although the methods may vary in detail, the basic aim of the studies has been to identify factors that can be shown to be related statistically to parole outcome and, by combining them, to ascertain recidivism probability for certain parolee classes. These studies usually have been labeled "parole predictions."

Typically, the probability statements produced by statistical techniques are more accurate in estimating the likely outcome of parolees than are traditional case methods. There has been relatively little use of these devices in the parole field, although some experimental work has been carried on in several jurisdictions.

A major source of resistance to the use of prediction methods is found in the nature of the parole decision itself.** Parole board members argue, for example, that simply knowing the probability of success or failure is not nearly as helpful as knowing what type of risk would be involved. For example, they are more likely to tolerate higher risks of success if the parolee is likely to commit a forgery than if he is prone to commit a crime against a person. Most prediction systems depend largely on prior events, such as criminal age and criminal record. This does not help parole board members deal with the offender as he is today within the realities of the decisions and time constraints available to them. Techniques for keeping score high in dealing with a number of the additional concerns of parole authorities and probably will continue to make statistical information increasingly valuable. Currently a major research project is under way with the U.S. Parole Board seeking ways in which statistical material can assist the parole board member in his decision making. Significant help lies in this direction, and such a jurisdiction should be made fully aware of the possibility of using statistical information in parole decision making.

With computer technology and the possibility it offers of instant feedback, the usefulness of this kind of system should increase. It seems doubtful, however, that statistical methods in the foreseeable future can substitute entirely for the judgments of parole board members and examiners. The impact and the variety of elements other than the estimation of risks are profound. The intricacies that arise in the individual case make too great a dependence on any statistical system人类的。

Statistical predictions can be helpful in giving guidelines to parole board members as to general categories into which particular inmates fit, how inmates similarly situated were treated earlier, and what the trends are in broad decisions. This information is important for parole decisionmakers. But they need to be convinced that the parole system is one in which both statistical and individual case methods are used in making decisions about individuals.

Daniel Glaser sums up the issue as follows: 1.1

I know of no instance where an established criminalist, judge or correctional administrator has advocated reliance on cases studies and subjective evaluation by statistical tables for sentencing parolees or other major decisions on the fate of an offender. The most reason for insisting upon case data may be grouped into two categories. First of all, these officials must make moral decisions for the state as a whole in determining what risks would justify withholding from or granting freedom to a man. Secondly, there always is some intangibility on a case too special to be readily taken into account by any verifiable table in estimating what risks are involved in a specific official action. Thirdly, there are many types of predictions besides the overall prospect of violations which judges and other officials must consider. These include the type of violation, and the consequences of certain types of violations for community treatment of other parolees.

The Effectiveness of a Parole and Parole System, p. 304.

Standard 12.1

Organization of Paroling Authorities

Each State that has not already done so should, by 1975, establish parole decisionmaking bodies for adult and juvenile offenders that are independent of correctional institutions. These boards may be administratively part of an overall statewide correctional services agency, but they should be autonomous in their decisionmaking authority and separate from field services. The board responsible for the parole of adult offenders should have jurisdiction over both felons and misdemeanants.

1. The boards should be specifically responsible for articulating and fixing policy, for acting on appeals by correctional authorities or inmates on decisions made by hearing examiners, and for issuing and signing warrants to arrest and hold alleged parole violators.

2. The boards of larger States should have a staff of full-time hearing examiners appointed under civil service regulations.

3. The boards of smaller States may assume responsibility for all functions, but should establish strictly defined procedures for policy development, hearings, and appeals.

4. Hearing examiners should be empowered to hear and make initial decisions in parole grant and revocation cases under the specific policies of the parole board. The report of the hearing examiner containing a transcript of the hearing and the decision should constitute the exclusive record. The decision of the hearing examiner should be final unless appealed to the parole board within 5 days by the correctional authority or the offender. In the case of an appeal, the parole board should review the case on the basis of whether there is substantial evidence in the report to support the finding or whether the finding was erroneous as a matter of law.

5. Both board members and hearing examiners should have close understanding of correctional institutions and be fully aware of the nature of their programs and the activities of offenders.

6. The parole board should develop a citizen committee, broadly representative of the community and including ex-offenders, to advise the board on the development of policies.

Commentary

Parole authorities are criticized both for being too closely tied to the institution (as with juveniles) and too remote from the realities of correctional programs (as with adults). Most persons concerned with parole decisionmaking for juveniles are full-time institutional staff. In the adult field, most parole boards are completely independent from the institutions whose residents they serve. In fact, no adult parole releasing authority is controlled directly by the operating staff of a penal institution. Parole boards that are tied to, or part of, institu-
tional staff are criticized mainly on the grounds that too often institutional considerations, rather than in-
dividual or community needs, influence the decisions.
Institutional decisionmaking also lends itself to such
informal procedures and lack of visibility as to raise
questions about its capacity for fairness.
On the other hand, independent parole boards are
criticized on the grounds that they tend to be insensi-
tive to institutional programs; to base their decisions
on political considerations; to be too remote to fully
understand the dynamics of a given case; and/or that
they and their staff have little training in or knowl-
edge about corrections.
An organizational arrangement lying between
these two extremes is now gaining prominence. In
the new model, the parole authority is organization-
ally situated in a unified department of corrections
but possesses independent powers. This arrangement
is desirable in that paroling authorities need to be
aware of and involved with all aspects of correctional
programs. Yet they should be so situated organiza-
tionally as to maintain sufficient independence and
capacity to reflect a broader range of decisionmaking
concerns than efficient correctional management.
The absence of written criteria by which decisions
are made constitutes a major failing in virtually
every parole jurisdiction. Some agencies issue state-
ments purporting to be criteria, but they usually are
so general as to be meaningless. The sound use of
discretion and ultimate accountability for its exercise
rest largely in making visible the criteria used in
forming judgments. Parole boards must free them-
selves from total concern with case-by-case decision-
making and attend to articulation of the actual poli-
cies that govern the decisionmaking process.
In addition to the pressure for clearly articulated
policies, there is also demand for mechanisms by
which parole decisions can be appealed. It is impor-
tant for parole systems to develop self-regulation
systems, including internal appeal procedures.
Where the volume of cases warrants it, a parole
board should concentrate its attention on policy
development and appeals.
Case-by-case decisionmaking should be done by
hearing examiners responsible to the board who are
familiar with its policies and knowledgeable about
correctional programs. Hearing examiners should
have statutory power to grant, deny, or revoke pa-
role subject to parole board rules and policies. Ap-
peals by the correctional authority or inmates on the
decisions of hearing examiners should be decided by
the parole board on the basis of the written report of
the hearing examiner. The grounds for review would
be whether or not there is substantial evidence in the
report to support the finding or whether the decision
was erroneous as a matter of law.

In smaller states, many of these activities would
have to be carried out by the same persons, since the
size of the system would not justify hearing examin-
ers in addition to a parole board. However, proce-
dures can and should be developed to assure atten-
tion to each separate function—policy development,
hearings, appeals, and decisionmaking.
An important component of the parole decision-
making function which currently exists in few, if any,
parole jurisdictions is the involvement of community
representatives. Policy development offers a particu-
larly suitable opportunity for such citizen participa-
tion. It is likely to improve the quality of policies and
almost certainly will improve the probability of their
implementation.

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Related Standards

The following standards may be applicable in
implementation Standard 12.1.
2.2 Access to Legal Services.
2.3 Access to Legal Materials.
2.10 Retention and Restoration of Rights.
Standard 12.2

Parole Authority Personnel

Each State should specify by statute by 1975 the qualifications and conditions of appointment of parole board members.

1. Parole boards for adult and juvenile offenders should consist of full-time members.
2. Members should possess academic training in fields such as criminology, education, psychology, psychiatry, law, social work, or sociology.
3. Members should have a high degree of skill in comprehending legal issues and statistical information and an ability to develop and promulgate policy.
4. Members should be appointed by the governor for six-year terms from a panel of nominees selected by an advisory group broadly representative of the community. Besides being representative of relevant professional organizations, the advisory group should include all important ethnic and socioeconomic groups.
5. Parole boards in the small States should consist of no less than three full-time members. In most States, they should not exceed five members.
6. Parole board members should be compensated at a rate equal to that of a judge of a court of general jurisdiction.
7. Hearing examiners should have backgrounds similar to that of members but need not be as specialized. Their education and experiential qualifications should allow them to understand programs, to relate to people, and to make sound and reasonable decisions.
8. Parole board members should participate in continuing training on a national basis. The exchange of parole board members and hearing examiners between States for training purposes should be supported and encouraged.

Commentary

In a number of States, parole authority positions are held by part-time personnel. With expanded responsibilities for such boards, effective membership will require a full-time commitment of time and energy. Thus part-time parole authorities should be replaced in virtually every jurisdiction. In larger States, the use of hearing examiners reduces the necessity of expanding parole boards to unwieldy proportions and makes emphasis on policy development more feasible.

The chief obstacle to creating effective parole authorities is the appointment of unqualified persons to parole boards, a practice which can have disastrous effects. More often than not, such appointments are made by political criteria. Use of nonpartisan citizen nominating panels is vitally needed in the appointment process.

There is no one profession or set of experiences known to qualify an individual automatically for the role of parole board member. The variety of goals of parole boards requires a variety of skills. At the least, knowledge of the fields of law, the behavioral sciences, and corrections should be represented. It is also desirable for persons selected to be able to utilize statistical materials, reports from professional personnel, and a variety of other technical information.

Besides improving the appointment process, it is important that qualifications for parole authority membership be spelled out by law. Terms of appointment should be long and sufficient salaries provided.

Training opportunities specifically designed for parole decisionmakers are also vitally needed. Training programs should be designed to keep board members informed on recent legal decisions and advances in technology, as well as acquainting them with current correctional practices and trends.

References


Related Standards

The following standards may be applicable in implementing Standard 12.2.

16.1 Comprehensive Correctional Legislation.
16.16 Parole Legislation.
The Parole Grant Hearing

Each parole jurisdiction immediately should develop policies for parole release hearings that include opportunities for personal and adequate participation by the inmates concerned; procedural guidelines to insure proper, fair, and thorough consideration of every case; prompt decisions and personal contact of decisions to inmates; and provision for accurate records of deliberations and conclusions. A proper parole grant process should have the following characteristics:

1. Hearings should be scheduled with inmates within one year after they are received in an institution. Inmates should appear personally at hearings.

2. At these hearings, decisions should be directed toward the quality and pertinence of program objectives agreed upon by the inmate and the institution.

3. Board representatives should monitor and approve programs that can have the effect of releasing the inmate without further hearings.

4. Each jurisdiction should have a statutory requirement, patterned after the Model Penal Code, under which offenders must be released on parole when first eligible unless certain specific conditions exist.

5. When a release date is not agreed upon, a further hearing date within one year should be set.

6. A parole board member or hearing examiner should hold no more than 20 hearings in any full day.

7. One examiner or member should conduct hearings. His findings should be final unless appealed to the full parole board by the correctional authority or the inmate within 5 days.

8. Inmates should be notified of any decision directly and personally by the board member or representative before he leaves the institution.

9. The person hearing the case should specify in detail and in writing the reasons for his decision whether to grant parole or to defer it. Parole procedures should permit disclosure of information on which the hearing examiner bases his decisions. Sensible information may be withheld, but in such cases nondisclosure should be noted in the record so that subsequent review will know what information was not available to the offender.

10. Parole procedures should permit representation of offenders under appropriate conditions, if required. Such representation should conform generally to Standard 2.2 on Access to Legal Services.

Commentary

Although every standard-setting body attests to the crucial part the parole hearing plays in an effective correctional system, substantial shortcomings exist in this procedure. In some jurisdictions large numbers of inmates do not get an opportunity to appear before parole authority representatives. In others, so many offenders are motivated through parole hearings in a single day that the process becomes meaningless. Even in jurisdictions where regular interviews are conducted with all inmates and the number interviewed is reasonable, grave deficiencies exist.

Perhaps the most pervasive shortcomings are the undue emphasis in parole hearings on past events and the extreme vagueness about the necessary steps to achieve parole. Badly needed are clearly defined objectives for the inmate, attainment of which will result in his parole. This need is highlighted by the difficulties being experienced by parole and correctional officials when parole decisions must be made on offenders already under part-time release programs. Increasingly, parole authorities must be oriented to the future, spelling out what is required for parole in a given case. They also will need to emphasize to institutional authorities the type and quality of programs to be undertaken by inmates under the direction of correctional personnel.

In the past, most jurisdictions have operated on the premise that the offender has no statutory rights in the parole consideration process, except in some instances the right to appear before the board. Yet the traditional stance has also been that the inmate had no record until an affirmative case for parole was made on offenders already under part-time release programs. The Model Penal Code reflects a growing dissatisfaction with this position. It proposes that an inmate be released on parole when he is first eligible unless certain specific obstacles exist.

The notion that the preference should be for retaining an inmate on parole when he is first eligible may require some modification if minimum sentences are eliminated, but the correctional authority, rather than the attorney, bears the burden of proof (however evaluated from jurisdiction to jurisdiction) that an inmate is not ready for release.

Consistent with this is the concept that all inmates should have a parole hearing within one year after they are received in an institution. Such hearings right result in consideration of immediate parole. Often it would involve review of the particular objectives developed by the inmate and staff. The board's representative would approve the inmate's current parole and program objectives, especially those involving combinations of institutional activities and periods of temporary release.

A particularly critical determination during this initial interview is scheduling another interview or hearing, if one is necessary, before the inmate's release. It should be increasingly common to approve an inmate's program, including a parole release date, as far as a year in advance without requiring another hearing or further interviews by the parole board. If the plan for the inmate that is agreed to by the board's representative at the initial hearing were carried out to the institutional staff's satisfaction, parole would be automatic. Only if substantial variations from the program developed would another hearing be required. In any event, no more than one year should pass between hearings.

The nature of these hearings, involving close attention to tailoring programs and releases to individual cases, would require careful recording of plans and decisions. With a functional system of this kind, a maximum of 20 cases a day should be heard.

As to the hearing itself, in few jurisdictions are parole authorities required to write the detailed reasons for their decisions. Future decisionmakers are left with little information, and effective review is impeded. The failure to record reasons for action also means loss of a critical information source for policy formation.

Closely allied to the failure to record reasons for parole decisions is the manner in which offenders are notified. In many jurisdictions inmates learn of the decision through a cryptic communication or verbally through a correctional staff member who tries to interpret the reasons for a parole action without really knowing them, instead of obtaining such information from the parole authority representative who conducted the hearing.

The key to rectifying this situation lies in allocating sufficient decisionmaking power to the hearing examiner. They should be able to make the final decision, based on board policy, and notify inmates personally of the results before the examiners depart. Representation should be to by the board's representative at the hearing.

In few States can inmates review, even selectively, the information on which decisions affecting them are based. In few States are offenders given an opportunity to be represented by others at a parole hearing. Effectiveness and fairness argue for the existence of both of these provisions in every jurisdiction. The issue of the need for a public hearing or other spokesmen has been highly controversial. If the offender can have a representative who is free to pursue information, develop resources, and raise questions, decisions are more likely to be made on fair and reasonable grounds. The inmate will be more likely to feel that he has been treated fairly and that there is definitely someone who is "on his side." Furthermore, such representation would do much to increase the credibility of the parole system in the public's view.
Standard 12.4

Revocation Hearings

Each parole jurisdiction immediately should develop and implement a system of revocation procedures to permit the prompt confinement of parolees exhibiting behavior that poses a serious threat to others. At the same time, it should provide careful controls, methods of fact-finding, and possible alternatives to keep as many offenders as possible in the community. Return to the institution should be used as a last resort, even when a factual basis for revocation can be demonstrated.

1. Warrants to arrest and hold alleged parole violators should be issued and signed by parole board members. Tight control should be developed over the process of issuing such warrants. They should never be issued unless there is sufficient evidence of probable serious violation. In some instances, there may be a need to detain alleged parole violators. In general, however, detention is not required and is to be discouraged. Any parolee who is detained should be granted a prompt preliminary hearing. Administrative arrest and detention should never be used simply to permit investigation of possible violations.

2. Parolees alleged to have committed a new crime but without other violations of conditions sufficient to require parole revocation should be eligible for bail or other release pending the outcome of the new charges, as determined by the court.

3. A preliminary hearing conducted by an individual not previously directly involved in the case should be held promptly on all alleged parole violations, including convictions of new crimes, in or near the community in which the violation occurred unless waived by the parolee after due notification of his rights. The purpose should be to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts that would constitute a violation of parole conditions and a determination of the value question of whether the case should be carried further, even if probable cause exists. The parolee should be given notice that the hearing will take place and of what parole violations have been alleged. He should have the right to present evidence, to confront and cross-examine witnesses, and to be represented by counsel.

The person who conducts the hearing should make a summary of what transpired at the hearing and the information he used to determine whether probable cause existed to hold the parolee for the final decision of the parole board on revocation. If the evidence is insufficient to support a further hearing, or if it is otherwise determined that revocation would not be desirable, the offender should be released to the community immediately.

4. At parole revocation hearings, the parolee should have written notice of the alleged infractions of his rules or conditions; access to official

References

5. President's Commission on Law Enforcement and Administration of Justice. Task Force Report:


Related Standards

The following standards may be applicable in implementing Standard 12.3.
2.2 Access to Legal Services.
16.2 Administrative Justice.
16.3 Code of Offenders' Rights.
16.15 Parole Legislation.
records regarding his case; the right to be represented by counsel, including the right to appointed counsel if he is indigent; the opportunity to be heard in person; the right to subpoena witnesses in his own behalf; and the right to cross-examine witnesses or otherwise to challenge allegations or evidence held by the State. Hearing examiners should be empowered to hear and decide parole revocation cases under policies established by the parole board. Parole should not be revoked unless there is substantial evidence of a violation of one of the conditions of parole. The hearing examiner should provide a written statement of findings, the reasons for the decision, and the evidence relied upon.

5. Each jurisdiction should develop alternatives to parole revocation, such as warnings, short-term local confinement, special conditions of parole, and holding the offender should be empowered to parole revocation. The evidentiary hearing and to the parolee's sense of its being fair and just must be seen as a “privilege.”

The growing emphasis on community supervision is encouraging a much wider use of measures such as short-term confinement or additional restrictions and warnings rather than outright revocation. Such innovations should be encouraged. The possibility of release for offenders returned to confinement also is a desirable program direction.

The following standards may be applicable in implementing Standard 12.4.

Standard 12.5

Organization of Field Services

Each State should provide by 1978 for the consolidation of institutional and parole field services in departments or divisions of correctional services. Such consolidations should occur as closely as possible at the operational level.

1. Juvenile and adult correctional services may be part of the same parent agency but should be maintained as autonomous program units within it.

2. Regional administration should be established so that institutional and field services are jointly managed and coordinated at the program level.

3. Joint training programs for institutional and field staffs should be undertaken, and transfers of personnel between the two programs should be encouraged.

4. Parole services should be delivered, wherever practicable, under a team system in which a variety of persons including parolees, parole managers, and correctional professionals work together.

5. Teams should be located, wherever practicable, in the neighborhoods where parolees reside. Specific team members should be assigned to specific community groups and institutions designated by the team as especially significant.

6. Organizational and administrative practices should be altered to provide greatly increased autonomy and decisionmaking power to the parole teams.

Commentary

Lack of coordination among correctional programs and functions has for years been a grave impediment to development of effective correctional programs. The separation of field parole service from the rest of corrections has been no exception. The growing complexity and interdependence of correctional programs require more than ever the parole field staff to be integrated more closely with institutional staff.

As the philosophy of reintegration gains prominence, many correctional staff relationships will change. Parole staff will be concerned with prerelease activities and halfway house programs. It will no longer be the practice to wait for the "transfer" of a parolee assigned to a parole officer. Rather, the lines of responsibility between institution and parole staff will become increasingly blurred. The parole staff will either perform similar roles or cooperate closely.

While organizational change will not automatically create such a close interrelationship, it certainly will facilitate the goal of functional integration.

A crucial first step to this goal is to place both of these units under one administrative head. In a number of States, some parole field staffs report to department of corrections to enhance correctional program integration and to free parole staffs for their prime task of parole policy formulation and decisionmaking.

The move to consolidate parole services should also involve increasing emphasis on providing services for misdemeanants, a function currently characterized by large gaps in services. Likewise, to assure continuity of services for juveniles, juvenile programs should be encompassed in statewide correctional agencies. This is not to say that separate divisions focusing on juvenile institutional and field services should not be maintained, but they should be organizationally tied to such services for adults so that consolidated planning may occur. For both juveniles and adults, regional administration will provide for a coordinated flow of services regardless of an offender's legal status at any given time.

However, more than a common administration is needed to coordinate field and institution staffs. Ideological differences between the two divisions, augmented too often by empirical, educational, and cultural differences, are a hazard. Badly needed are mechanisms that foster a focus on program objectives rather than on organizational function. These include training programs, common administrative controls at lower levels, and personnel policies that encourage transfers across functional areas.

The organization of field services also requires fundamental re structuring in the way its services are delivered. Organizational patterns based on the notion of a single parole officer responsible for a specific caseload of parolees should give way to those facilitating team methods. With a team approach a group of parole personnel including volunteers and paraprofessionals works with a group of parolees, with tasks being assigned on the basis of the team's assessment of services needed and staff not able to provide for them. In many cases, parole staff's efforts will be focused on various community groups or organizations rather than directly to a parolee. The variety of needs presented by parolees and the objectives of involving the community more directly in programs require such methods.

Moving from the traditional caseload orientation to a team approach will not be easy. Formerly, the tasks and responsibilities assigned to individual parole officers were fairly easy to manage and supervise. Often the performance of parole officers was evaluated on the number of contacts made with each parolee assigned to each officer. Complete and prompt reports, often emphasizing compliance with rules and policies, were also valued highly. Under a team approach, however, parole managers must learn to administer a decentralized organization that must both adhere to broad policies and allow for a high degree of individual autonomy. Communication must be open, and power must be shared. There will be no set formula for how a "caseload" should be handled, and strong administrative leadership will be crucial.

References


Related Standards

The following standards may be applicable in implementing Standard 12.5.

1.2 Marshaling and Coordinating Community Resources

1.3 Professional Correctional Management

1.4 Staff Development

1.6 Comprehensive Correctional Legislation

1.6 Unifying Correctional Programs

1.6 Regional Cooperation.
Standard 12.6

Community Services for Parolees

Each State should begin immediately to develop a diverse range of programs to meet the needs of offenders. The programs should be drawn to the greatest extent possible from community programs available to all citizens, with parole staff providing liaison between services and the parolees needing or desiring them.

1. Stringent review procedures should be adopted, as that parolees not requiring supervision are released from supervision immediately and those requiring minimal attention are placed in minimum supervision caseloads.

2. Parole officers should be selected and trained to fulfill the role of community resource manager.

3. Parole staff should participate fully in developing coordinated delivery systems of human services.

4. Funds should be made available for parolees without interest charge. Parole staff should have authority to waive repayment to fit the individual case.

5. State funds should be available to offenders, so that some mechanisms similar to unemployment benefits may be available to inmates at the time of their release, in order to tide them over until they find a job.

6. All States should use, as much as possible, a requirement that offenders have a visible means of support, rather than a promise of a specific job, before authorizing their release on parole.

7. Parole and State employment staffs should develop effective communication systems at the local level. Joint meetings and training sessions should be undertaken.

8. Each parole agency should have one or more persons attached to the central office to act as liaison with major program agencies, such as the Office of Economic Opportunity, Office of Vocational Rehabilitation, and Department of Labor.

9. Institutional vocational training tied directly to specific subsequent job placements should be supported.

10. Parole boards should encourage institutions to maintain effective quality control over programs.

11. Small community-based group homes should be available to parole staff for prerelease programs, for crises, and as a substitute to recommitment to an institution in appropriately reviewed cases of parole violation.

12. Funds should be made available to parole staffs to purchase needed community resources for parolees.

13. Special caseloads should be established for offenders with specific types of problems, such as drug abuse.

Commentary

Attempts to improve parole outcome by providing parolees with closer supervision have proved to be quite fruitless. A number of parolees require little or no supervision, others none at all. For those requiring supervision, the most recent emphasis has been directed toward finding and using existing community resources. A number of advantages accrue: better and more relevant services usually can be obtained; less stigma is attached to services offered by non- governmental agencies; and more flexibility is provided when services are not entrenched in the organizational structure of a correctional agency.

To obtain these resources parole staffs must guide their attention to other community service agencies and develop greater experience in acting as resource managers as well as counselors. A parole staff has a specific task: to assist parolees in availing themselves of community resources and to counsel them regarding their parole obligation. Parole staffs also must take responsibility for finding needed resources for parolees in the community.

Of course, the time when parole staff can function as brokers or resource managers will be a while in coming. In the near future, parole officers will have to continue to deal directly with many of the very real problems parolees face. Chief among these is making sure that persons recently released have adequate financial support. There are a number of ways in which this need can be met. Where offenders have been involved in work-release programs, no major problem should be encountered. For other offenders, however, or for those who have large families or wish to continue education or training, other arrangements may be needed.

All States should consider establishing a form of unemployment compensation for released offenders with major program agencies, such as the Office of Economic Opportunity, Office of Vocational Rehabilitation, and Department of Labor.

9. Institutional vocational training tied directly to specific subsequent job placements should be supported.

References


4. Lohman, Joseph D.; Wahl, Albert; and Carter,

Related Standards
The following standards may be applicable in implementing Standard 12.6.
7.2 Marshaling and Coordinating Community Resources.
7.3 Corrections’ Responsibility for Citizen Involvement.
7.4 Inmate Involvement in Community Programs.
9.9 Release Programs.
14.5 Employment of Volunteers.

Standard 12.7
Measures of Control

Each State should take immediate action to reduce parole rules to an absolute minimum, retaining only those critical in the individual case, and to provide for effective means of enforcing the conditions established.

1. After considering suggestions from correctional staff and preferences of the individual, parole boards should establish in each case the specific parole conditions appropriate for the individual offender.
2. Parole staff should be able to request the board to amend rules to fit the needs of each case and should be empowered to require the parolee to obey any such rule when put in writing, pending the final action of the parole board.
3. Special caseloads for intensive supervision should be established and staffed by personnel of suitable skill and temperament. Careful review procedures should be established to determine which offenders should be assigned or removed from such caseloads.
4. Parole officers should develop close liaison with police agencies, so that any formal arrests necessary can be made by police. Parole officers, therefore, would not need to be armed.

Commentary
The chief expression of the coercive power of parole agencies, and consequently a potential source of great abuse, is found in the conditions governing the conduct of parolees and the measures taken to enforce those rules. Some of the major criticisms against parole rules are that they are often so vague as to invite serious problems of interpretation by both the parolee and the parole officer, and that they frequently embrace such a wide portion of the parolee’s potential and actual behavior as to become unnecessarily restrictive of his freedom and do little to prevent crime.

Any conditions set for parole continuance should be as specific as possible and reasonably related to the facts of the specific parole case. In formulating conditions, the offender’s wishes and interests should be taken into account. Maximum consideration should also be attached to guarding the individual’s constitutional and legal rights, remembering that offenders retain all rights that citizens in general have, except those necessarily limited for the purpose of confinement or control.

It is of utmost importance that the parolee know the conditions of his parole and the reasons for them. If the number of conditions is limited to those deemed absolutely necessary, the parolee will understand that these conditions are meant to be enforced, a situation which is uncommon at the present time. The removal of unnecessary rules also helps...
the parole officer in his relationship with the parolee. If both parties know and understand the reasons for rules in the case in question, it is less likely that the parole officer will have to either ignore rules he sees as frivolous or jeopardize his relationship with the parolee by reporting them. Furthermore, the more open the parole system, the more possibilities exist for working out postrelease arrangements that are conducive to leading a law-abiding life. Again, this means that the system will have to be ready to tolerate more diversity. Citizens in general find many satisfying lifestyles that meet the tests of legality. Parolees should have the same opportunities.

Closely related to formulation of fair and effective parole rules is the issue of their enforcement. In a number of parole systems, too many parole officers still see their major role as that of policeman-enforcer. Although close supervision may be indicated in individual cases, it should be done on a highly selective basis. Close coordination with police agencies should obviate the necessity of arming parole officers or requiring them to arrest parole violators. To the extent that a parole agency can reduce emphasis on surveillance and control and stress its concern for assisting the parolee, it probably will be more successful in crime reduction.

References


Related Standards

The following standards may be applicable in implementing Standard 12.7.
2.7 Searches.
2.10 Retention and Restoration of Rights.
2.11 Rules of Conduct.
2.14 Grievance Procedure.
2.15 Free Expression and Association.
2.16 Exercise of Religious Beliefs and Practices.
2.17 Access to the Public.

16.2 Administrative Justice.

Standard 12.8

Manpower for Parole

By 1975, each State should develop a comprehensive manpower and training program which would make it possible to recruit persons with a wide variety of skills, including significant numbers of minority group members and volunteers, and use them effectively in parole programs.

Among the elements of State manpower and training programs for corrections that are prescribed in Chapter 14, the following apply with special force to parole.

1. A functional workload system linking specific tasks to different categories of parolees should be instituted by each State and should form the basis of allocating manpower resources.
2. The bachelor's degree should constitute the requisite educational level for the beginning parole officer.
3. Provisions should be made for the employment of parole personnel having less than a college degree in work with parole officers on a team basis, carrying out the tasks appropriate to their individual skills.
4. Career ladders that offer opportunities for advancement of persons with less than college degrees should be provided.
5. Recruitment efforts should be designed to produce a staff roughly proportional in ethnic background to the offender population being served.
6. Ex-offenders should receive high priority consideration for employment in parole agencies.

7. Use of volunteers should be extended substantially.
8. Training programs designed to deal with the organizational issues and the kinds of personnel required by the program should be established in each parole agency.

Commentary

Typically, manpower allocation in parole agencies has been based on a ratio of a fixed number of parolees to one parole officer. Little experimental evidence is available on the optimal allocation of manpower, and any ratio would probably be quite specific to an individual agency depending on the character of the parolees supervised, geographic factors, and the administrative tasks the officer must carry out. It is essential that parole agencies develop workload data, especially in an era of team supervision, so that manpower can be reasonably related to activities to be done. Present workloads are too burdensome and immediate steps are needed in a number of States to augment parole staffs with additional manpower.

Parole manpower should consist of persons with a variety of skills and aptitudes. While a bachelor's degree generally is agreed to be the appropriate entrance requirement for the parole officer position, it is
also widely agreed that persons with less than a college education can be employed quite effectively to handle a number of tasks for which they may be uniquely qualified. However, career ladders that permit opportunities for advancement for such personnel must be established.

Minority groups in the community should be the targets for special efforts in recruiting for parole personnel. Not only are they familiar with the life-styles of many parolees but also they know both formal and informal resources of the community.

Major manpower resources also are to be found in the use of volunteers and ex-offenders from the community. New and innovative training programs in organizational development are needed to integrate successfully the variety of skills involved in a modern parole agency and to deal with the tensions and conflicts which will inevitably arise from mixing such a variety of personnel in team supervision efforts.

References


Related Standards

The following standards may be applicable in implementing Standard 12.8.

10.4 Probation Manpower.
13.3 Employee-Management Relations.
14.1 Recruitment of Correctional Staff.
14.2 Recruitment from Minority Groups.
14.3 Employment of Women.
14.4 Employment of Ex-Offenders.
14.5 Employment of Volunteers.
14.6 Personnel Practices for Retaining Staff.
14.8 Redistribution of Correctional Manpower Resources to Community-Based Programs.
14.11 Staff Development.
16.5 Recruiting and Retaining Professional Personnel.
Part III
Cross-Section of Corrections

Chapter 13
Organization and Administration

American corrections is a diffuse and variegated system. Its organization and management processes reflect those conditions. The range includes huge, centralized departmental complexes and autonomous one-man probation offices; separation of corrections from other governmental functions and combination of corrections with law enforcement, mental health, and social welfare; highly professionalized management methods and strikingly primitive ones.

In spite of these differences, there are commonalities. Of special interest are the stubborn problems and dilemmas which run through the whole fabric of correctional organization. These focal problems and concerns will be discussed in the following pages.

BASIC PROBLEMS OF CORRECTIONAL ORGANIZATIONS

What is the nature of correctional organizations in the United States? What are the attendant problems facing correctional agencies, and how, if at all, are these problems being addressed?

The answer to the first question is made clear by a series of statistical reports recently prepared by the Law Enforcement Assistance Administration. The reports, which provide data on justice services at State and local levels, reveal that we have an almost incomprehensible maze of departments, divisions, commissions, and boards functioning at city, county, and State levels, developed and maintained without the benefit of inter- or intra-governmental coordination. Contributing also to this diversity are the Federal institutions dealing with both adult and juvenile offenders that operate independently from the functions of the State and local governments.

The national summary of the LEAA reports indicates that there were 5,312 corrections facilities in the United States in 1971 (4,503 for adults and 809 for juveniles) and 2,444 probation and parole agencies. While a cursory examination of these figures may not be startling, more detailed evaluation reveals the fact that only 16 percent of the adult and juvenile correctional facilities are operated at the State level, with the remaining 84 percent, consisting predominantly of county and local jails and lockups, dividing among the 3,047 counties in the Nation and an even greater number of cities, townships, and villages.

Dividing correctional activities into the two major divisions, institutions on the one hand and probation and parole activities on the other, provides a clearer understanding of the national corrections picture. For example, LEAA statistics show that approximately

These figures are provided by the LEAA reports. Percentages and other interpretations were extrapolated from the original figures.
Three basic problems emerge from this analysis of correctional organization in the United States:

- The problem of unifying and coordinating a highly fragmented array of services and programs.
- The problem of shifting fiscal resources from Federal and State levels to local governments, while guiding and assisting localities to improve the quality of their services.
- The problem of changing correctional organization and jurisdiction. Consequently, their structures follow the traditional authoritarian model—one that was developed to control offenders into the community. However, correctional organizations have superimposed additional goals since that time—rehabilitation and, more recently, reintegration of offenders into the community. It is probably possible to achieve the same goals in a traditional organizational milieu. The incompatibility of these more recent trends with the traditional physical plant and organizational structure of corrections represents a profound problem in the renovation of correctional systems.

Some Directions for Change

How can the organization of correctional services be redesigned to meet the problems described above? What can be done to overcome fragmentation and duplication of scarce resources? How can existing resources be reallocated to meet new goals? What costs can be saved?

1. The problem of changing jurisdiction. Our correctional systems have become characterized by a highly fragmented distribution of these important functions. This problem is currently being examined by the Select Committee on Intergovernmental Relations, a study of which is due to be issued shortly. The problem of rigid, stratified, and overlapping systems is of vital importance. Linkages among various governmental jurisdictions involved in the correctional field should be significantly improved. The problems of the correctional field, however, cannot be considered in isolation from other major problems that confront society today. The major areas for reintegration programs is the local community. Administrative power and sanction must be placed there if such efforts are to be strong, well articulated with local resources, and suitably responsive to local needs and problems.

2. The key to a such a redistribution of authority and responsibility lies in the development of new methods of financing correctional services. The probation subsidy program in California is one illustration of a strategy to develop county level programs and reduce reliance on State and Federal institutions. Experimentation with various subventions, grants, and other forms of intangible assistance will be required. A combination of assistance and regulation—carrot and stick—will be necessary to bring about the needed changes.

There is, moreover, a major opportunity for regional solutions to problems which no single jurisdiction can meet unilaterally. It is essential to have regional organizations to assist in solving the gross, statistically overwhelming problems of alcoholism, drug abuse, and social alienation.

The Commission believes that unification of all correctional programs within a State will allow it to coordinate programs that are essentially interdependent. There are no easy answers, but there are many possible approaches. The following sections are intended to stimulate further thinking and action on the problems described above.

CORRECTIONAL ORGANIZATIONS

Corrections is a "human resource" organization. It has a large range of activities to meet the needs of society, including education, health care, law enforcement, and social services.


**Notes**


2. Examples of appropriate activities might be: development of regional facilities for female offenders; and the development of special facilities for adolescent offenders.

3. A group which has fallen between psychiatric and correctional institutions.

4. The problem of changing jurisdiction. Our correctional systems have become characterized by a highly fragmented distribution of these important functions. This problem is currently being examined by the Select Committee on Intergovernmental Relations, a study of which is due to be issued shortly.

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that is, its material is people, its product, behavior. The unique features of this type of organization necessitate a structural design and a management and planning process that make both a central part of implementing programs discussed in other chapters of this report. Plan and control, the "production process" consists of trained specialists operating on intangibles, and so organizational design must consider the added interpersonal dimension of employment. Behaviors, attitudes, and attitudinal effects of specialists on the client are interdependent, and the degree to which various functional specialists are integrated into a "team" determines organizational effectiveness. The relation of functional integration to the effectiveness of human resource organizations places a premium on clearly defined and mutually agreed-to objectives whose identification must precede structural design. Too frequently the attempt to change is in the simplification of decision trees rather than a detailed analysis of the problem as a description of alternative functional elements in relation to previously specified objectives.

Managing a human resource organization is probably even more difficult than managing other public agencies because many traditional management tools are not directly applicable. Data describing effects of the correctional process relate to behavior or outcomes and are subject to subjective, frequently conflicting interpretations. The feedback loops necessary for judging the consequences of policies are difficult to create and suffer from incomplete and inaccurate information. There has not been in corrections an organized and consistent relation between successful management and public action.

The management of corrections as a human resource organization must be viewed broadly in terms of the behavior of entire organizations, various organization processes (communications, decisionmaking, and others) are combined into what is called "the corrections process."

**ORGANIZATION DEVELOPMENT**

Management by objectives (MBO), planning, and organization analysis are elements of a relatively new methodology known as organization development (OD). Warren G. Bennis defines it as "a response to change, a complex educational strategy intended to change beliefs, attitudes, values, and structure of organizations so that they can better adapt to new technologies, market and challenges and the dizzying rate of change itself." Terms for innovation, the trend toward integrated services, and disagreement over objectives suggest that OD programs are applicable to the correctional setting. To specify how this could be done would require a separate book. Hence the discussion here will outline only the interrelations between basic elements of OD and will use broad areas considered to be of top priority in corrections today: organization analysis, management by objectives, and planning. However, ideally and for completeness, the considerations of personnel, effects on employee effectiveness (interpersonal skills, individual performance objectives, etc.) with the goals of the organization, and organizational structure. A broad complex of concepts is necessary to relate organization design, planning, objectives, and employee performance.

**ORGANIZATION ANALYSIS**

Organization analysis and design is a specialty that should not be left to whim, the pressures and forces of the moment, or the experience of individuals when planning corrections. The organizational process as a whole is a simple example of how change will be determined in large part by the process. Calling for simple unification of institutions, parole, and probation into a State department of corrections has been a frequent suggestion. While in some situations this will improve correctional services, it is a delusion that tinkering can, by itself, effect the functional integration desired. Frequently, subunits of large-scale organizations carve out a functional territory and vigorously guard it against intrusion and change. Organization, although important, is not the panacea for problems; formally redefining roles does not automatically change actual operations.

Any reorganization problem should be viewed from all these perspectives to draw out the possible objectives and effects of the particular structure being proposed as a solution. The exigencies of the time may require a compromise of specific "principles" of organization. For example, the adopted principles frequently violated by correctional organizations are "unity of direction" and "equality of authority and responsibility." The influence of the board at the State's chief executive and the correctional agency limits the governor's authority over an organization for which he is responsible to the public. Policies are made that are distorted by the influence of the board.

Similarly, overlapping responsibilities are set, per se, undesirable. In some situations, in fact, they may positively contribute to the dynamic effectiveness. For example, the Air Force does not have sole


responsible for military air operations. The Marine Corps and the Army also have organizational units providing air services because the prime objective for the Marines is troop mobility and for the Army, air operations are integral. When responsibility is an objective, a program-based organizational unit (e.g., narcotics treatment) may be superimposed on a functional categorization (e.g., education, counseling).

Failure to recommend a specific solution will not satisfy the manager who expects a formula and not a recipe. But there is no single or simple answer. Rather the most appropriate organizational arrangements must be decided after the problem is analyzed from a variety of perspectives and in relation to what the particular structure is ultimately to accomplish.

The important features in a reorganization are the actual changes in employee interrelations and the policies communicated to them, not the arrangement of boxes in an organization chart. Effective work groups and interpersonal relations are not formed and dissolved by policy statements. A reorganization cannot be accomplished solely by pronouncement. It must include a specification of what processes (meetings, group discussions, timing, etc.) will be used to implement it. Management disenchanted with reorganization usually arises because: 

- The organization's objectives partially determine its most effective structure. Although offenders are the organization's customers, they are not the focus primarily to serving society. A rehabilitation or reintegration objective focuses directly on the individual, and consequently organizational arrangements must be structured around the individual's needs.
- The emphasis on opening institutions to the community increases the number of employees whose reference and whose verification of performance goes to the organization. Such "boundary persons" typically have attitudes more congruent with persons outside the correctional system than with those inside. Changes in these attitudes may increase the difficulties of resolving internal conflicts.
- The emphasis on offenders' rights implies more than a new office or changed procedures; it will require different kinds of relationships (blind trust, aggression, and an attitude of negotiation rather than confrontation). The present stress on innovation and the prospects of a continuing demand for change in corrections require flexible organizational arrangements where work groups are viewed as fluid and temporary.

**Analysis of Correctional Organization**

For many years it has been an almost universal practice in the corrections field to refer to "systems" when considering the corrections process. Earlier, the reference was to "prison systems" or "prison systems." Currently, the phrases "correctional system" or even "criminal justice system" are favored. In a long-term and widespread use of the word "systems" has tended to obscure the fact that most correctional organizations are highly structured and are managed as organizational systems.

Correctional services can be described only as nonorganized. Virtually all larger correction agencies have organization charts that presume to depict the flow of authority and accountability among the diverse elements that comprise each specific correctional organization. Many such organizations also have policy manuals, job descriptions or position profiles for staff, job specifications, other organizational and management personnel, and standard operating procedures that reinforce the notion of organization. But the salient characteristic of virtually all correction organizations today is their high degree of inter- and intra-organizational separation for legal, political, and bureaucratic reasons.

In substantial part this organizational fragmentation is the heritage of the legal background from which all contemporary correction organizations have evolved. This legal heritage limited the organizational boundaries of "correctional" responsibility to those objectives that, historically, were perceived as "appropriate" by those with authority over the "appropriate" extension of the court of jurisdiction: the training school for the juvenile offender, the prisons for the convicted adult offender, and the probation service. As noted earlier in this chapter, each of the 50 States operates a correction agency. And, through bureaucratic associations, each agency groups with others in various coalitions and, through these coalitions, are favored. This has been reflected in growing recognition of the need for administrative reform. Professional groups such as the American Bar Association have assumed an active role in advocating reform and direct services to offenders. This has been reflected in growing recognition of the need for administrative reform. Professional groups such as the American Bar Association have assumed an active role in advocating reform and direct services to offenders.

The corrections field today is being substantially affected by dramatic changes occurring in American society. The incidence of certain social crises has risen at an alarming rate, and younger persons comprise a disproportionate amount of this increase. Therefore, it can be expected that the number of offenders requiring services will rise dramatically in the immediate future. Because of the national pattern of high birth rates from the end of World War II until the mid-1960's, that number will probably decline somewhat, at least in the immediate future. There has been perceptible shift in political opinion regarding correctional operations and their effects on offenders. This has been reflected in growing legislative criticism and demands for reform. The juvenile population, which has disproportionately affected the correctional system, is declining. Even within those States with administratively grouped correctional responsibility, there nonetheless exist compartments of offenders, environmental factors, and institutional and ideological pressures. Organizational patterns range from those focusing on rehabilitation, through those focusing on retribution and punishment, to those focusing on education and training. By far the most common pattern is the "division of labor" and "division of responsibility."

Even within those States with administratively grouped correctional responsibility, there nonetheless exist compartments of offenders, environmental factors, and institutional and ideological pressures. Organizational patterns range from those focusing on rehabilitation, through those focusing on retribution and punishment, to those focusing on education and training. By far the most common pattern is the "division of labor" and "division of responsibility."

These major categories sometimes are further subdivided on the basis of the individual's offense, age, and sex. Hence, the "organization of corrections in each State" is a complex arrangement of specialized subparts for the adult offender, subdivided into three categories: the institution for the adult offender, subdivided into three categories: the institution for the adult offender, subdivided into the maximum security facility, the minimum security facility, and the halfway house. Each of these is a separate legal entity with the power to admit, retain, and release offenders. State correction agencies and local facilities segregated each category of offender on the basis of race, sex, sex, and sometimes even age group, thereby creating a form of separation of offenders that reflects the realities of past and present segregation of offenders. Within correctional agencies and specific institutions of such agencies, there is often a philosophic and operational separation of staff members whose duties are principally custodial from those whose responsibilities concern offender programs. Also, like all large-scale organizations, corrections has informal or social organization of staff and of individuals who need the social support in institutions that lack competent staff and adequate facilities, and acceptance from the criminal justice process by only a proportionately large numbers of the black and the poor.

- The focus of correctional organizations tends to be institutional, reflecting the emphasis in the criminal justice process on whether an individual is perceived as the "appropriate" extension of the court of jurisdiction; the training school for the juvenile offender, the prisons for the convicted adult offender, and the probation service. As noted earlier in this chapter, each of the 50 States operates a correction agency. And, through bureaucratic associations, each agency groups with others in various coalitions and, through these coalitions, are favored. This has been reflected in growing recognition of the need for administrative reform. Professional groups such as the American Bar Association have assumed an active role in advocating reform and direct services to offenders. This has been reflected in growing recognition of the need for administrative reform. Professional groups such as the American Bar Association have assumed an active role in advocating reform and direct services to offenders.

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**Management by Objectives**

Management by objectives (MBO) emphasizes a goal-oriented philosophy and attitude. Goal-oriented methods are the way to go. The manager must establish objectives in a way that is meaningful and realistic to the employees. The objectives must be measurable and specific. The manager should set a deadline for each objective. The manager should provide feedback to the employees on their progress. The manager should review the objectives periodically. The objectives should be flexible and adaptable to changes. The manager should encourage creativity and innovation. The manager should recognize and reward employees for achieving objectives. This approach helps to improve the quality of work, increase employee satisfaction, and decrease employee turnover. It also helps to promote a team-oriented culture and improve communication. The manager should be aware of potential obstacles to achieving objectives and plan for them. The manager should be a good communicator. The manager should be a good listener. The manager should have good interpersonal skills. The manager should be able to lead and motivate employees. The manager should be able to make difficult decisions. The manager should be able to handle conflict. The manager should be able to handle stress. The manager should be able to handle change. The manager should be able to handle failure. The manager should be able to handle success.
management focuses on results with less concern for method, as long as it is within acceptable legal and moral limits. Traditional management, on the other hand, tends to be task-oriented, with emphasis on task performance without adequate regard for re- 

The purpose of management by objectives is to: (1) develop a mutually understood statement re- 

1. An ongoing system capable of accurately iden- 

2. Administrative capability through a manage- 

3. Clearly established and articulated organiza- 

4. An ongoing evaluation of the organizational 

5. A properly designed and functioning organiza- 

6. A managerial and work climate highly condu- 

7. A properly functioning system for appraising 

**Implementing MBO**

**Designing and implementing management by ob-** 

jectives requires the achievement of the following se-

quential steps:

1. An ongoing system capable of accurately iden-

2. Administrative capability through a manage-

ment information system to provide data quickly to 

appropriately organizational members, work groups, 
or other organizational units for their consideration and possible utilization.

3. Clearly established and articulated organiza-

tional and individual goals, mutually accepted 
through a process of continuous interaction between 
management and workers and between various levels 
of management. Unilateral imposition of organiza-
tional goals on lower echelon participants will not re-
sult in an MBO system but another bureaucracy.

4. An ongoing evaluation of the organizational and individual goals in the light of feedback from the 
system. Such feedback and evaluation may result in 
the resetting of goals.

5. A properly designed and functioning organiza-
tional system for efficient and effective service deliv-

ery. In such a system, goal-oriented collaboration and 
corporation are facilitated and administrative and 
supervisory support efforts are goal accomplished.

6. A managerial and work climate highly condu-

tive to emphasizing and reaching the degree of goal 
accomplishment. Such a climate should be developed and nurtured through the application of a participative style of manage-
ment, to be discussed shortly.

7. A properly functioning system for appraising 
organizational, work group, and individual progress 
toward goal attainment.

**CORRECTIONAL MANAGEMENT'S PLANNING RESPONSIBILITY**

It is an unfortunate reality that most correction 

agencies lose sight of their responsibility to plan 
in the fullest sense. While many have a general notion of 

where they are going and some engage in specific aspect 
of planning, construction, few are engaged in the full planning process. This process involves development of integrated long-range, inter-

mediate-range, and short-range plans for the com-

plete spectrum of their administrative and opera-
tional functions.

Several rationalizations are offered to account for 

the lack of comprehensiveness. Perhaps the most common is "We can't tell what the legislature is 

planning to do." This is a classic case of the "don't 

advocate and question the basic assumptions and 
operating principles of the organization. In examining alternatives to the 

status quo for their possible application to the organi-

zation, he is placed in the role of an unwanted 
change agent.

The planner sometimes contributes to his own 

alienation by a distinction in approach to the 

important problems.

"One of the characteristics of being human is that one makes plans." While the efficiency experts of World War II and the 

PBB (Planning, Programming, Budgeting) experts of 

the mid-1960's may lay claim to a large share of the 

insight and inspired much of the thinking that 

appears in varying degree of 

revised plans, at least 50 years to recognize the 
continuum of changing planning styles that has taken place in the 

United States:

- Long-range corporate planning from the 1920's is the present.
- New Deal economic planning.
- World War II military operations and production planning.
- Fair Deal, New Frontier, and Great Society full employment and social welfare planning.
- Suburban growth and urban renewal planning.
- Systems planning (PBB and PMS) and application to human resources programs.

Too frequently, planning has been left to an iso-

lated office staffed with technicians, and the organi-

zation has received its product with reluctance. Failure to differentiate types of planning (e.g., stra-

ategic and tactical) has led to two extremes: either the planning function is considered the total purview 
of top management, or it is seen as the aggregation of individual plans from many organizational subun-

its. In fact, it is neither. The planning process should 

involve input (information, objectives, progress, 
etc.) from all organizational units, but the major de-

cisions regarding goals and resource allocations are 

the responsibility of top management.

**Role of the Planner**

The effective planner is not an ivory tower tech-

nologist, but some unique features of his role should 

be recognized and supported. His effectiveness depends 

on his ability to sense the changing conditions under 

which the organization must operate. Therefore, 

he is frequently seen as an "outsider" by the rest of 

the organization because he continually raises 

questions not immediately impinging on daily opera-

tions. The planner is a "dissenter," an inquirer, and 

questions the basic assumptions and operating principles 

of the organization. In examining alternatives to the 

status quo for their possible application to the 

organization, he is placed in the role of an unwanted 

change agent.

The planner should be a participant-observer in 

the short-term decision-making of top management. 

Only in this way can he be in a position to social, legal, and 

the relationships between daily action and long-range intentions. Planning can be called a manager's tech-

nique to invent the future. It can also be thought of 

as a systematic examination of future opportunities and 

risks and the strategies to exploit the opportuni-

ties and avoid the risks. It would appear, however, 

that planning more clearly is the critical process of 

directing today's decisions toward the accomplish-

ment of a set of predetermined short- and long-range goals. This process depends on five conditions, 

identified, broken down into manageable dimensions, 

related to one another, and resolved through the 

choice of a number of alternatives.

**Planning and Budgeting Systems**

The budget expresses in financial terms the 

correctional manager's plans or goals. Budgeting is 

an administrative mechanism for making choices 

among alternative and competitive resources uses, 

presumably by balancing public needs and organiza-

tional requirements against available and requested 

funds. When the choices are coordinated with the 
correctional organization's goals, the budget becomes 

a plan.

Like planning, budgeting is something that every-

one does in a variety of ways, from our budget our 

time, money, food, entertainment, and other require-

ments with a general view to meeting our personal and 

family goals. The correctional manager is charged 

with budgeting his resources to meet organizational, 

staff, and offender goals.

Operating, annual, capital, or facilities budgets are 

common differentiations in types of budget. The dis-

inction largely is related to differences in timing 

(annual vs. long-range), degree of uniqueness (ongoing requirements vs. one-time expenditures),

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and differentiated financing arrangements (annual tax collection vs. bonded indebtedness).

The relationship between line-item and program budgets is of substantial managerial significance. The line-item budget is input-oriented, focusing on specific, discrete items of expenditure required to perform a service and categorized by organizational units. A program budget is output-oriented, focusing on the function or service performed.

Program budgeting tends to focus the attention of decisionmakers, including legislators, on specifics such as food, supplies, clothing, and books. The program approach tends to elevate the decisionmaking focus to the level of programmatic concern and consideration of alternative courses of action.

The Program Planning and Budgeting System (PPBS), popular in the 1960s, is a system-oriented effort to link planning, budgeting, and management by objective processes through programs. Under this system an agency or organization first would ask itself: "What is our purpose, and what goals are we attempting to realize?"

Once our purposes or objectives have been determined, action programs to achieve these objectives would be identified or, if nonexistent, designated.

Next, each such program would be analyzed. In existing organizations, analysis would be in terms of the extent to which they were oriented to achievement of the organization's objectives. Reference would then be made to the level of effectiveness at which they were functioning toward such attainment. In the case of newly formulated, objective-oriented programs, the analysis would be in terms of their anticipated costs and expected contribution to accomplishment of organizational objectives.

Finally, in terms of the decisionmaking process, existing and new alternative programs would be analytically compared to their respective costs and anticipated benefits. Should an alternative, on the basis of analysis, be deemed preferable to an existing program, the latter would be discarded and the alternative adopted.

In summary, the management system is a longer range, continuously programmed perspective coupled with a continuous process of reevaluation of objectives, programs, and budgetary amounts as circumstances evolve.

Regardless of how organized and formal an organization's planning, there are six criteria by which managers must judge the comprehensiveness and adequacy of the planning process. These criteria are stated in terms of questions that should be asked repeatedly with reference to any specific planning approach:

- Has the system's planning process adequately identified the key influences in development and trends of American society, the region, and the State, and properly evaluated the impact of each such influence on the field of corrections, its components, and on the specific correction system itself?
- Have the strengths and weaknesses of the system been assessed accurately?
- Have the capacities and capabilities of different system functions to support the plan been projected accurately?
- Have alternatives been considered and evaluated adequately?
- Is there a realistic timetable or schedule for implementation?
- What provisions have been made for possible future reverses?

The basis of correctional planning must shift from individuals to a group framework, as the concerns of the correctional manager and planner quickly become system-oriented instead of individual-oriented.

The objective of community corrections, for example, is to maximize offenders' access to local resources, not as an alternative to incarceration but as a solution itself. This goal requires more integration of criminal justice components (statewide and within each local area) and coordination with other social service delivery systems. (See Chapter 9.)

Planning for the Future of Corrections

The rate of change in corrections has not reached a pace that makes planning impossible. Many of today's problems are related directly to the failure to anticipate the operational impact of general social and environmental changes. The extension of the range of offenders' rights, for example, was a natural outgrowth of a similar movement involving racial minorities and students.

The need for a more coherent approach to correctional programs long has been recognized. Historically, correctional reform has been limited to minor variations on a discordant theme. Reform can and should be a continuing process, not a reaction to periodic public criticism. The planner's role as a skeptic or devil's advocate regarding underlying concepts and basic assumptions can keep the corrections field from a state of complacency.

Even the best plan, however, is of little value if the organization's climate, structure and employees resist or obstruct its implementation. Employees react negatively to changes imposed from above. So access to decisionmaking is important, even though the approach to the business of executive responsibilities requires that innovations cannot always be vetoed by subordinates.

As human resource agencies, corrections must make special effort to integrate various functional specialties into an organization team that holds mutual objectives vis-a-vis the client not only among its members but also between members and the organization. Accomplishing this organization climate will require a participatory and nonthreatening leadership style of a type that has already been gained by the top decision group almost exclusively through statistical reports and compilations. These reports may be incomplete, inaccurate, or even deliberately misrepresented of fact in order to show lower echelons in a favorable light.

The reasonably efficient bureaucracy is an adequate and sometimes excellent action system in the areas to which it is geared. But it is almost universally a poor system for analyzing the need for change, for responding to it, or for measuring or rewarding commitment to its goals, particularly under conditions demanding rapid alteration or modification of goals.

Technocratic Style

A second managerial style is the technocratic, in which the manager views himself as the principal expert in his organization. The technocratic manager, based largely on his professional expertise and technical position or rank, which he associates with "administration" (i.e., paper work), prefers rather to define his role as interpreting technical matters and modifying organizational programs to fit the changing needs of the technological situation.

The technocrat performs the management role as the senior expert in the field, relating personally with colleagues but striving to remain dominant through his perceived superior technical knowledge and ability to give specific directions on jobs. Within the correctional field, psychologists and social workers frequently are technocratic in their managerial application.

The following discussion relies heavily upon an unpublished paper prepared by Kenneth Honing, University of Oregon, for the U.S. Bureau of Prisons in connection with its contribution to the National Advisory Commission on Criminal Justice Standards and Goals.

**Bureaucratic Style**

The bureaucratic management or organizational climate is rule-oriented, position-focused, and downward-directed in communication flow. Examples are military organizations and paramilitary systems, such as many correctional agencies. Dedicated bureaucratic managers perceive their jobs as requiring loyal, unswerving, unquestioning execution of organizational policy.

The bureaucratic's tendency is to avoid development of personal relationships with subordinates in the belief that personal involvement weakens the "authority." Real organizational input in the form of suggestions, ideas, innovations, and danger signals is usually restricted to those few persons in high office. Consequently, reality feedback to the top from operating organizational levels is slow at best. It oc- 

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Second, the idiosyncratic manager makes his idiosyncratic style. Rather than deteriorate the worker's eye for minute significance of himself and the institution casually, he dislikes conflict and lack of harmony, he may do so under the pretense of his decisions. The idiosyncratic manager prides himself on knowing each inmate and has an index picture readily available in his office. The former food service administrator may bestow the team's objectives.

**Participative Style**

The fourth management style or organizational climate is the participative. Such a manager is group-oriented and perceives his managerial role as involving the integration of the work group and its development into an effective team. Toward this end, the participative manager believes he should maintain a harmonious relationship with all subordinates as individuals with specific roles and responsibilities.

**Idiosyncratic Style**

The idiosyncratic or "big daddy" manager views himself as the central figure, one who is expected to carry out his responsibilities to the best of their abilities. But he may also manage by personal manipulation. The idiosyncratic manager is likely to rely on a substantial amount of decision-making to himself and frequently bypasses subordinates in his efforts to influence the behavior of individuals several echelons below in the hierarchy.

This manager's need for information to motivate, influence, or manipulate individuals may cause him to become preoccupied with direct personal contact or minute organizational detail. He usually supposes himself to be adept at the practice of psychology and often believes control over the organization's affairs and its effectiveness as a system depend substantially upon his capacity to deal with differing kinds of personnel problems and situations.

Application of this style is likely to result in certain problems, especially in larger organizations. First, like the bureaucratic and technocratic manager, he reserves most decisions for himself. In these areas of little or no personal interest to him, he delegates rather than delegates. Decision-making in decisional areas is left to the judgment of his subordinates. Second, the idiosyncratic manager makes his choices more on the basis of personal interest or the personal characteristics of the individuals. In particular, the idiosyncratic manager, the bureaucratic and idiosyncratic styles may become more prevalent, particularly if the right hierarchical features of the bureaucracy are retained.

The two management styles most frequently used in the majority of organizations, particularly of managerial development, are the bureaucratic and idiosyncratic. But, as specialized intensive treatment situations more characteristic of juvenile corrections, spread to the adult field, the technocratic style may become more prevalent, particularly if it is not characterized by the rigidity and rigidity of the bureaucratic structure. An organization has established certain administrative processes rather than what is being processed—"the system". The manager's intentional aloofness from his subordinates is rejected by the sort of inmate-staff relations that are common to lower echelons as done for the offender, not with the parole board's problem. Probation is a court function. Halfway houses are run by a community beneath units.

A bureaucratic management style is particularly inappropriate for a human services organization, because its focus on rational processes rather than what is being processed—"the system". The manager's intentional aloofness from his subordinates is rejected by the sort of inmate-staff relations that are common to lower echelons as done for the offender, not with the parole board's problem. Probation is a court function. Halfway houses are run by a community beneath units.

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Adding behavioral change to corrections' traditional control function requires a structural organizational change. When a correctional officer begins to vie for position by playing to the manager's idiosyncrasies. Rather than assembling and organizing data for a rational argument, they try to shuck the issues so that the outcome they prefer appears to be a natural consequence of the manager's predispositions. A request for more casual conversation with subordinates, for example, is justified in terms of his need to counsel others in institutional security. The manager, in providing by an outline for inmate grievances.

**Classic Styles in Correctional Management**

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The ideal Managerial Climate

A well-managed organization is one in which the attitudes and values of the individual members are in substantial agreement with the organization's attitudes and values, and in which organizational positions are matched properly with the personalities and abilities of those occupying them. Adequate satisfactions for the needs of its members are provided. Organizational members, voluntarily and willingly, undertake to do what is organizationally necessary. As Douglas McGregor emphasizes, "The acceptance of responsibility [for self-direction and self-control] is correlated with commitments to objectives." 19

This is, of course, an ideal state of affairs. More commonly, the organization's authority system and its informal social system drift or are driven apart.

Under conditions of rapid environmental change, the effective manager and his subordinates do recognize their role differentiation but, at the same time, share in the decisionmaking process.

However, organizations cannot know exactly what needs to be done or exactly how best to proceed. The urgent requirement confronting modern corrections organizations, therefore, is to structure themselves so that they are adaptable, their participants voluntarily embrace the organization's goals as their own, and they have the capability for determining and interpreting forces impacting upon them. This requires effective problem-solving processes, employee participation in setting organizational objectives, access to the decision-making process, and mechanisms for testing reality (e.g. avoiding stereotyping). Employee participation, by increasing the sources of information, will give management a fuller understanding of the altering environment and a better indication of the organizational consequences of such changes. Management receives assessments from a wider range of perspectives in a form allowing personal interaction and discussion. Full commitment by an organization's leadership as well as other employees would help develop those strategies that are most appropriate for accomplishment of the organization's goals under rapidly changing conditions.

To meet these contemporary requirements, corrections must replace its older management orientation and organization structure which was predicated upon a set of beliefs about human nature and human behavior labeled by Douglas McGregor as Theory X. The assumptions of McGregor's Theory X are that people do not like work, that they require force and control, that they resist change and the expenditure of physical and mental effort and that they have not developed capacities for self-actualization. The average human being has an inherent dislike of work and will avoid it if he can.

Because of this characteristic of dislike of work, most people must be coerced, controlled, directed, and threatened with punishment to get them to put forth adequate effort. Management's job is to make people hate their jobs so much that they will work only as long as they are forced to work. The average human being prefers to be directed, wishes to avoid responsibility, has relatively little ambition, wants security above all. McGregor challenged the validity of these assumptions and proposed instead his Theory Y, which held that:

- The expenditure of physical and mental effort in work is as natural as play or rest. The average human being likes work, and work is self-motivating.
- External control and the threat of punishment are not the major means of securing the cooperation of the individual. People will contribute their abilities toward the achievement of organizational goals if management can provide an organizational setting that is: (1) rewarding in itself, (2) provides an opportunity to realize one's potential, and (3) provides a sense of achievement.
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**Avoidance of responsibility**

The capacity to exercise a relatively high degree of imagination, ingenuity, and creativity in the solution of organizational problems is widely, not necessarily, not uniformly in the population. Under the conditions of traditional life, however, the personal criteria that man be human are utilized only partially.

The assumptions of McGregor's Theory Y as being augmented and modified as greater insight into human behavior is gained from research. Current models of management today recognize man as more complex than either the traditional view or the Theory Y model assumed him to be. Schein has observed, "Not only is he more complex within himself, being part of many needs and potentials, but he is also likely to differ from his neighbor in the patterns of his own complexity." This statement is followed by Schein's summary of the assumptions which underlie the "complex man view of human nature":

Man not only is complex, but also highly variable; he has many skills and abilities of some bit of importance to him, but this heterarchy is subject to change from time to time and situation. Furthermore, more is internal and combines into complex motive patterns the example, since money can facilitate self-actualization, for some people economic striving is equivalent to self-actualization.

**The Union and Correctional Administration**

Public employment is the fastest growing sector in the American labor force today. It is widely predicted that by 1975 about one out of every five workers will be employed by some governmental agency, Federal, State, or local. Since his establishment within the organization is the result of a complex interaction between initial needs and organizational experiences. Man's motives and actions in organizations or different subparts of the same organization may vary; the person who is alienated in the formal organization may find fulfillment of his social and self-actualization needs in the informal a part of the organization. The job may engage some motives while other parts engage other motives.

Man can become involved productively with organization on the basis of a wide range of motives; his satisfaction and the ultimate effectiveness of the organization depend on his satisfaction and the ultimate effectiveness of the organization. The nature of the task to be performed, the abilities and experiences of the person on the job, and the nature of the other people in the organization all interact to produce a pattern of work and feelings. For example, a highly skilled worker.

Man can respond to many different kinds of managerial strategies, depending on his motives and abilities and the nature of the task; in other words, there is no single managerial strategy that will work for all men at all times. Shifts in Managerial Philosophy

The philosophy underlying managerial behavior is central to any discussion of the problem of organizing unions. The literature, in fact, has shifted fundamentally because of the demands of contemporary society. The change is reflected not only by the following three areas:

- A new concept of management, based on increased knowledge of human nature. Semi-skilled and unskilled workers have been the object of attention, not merely managers who are trained by technical means, which replaces the over-simplified, innocent push-button or inert idea of man.
- A new concept of organizational structure, based on a hierarchical, orientational structure, which replaces the decentralized, multidimensional.

The history of recent organizational experience clearly reveals that only those organizations that recognize the direction, magnitude, and rapidity of change and that can marshal the fullest employee commitment and effort will be able to design and direct the anticipatory, adaptive and effective organizational systems required. This organizational climate will still be conducive to assessing change, deciding where to go, and selecting a method to get there.

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These trends will have an increasing impact on correctional managers in the future. They can choose to follow the course industrial managers followed, resist unionization and end up in a strong adversary relationship. Alternatively, they can adopt a more open stance, reduce the need for employee organizations, and work cooperatively. This latter approach recognizes that employees have needs that the organization may not be able to meet.

Standard 13.1
Professional Correctional Management

Each corrections agency should begin immediately to train a management staff that can provide, at minimum, the following system capabilities:

1. Managerial attitude and administrative procedures permitting each employee to have more say about what he does, including more responsibility for deciding how to proceed for setting goals and producing effective rehabilitation programs.

2. A management philosophy encouraging delegation of work-related authority to the employee level and acceptance of employee decisions, with the recognition that such diffusion of authority does not mean managerial abdication but rather that decisions can be made by the persons most involved and presumably best qualified.

3. Administrative flexibility to organize employees into teams or groups, recognizing that individuals involved in small working units become concerned with helping their teammates and achieving common goals.

4. Desire and administrative capacity to eliminate consciously as many as possible of the visible distinctions between employee categories, thereby shifting organizational emphasis from an authority status orientation to a goal orientation.

5. The capability of accomplishing promotion from within the system through a carefully designed and properly implemented career development program.

Commentary

It is almost universally recognized today in industry and the higher levels of government that management is a science as well as an art, and that the field of management rapidly is approaching the status of a profession. There are graduate schools of business and public administration all over the world, and innumerable commercial and governmental organizations strongly encourage, indeed often demand, that their managers have an appropriate managerial education.

The field of corrections, in contrast, is characterized by a virtual absence of professionally trained managers. Often, advancement into and upward in management is through the ranks, with little thought given to the more difficult and professional demands placed on higher management levels. Appointment to management positions in the corrections field frequently is related to politics. Seniority and cronyism have proved greatly inadequate as selection and advancement criteria. The magnitude and complexity of the tasks confronting the field of
corrections demand the highest levels of professional competence and managerial expertise.

References


Related Standards

The following standards may be applicable in implementing Standard 13.1.
14.6 Personnel Practices for Raining Staff.
14.7 Participatory Management.

Standard 13.2
Planning and Organization

Each correctional agency should begin immediately to develop an operational, integrated process of long-, intermediate-, and short-range planning for administrative and operation functions. This should include:

1. An established procedure open to as many employees as possible for establishing and reviewing organizational goals and objectives at least annually.
2. A research capability for adequately identifying the key social, economic, and functional influences impinging on that agency and for predicting the future impact of each influence (See Chapter 15).
3. The capability to monitor, at least annually, progress toward previously specified objectives.
4. An administrative capability for properly assessing the future support services required for effective implementation of formulated plans.

These functions should be combined in one organizational unit responsible to the chief executive officer but drawing heavily on objectives, plans, and information from each organizational subunit.

Each agency should have an operating cost-accounting system by 1975 which should include the following capabilities:

1. Classification of all offender functions and activities in terms of specific action programs.
2. Allocation of costs to specific action programs.
3. Administrative conduct, through program analysis, of ongoing programmatic analyses for management.

Commentary

The rate of change in corrections has not reached a pace that makes planning impossible. Many of today’s problems are related directly to a failure to anticipate the operational impact of general social environmental changes. Extension of the range of offenders’ rights, for example, was a natural outgrowth of a similar movement with regard to racial minorities and students.

Planning is even more important at a time when an organization’s basic assumptions and objectives are being critically questioned. Reform can and should be a continuing process, not a reaction to periodic public criticism. The planner’s role as a skeptic or devil’s advocate can keep the corrections field from a state of complacency.

An organization’s climate and structure are critical features of its ability to respond to changing environmental conditions. Employees react negatively to changes imposed from above, and so their access to decisionmaking is important even though the chief executive’s leadership responsibilities require that in-
novations cannot always be vetoed by subordinates. Functional groupings in organizations that deal with human behavior are almost always ineffective. A behavioral problem cannot be addressed by one group alone. Groups must be required to respond in a unified way. Organizations cannot be viewed as temporary work groups with a mutually accepted objective.

References
6. Littleton, Ananias, and Zimmerman, V. K.


Related Standards
The following standards may be applicable in implementing Standard 13.2.
15.2 Staffing for Correctional Research and Information Systems.
15.5 Evaluating the Performance of the Correctional System.

Standard 13.3
Employee-Management Relations

Each correctional agency should begin immediately to develop the capability to relate effectively to and negotiate with employees and offenders. This labor-offender-management relations capability should consist, at minimum, of the following elements:
1. All management levels should receive in-depth management training designed to reduce interpersonal friction and employee-offender alienation. Such training specifically should include methods of conflict resolution, psychology, group dynamics, human relations, interpersonal communication, motivation of employees, and relations with minority and disadvantaged groups.
2. All nonmanagement personnel in direct, concerning contact with offenders should receive training in psychology, basic counseling, group dynamics, human relations, interpersonal communication, motivation with emphasis on indirect offender rehabilitation, and relations with minority groups and the disadvantaged.
3. All system personnel, including executives and supervisors, should be evaluated, in part, on their interpersonal competence and human sensitivity.
4. All managers should receive training in the strategy and tactics of union organization, management strategies, tactical responses to such organizational efforts, labor law and legislation with emphasis on the public sector, and the collective bargaining process.
5. Top management should have carefully developed and detailed procedures for responding immediately and effectively to problems that may develop in the labor-management or inmate-management relations. These should include specific assignment of responsibility and precise delegation of authority for action, sequenced steps for resolving grievances and adverse actions, and an appeal procedure from agency decisions.
6. Each such system should have, designated and functioning, a trained, compensated, and organizationally experienced ombudsman. He would hear complaints of employees or inmates who feel aggrieved by the organization or its management, or in the case of offenders who feel aggrieved by employees or the conditions of their incarceration. Such an ombudsman would be roughly analogous to the inspector general in the military and would require substantially the same degree of authority to stimulate changes, ameliorate problem situations, and render satisfactory responses to legitimate problems. The ombudsman should be located organizationally in the office of the top administrator.
Commentary

Corrections management urgently need to learn to relate to and negotiate with unions in their systems, or to prepare to cope with the probability of unionization of certain of their employees, possibly their entire organization membership. There also is the distinct probability of inmate unions forming and seeking, with outside legal guidance and aid, to negotiate certain terms and conditions of their incarceration with institutional or correctional system managements.

An often quoted phrase that "unions are organized from the inside, not the outside" should alert managers to the fact that the application of appropriate modern management methods may render the organization of employees unnecessary. Employees who truly feel a part of the organization, who find their work challenging and interesting, who perform their duties in an atmosphere of trust, confidence, and approval, and who have the feeling that their economic and security needs are of serious concern to management are unlikely to seek redress of grievances through union affiliation.

The prudent course of action for corrections, however, is to prepare to deal with employee organizations, while at the same time seeking, through enlightened management, to make their generation unnecessary.

References


Related Standards

The following standards may be applicable in implementing Standard 13.3.
13.4 Work Stoppages and Job Actions.
14.1 Recruitment of Correctional Staff.
14.6 Personnel Practices for Retaining Staff.

Standard 13.4

Work Stoppages and Job Actions

Correctional administrators should immediately make preparations to be able to deal with any concerted work stoppage or job action by correctional employees. Such planning should have the principles outlined in Standard 13.3 as its primary components. In addition, further steps may be necessary to ensure that the public, other correctional staff, and inmates are not endangered or denied necessary services because of a work stoppage.

1. Every State should enact legislation by 1978 that specifically prohibits correctional employees from participating in any concerted work stoppage or job action.
2. Every correctional agency should establish formal written policy prohibiting employees from engaging in any concerted work stoppage. Such policy should specify the alternatives available to employees for resolving grievances. It should delineate internal disciplinary actions that may result from participation in concerted work stoppages.
3. Every correctional agency should develop a plan which will provide for continuing correctional operations in the event of a concerted employee work stoppage.

Commentary

Until recently, strikes by public employees have been almost universally prohibited by legislation, agency policy, or common law. In the past 15 years, however, public employee organizations and unions have become increasingly common, and public employees have been faced with concerted work stoppages and other forms of job actions. The provisions of Standard 13.3, Employee-Management Relations, direct the affirmative action that correctional management should take to relate effectively to and negotiate with employees. Implementation of those provisions should greatly decrease the likelihood that correctional employees will resort to job actions or work stoppages. However, due to the seriousness of the situation if correctional employees should so act, legislation should be adopted to prohibit correctional employees from engaging in any concerted work stoppage or job action.

The courts have upheld such legislative prohibitions as well as those on apparent subterfuges for strikes, such as mass sick calls, even when striking employees have had a justifiable grievance or complaint. Such legislation will also allow correctional agencies to obtain court injunctions to force employees to return to duty.

In addition, every correctional agency should develop written policy dealing with employee work stoppages. Such policy should emphasize the positive alternatives to employees for resolving grievances.
should specify the range of actions that the agency may take in disciplining participants in work stoppages. Such policies should be flexible enough that the agency is not bound to only one course of action, but should make known the full range of actions that may be taken, including dismissal.

Finally, because responsibility of maintaining custody of offenders and providing for their care and safety does not cease in the event of a work stoppage, each correctional agency should develop a contingency plan for continuing an essential level of services. Such a plan might involve agreements with other jurisdictions for loan of correctional staff. Whatever the specific nature of the plan, the agency should ensure the safety and well-being of any employees not participating in the job action.

References

Related Standard
The following standard may be applicable in implementing Standard 13.4.
13.3 Employee-Management Relations.

Chapter 14
Manpower for Corrections

People are the most effective resource for helping other people. In corrections, as in most other fields, they are also the most underutilized and misappropriated resource.

Manpower problems in corrections include: critical shortage of specialized professional personnel; poor working conditions; and poor allocation of both human and fiscal resources. Women, members of ethnic minorities, ex-offenders, and volunteers are generally underutilized as correctional manpower and in some areas are not used at all.

Problems shared by all areas of corrections—its poor image and conflict among personnel as to its mission—also complicate solutions to manpower difficulties.

Manpower problems have been especially crucial because they usually have not been given sufficient recognition by persons responsible for financing and managing corrections. Not until 1965, when Congress passed the Correctional Rehabilitation Study Act, was a major manpower study launched. The results of the study were presented in a summary volume, A Time to Act, released in 1969 by the Joint Commission on Correctional Manpower and Training.

Originally, the Joint Commission concerned itself with remedies for the manpower shortage in corrections. However, this initial concern gave way to the task to address pertinent issues of utilization and training of all personnel, old hands as well as recruits.

Since the conclusion of the study in 1969, some of the problems noted there have been intensified, and new ones have surfaced. This chapter will seek to analyze the current situation in corrections as it bears specifically on manpower and to set forth standards by which solutions may be reached. These standards, building in part on the 1969 study, will set out in detail the steps to effective use of correctional manpower.

A HISTORICAL VIEW

Correctional manpower and training programs have developed haphazardly. There has never been a national manpower strategy, and State and local correctional systems have had few, if any, guidelines. From the beginning, persons working in corrections were there largely by chance, not by choice. Most correctional personnel were used then, as now, in large custodial institutions. Prerequisites for employment were low. For much of this century, the usual way to get a job in corrections was through political patronage. Vestiges of that practice remain today.

Institutions were in isolated rural areas where it was difficult to induce professional staff to locate.
Manpower was drawn largely from the local population and thus reflected a rural point of view out of line with that of most offenders, who came from cities.

Historically, corrections personnel resembled military and law enforcement officers. Correctional staff were used almost entirely in training penitentiary capacities, even in the State "schools" for juveniles and youths. Parole officers were more akin to law enforcement officers than "beating the bushes" personnel. Many carried guns and wore or carried official badges. Some correctional staff still wear uniforms and have military titles, as they did from the beginning. At least half of all job titles in corrections include the word "officer"—custodial officer, parole officer, probation officer, training officer, and the like.

This identification with the military strongly influenced manpower and training policies and practices. Staff members were promoted up the ranks. They were not to fraternize with the inmates, who were to call them "Sir." They conducted inspections and kept demerit lists. They were trained in military matters.

In all too many modern correctional institutions, these policies and practices remain. Great conflict is apparent here as well. As a result of continued military influence, many offenders are identified with the military, yet they are not to be treated as such. Their behavior is regulated as if they were in the military, while at the same time they are not to be treated as military personnel.

EMERGING ISSUES THAT AFFECT MANPOWER

Out of the changes taking place within the corrections system there are in society as a whole have emerged several issues with profound effects and potential effects, on correctional manpower.

Disenchantment with Prisons

Although institutional house less than a quarter of all convicted offenders, they employ more than two-thirds of all persons working in corrections, and they spend more than 70 cents of each dollar spent on corrections. This gross misallocation of human and financial resources has strong implications for a restructuring of the corrections system.

Prisons, jails, and juvenile institutions, which are the focal point of public concern about corrections, have been termed a failure by many authorities. In this period of manpower constraints, it is necessary to reexamine the role of those who are responsible for the correction of the criminal, and the role of the public in the criminal justice system.

The Move Toward Community-Based Corrections

As noted many times in this report, the community is recognized today as the rightful site and source for most correctional programs. With the closing of the large penal institutions and training schools, care was introduced. As various rehabilitation strategies gained prominence, a new movement has begun to prepare staff. Often the programs have operated in conflict, internally as well as with each other.

Mandatory that the gross misdistribution of human and financial resources is a major factor in the financial health of the corrections system. It is also a major factor in the quality of the correctional programs. Television coverage of the prison disturbances of 1971 and 1972 brought the charge of institutional racism directly into the Nation's homes. Such charges are now being made throughout the correctional system, in community programs as well as institutions. Many adult and juvenile programs are faced with escalating race situations. Staff members in some States spend more hours of training in riot control than in human communications or any other facet of their jobs.

Minorities are found disproportionately in the ranks of corrections: overrepresented as clients and underrepresented as staff. Unfortunately, there are no reliable national figures on minority group clients in the correctional system. Estimates place the percentage high but vary with geographical regions and urban-rural distribution of the population. For example, in California almost half of the 20,800 inmates are blacks or Chicano. In the total New York State population a number of minorities, such as Puerto Ricans. At least one-third of all Federal offenders are members of minority groups. American Indians are still being arrested and confined in alarming numbers in both Dakota, in the Southwest, and in Alaska, as they were then in 1971.

To most States, the proportion of minority group members confined to the penal system is a problem. This is especially true in the correction of those living in the State. Urban jails usually hold disproportionately large numbers of minority group members. In many large Eastern and Central Atlantic cities, 50 to 90 percent of the jail inmates are blacks or Chicanos. In the total New York State population, 90 percent of the inmates are black. In the Southwest, and in Alaska, as they were in 1971.

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To most States, the proportion of minority group members confined to the penal system is a problem. This is especially true in the correction of those living in the State. Urban jails usually hold disproportionately large numbers of minority group members. In many large Eastern and Central Atlantic cities, 50 to 90 percent of the jail inmates are blacks or Chicanos. In the total New York State population, 90 percent of the inmates are black. In the Southwest, and in Alaska, as they were in 1971.

As noted many times in this report, the community is recognized today as the rightful site and source for most correctional programs. With the closing of the large penal institutions and training schools, care was introduced. As various rehabilitation strategies gained prominence, a new movement has begun to prepare staff. Often the programs have operated in conflict, internally as well as with each other.

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to increase the number of correctional personnel who come from minority groups.

**Political Activism Among Offenders**

Prison inmates, parolees, and ex-offenders are organizing to demand correctional reform and to begin to provide the "ingredient for changing people"—giving of themselves to help each other and their families. Some correctional organizations are capable of activist efforts, and they are openly testing present policies and practices within the institutions and in the free community. Citizen support for their efforts is growing.

Political organizations are springing up at the local level, but they can be foreseen as a national movement. These challenges are likely to increase. Perhaps no other development has unseated correctional staff more than the politicalization of the offender. Stuffs, from wardens down, have been ill-equipped to deal with it. The old training manuals on riot control are totally obsolete in dealing with the sophisticated tactics and skills used by many inmate groups.

The first evidence of this politicalization was the prison underground newspaper produced by inmates. In some States, the prison newspapers are not subject to censorship, and the underground press has surfaced. The content is political in nature, with two primary characteristics: concern with the counterculture (anti-establishment in nature) and racial militancy.

**Ungapped Manpower Resources**

Corrections needs to look at other groups as well as minorities for the additional manpower it needs. More ex-offenders, women, and volunteers should be used. These "new manpower resources," as they are called, actually are resources that have always been at hand but have not been used effectively by corrections administrators.

While one of the issues was an operation to control, hold, survey, and regiment the behavior of its wards, today it is oriented increasingly to behavior modification. When the emphasis was on physical control, emotional strength was a primary prerequisite for positions.

This long-chiseled tradition has been challenged and thrown overboard. As the social distance between the keepers and the kept has decreased, a push to utilize once-untapped resources has surfaced. Unlike inmates, officers, women, and volunteers will introduce different skills, as well as help change the custodial image of the correctional system.

**MANPOWER NEEDS**

The changing trends in corrections portend a need for dramatic and immediate change in manpower policy—recruiting and keeping staff, training personnel, and allowing them to participate in program and agency management.

**Staff Recruitment**

Corrections can offer an attractive future for active, innovative persons. As the image of correctional changes, an effective recruitment service will point out the opportunities awaiting those who want to enter a field involved in dramatic change.

In the past, few wanted to enter this work. Among talented, trained persons, it was a second, third, or last career choice. Today it should rank high as a challenging career possibility.

According to a survey made for the Joint Commission on Correctional systems feel that they help others; participate in changing a system, making it more responsive to society; find rewarding personal satisfaction; and shape new roles in the changing correctional system. These rewards should offer more than adequate incentive for entering corrections as a career. However, the severe personnel shortage that still exists in the field is due in part to correction's poor public image and in part to the reluctance of some correctional administrators to recruit actively talented, creative, sensitive, and educated persons needed to meet the challenges of the changing correctional structure.

The Joint Commission found in 1969 that:

> Young people are missing from the correctional employment scene. While other vocations have tried to recruit and plan for the education of new leaders to replace the aging generation of officers, the Joint Commission was unable to uncover any widespread effort in corrections. Only 26 percent of correctional employees are under 34 years old, a statistic that is particularly disturbing in view of the fact that juvenile correctional workers and young correctional clients will need to make up about one-third of the total correctional work force and are being referred to correctional agencies as they are old enough to be workers and young correctional clients will no doubt exert pressure if efforts are not made to recruit young people into the field.¹

**Staff Education**

A critical point in corrections is lack of education among its personnel. The lack of educated manpower in corrections was a primary issue when the Joint Commission conducted its studies from 1964 to 1966. The Commission's recommendations were strongly supported by the Law Enforcement Education Program (LEEP) and the promise of a National Institute of Corrections.

The need for educated personnel increases with the changes in corrections. Educational standards of 1960s will not suffice in the 1970s. Several problems block a simplistic solution to the educational problems of corrections. Correctional programs vary widely, ranging from maximum security to minimum security to voluntary drug treatment.

Educational requirements for personnel to run these programs overlap in some areas, differ significantly in others, and are not established by the subsystems of criminal justice—police, courts, and corrections. The continued involvement of criminal justice practitioners should be maintained in order to assure that the curriculum keeps up with rapid developments in the field.

Clues for the development of a criminal justice curriculum which can be taken from the general development of criminal justice which have been established at a number of universities around the country in the past decade. These schools generally offer interdisciplinary programs for persons with bachelor's degrees or first professional degrees in social science, law, and related professional fields. Their current effort is to develop a fundamental understanding of basic


fields in criminal justice, using background materials in supporting disciplines. They provide opportunities for professional specialization, considering advancement to positions of policy determination and agency leadership. Further development of such programs is discussed in the Commission’s staff paper. 

When the criminal justice curriculum is refined and established, it should include degree offerings from the bachelor's to the doctoral level. In addition to criminal justice operational personnel, the curriculum should be required of criminal justice planners so they may achieve the knowledge and skills necessary to assist in charting new directions for the system. Finally, the Law Enforcement Assistance Administration and other funding organizations should furnish financial support for continued program development, faculty, student loans and fellowships, and research. 

Financial Assistance

The Joint Commission made many recommendations about financial assistance to educational efforts. Correctional agencies, community colleges, and colleges and universities involved in the education of correctional personnel were urged to seek funds from Federal programs concerned with corrections. Establishment of a comprehensive financial assistance program in an appropriate Federal agency was urged to provide support for personnel in or preparing to enter the field of corrections. Such a program should include institutional, guaranteed loans, research and teaching assistantships, work-study programs, educational opportunity grants for direct expenses, and Federal grants-in-aid. The Joint Commission recommended financial assistance programs to defray the cost of college education and provide incentive for further work in the field. 

Prior to establishment of the Law Enforcement Assistance Administration (LEAA), educational programs received meager financial support, and large numbers of correctional workers had never taken college-level courses. Some specific problems included these:

1. Criminology and corrections degree programs were developed erratically and frequently were terminated when once-interested faculty left.
2. Social work graduates rarely chose corrections careers, although the Master of Social Work degree was a preferred credential for probation and parole work as well as some institutional positions.
3. Sparse, if any, financial assistance in the form of loans or scholarships was available to preserve or improve personnel.
4. Institutions of higher education rarely provided more than token assistance to staff development efforts in nearby correctional programs. The Joint Commission recommended that LEAA become operational in late 1968. Thousands of interracial correctional staff have taken advantage of LEAP loans and grants. A smaller number of service personnel have participated. The largest number have been line workers studying for an associate degree. After achieving that degree, some have continued to pursue a bachelor's degree. Many field service and treatment staff have taken advantage of LEAP loans and grants to pursue master's degrees. Although the Joint Commission surveyed, 49 percent of the juvenile institutions reported that they had no training personnel. Adult and juvenile field service staff get the most training attention, yet many are not provided ongoing programs. Almost all state-operated agencies have orientation training, but local probation and court services have few staff development programs. This lack of staff development reflects an attitude of indifference about the services that staff provide to the clients of the system. It also suggests to staff that the management feels keeping up with the field has low priority.

Staff Development

The Joint Commission survey in 1969 reported a paucity of staff development programs in corrections. Less than 14 percent of any category of workers were participating in an inservice training program at the time of the survey. Most staff training terminated after the orientation effort, and many agencies offered no staff training. Only 4 percent of all juvenile agencies and 19 percent of adult agencies had a full-time staff training person. The quality of training was not measured in this study, but staff ranked it as no more than routinized when queried in a Harris survey. At that time, very little Federal funding was provided to support staff development efforts.

Because educational preparation for various aspects of correctional work is in a confused state, and for most personnel, education is not even a consideration, the importance of staff development cannot be overemphasized. Yet staff development has a very low priority as indicated by lack of commitment of training dollars, training staff, and staff time to in-service educational efforts. An adult correctional institution with a training program that is anything more than a plan on paper is more apt to have training conducted by a correctional sergeant or lieutenant who probably has no background in training methodology or objectives. If he has a program at all, he finds it difficult to justify it to his staff. Similarly, for training of group leaders, it is more often than not conducted by an institutional supervisor who certainly has no background in group methodology. As the training effort proceeds, it frequently is found that the persons involved in developing the concept probably have no interest in the final outcome.

Purchase of Services

Frequently large salaries are provided to correctional management to hire a psychiatrist, a clinical psychologist, or an educational consultant. Correctional management should reexamine this practice and move toward purchase of service from such highly specialized manpower. Contracts for specialists would free funds as well as resolve personnel problems frequently associated with keeping highly trained staff in the correctional setting. In addition to specialists commonly associated with corrections, a concentrated effort should be made to hire academically trained, persons skilled at handling intergroup relations, community development, public information, and other activities designed to link the correctional agency more closely with the community.

Participatory Management

An appropriate way to accomplish the needed change in manpower utilization is through participatory management. This concept is new and threatening to many managers, but if corrections is to be changed to meet the realities of the 1970s, innovations are inevitable. Some correctional systems are already experimenting with participatory management. The idea is to bring together staff, clients, and managers to plan and operate their new organizations. Each is a part of the organization and should have a stake in making it effective. In the past, most staff and clients were not included in decision-making or planning organizational operations. As the reorganization of correctional systems proceeds, many roles for staff, offenders, and managers will change, forcing new trends in manpower development as well as providing a new view that management is one of many roles to be played. In time, and in all probability, most institutions there will be more collaboration of inmates and staff in management, hence more inmate responsibility and less social difference between staff and inmates. 10

The tides noted portend much for correctional change and reflect dramatic need for changing correctional structures and thinking, for both today and the next decade. The example is drawn clearly from higher education. Since 1968, as university administrators began seriously to include students in decisionmaking roles throughout the campus structure, student protest has diminished and student commitment to the system emerged. It is ironic that massive violence shook the campus for the prison yard, but lessons must be learned from this phenomenon. A priority in corrections must be participation. 11

10 "Changes in Corrections during the Next Twenty Years," unpublished paper written for Project STAR, American Justice Institute, p. 61.
tory management sessions in which managers bring staff and inmates together to chart the future course for all of them.

PLANNING TO MEET MANPOWER NEEDS

Most correctional agencies have been too preoccupied with day-to-day staffing problems to attempt systematic long-range planning to meet manpower needs. Sporadic efforts to remedy pressing difficulties through raising wages, reducing workloads, or other piecemeal actions do not get to the heart of the problems with which this chapter has been concerned.

Elements of effective manpower planning are:

1. Assessment of manpower needed to meet the agency's goal.
2. Redesigning of present jobs on the basis of task analysis.
3. Development of methods to recruit additional manpower needed.
4. Training and staff development.

These elements must be the responsibility of the State. For only on a statewide basis can real needs for manpower be assessed and measures planned to utilize effectively the manpower now at hand and to secure the additional personnel needed. Unless there is basic consolidation to eliminate the present balkanization of corrections, it is unrealistic to expect overall manpower planning. But at least each system—institution, probation, parole, etc.—should be working now toward long-range statewide planning to meet manpower needs. Special needs in manpower planning for probation and parole are considered in Chapters 10 and 12.

Standard 14.1

Recruitment of Correctional Staff

Correctional agencies should begin immediately to develop personnel policies and practices that will improve the image of corrections and facilitate the fair and effective selection of the best persons for correctional positions.

To improve the image of corrections, agencies should:

1. Discontinue the use of uniforms.
2. Replace all military titles with names appropriate to the correctional task.
3. Discontinue the use of badges and, except where absolutely necessary, the carrying of weapons.
4. Abolish such military terms as company, mess hall, drill, inspection, and gig list.
5. Abandon regimented behavior in all facilities, both for personnel and for inmates.

In the recruitment of personnel, agencies should:

1. Eliminate all political patronage for staff selection.
2. Eliminate such personnel practices as:
   a. Unreasonable age or sex restrictions.
   b. Unreasonable physical restrictions (e.g., height, weight).
   c. Barriers to hiring physically handicapped.
   d. Questionable personality tests.
   e. Legal or administrative barriers to hiring ex-offenders.
   f. Unnecessary long requirements for experience in correctional work.
   g. Residency requirements.
3. Actively recruit from minority groups, women, young persons, and prospective indigenous workers, and see that employment announcements reach these groups and the general public.
4. Make a task analysis of each correctional position (to be updated periodically) to determine those tasks, skills, and qualities needed. Testing based solely on these relevant features should be designed to assure that proper qualifications are considered for each position.
5. Use an open system of selection in which any testing device used is related to a specific job and is a practical test of a person's ability to perform that job.

Commentary

The image of corrections as regimented and military in nature is discouraging to the recruitment of the very types of persons most needed. Corrections must abandon the appearances, terminology, and practices that have contributed to this image. These changes will make corrections a more attractive career field to the young, to educated and talented people, to minorities, women, etc.
Many problems must be overcome for the successful recruitment of highly qualified staff. Prospective staff often are driven from this field because of poor personnel policies and practices that select out or reject applicants.

Selection through political patronage results in the accumulation of employees who are poorly qualified or motivated for correctional work. The practice is also discouraging to employees who prepared themselves for correctional careers and who wish to improve the status and effectiveness of the field.

Correctional agencies traditionally have preferred to hire only males of mature age who met rigid and arbitrary requirements as to height and weight and who were free of physical defects. Agencies also have administered personality tests that were not originally designed for correctional recruitment and barred the employment of persons who had ever been arrested or convicted of even the most minor offenses. None of these practices is based upon the realities of correctional work. They have operated effectively to bar persons with skills and talents that can be put to good use in corrections. Instead of closing the doors of corrections to these people, agencies should make an active and enlightened effort to recruit them.

Announcements of positions available rarely get beyond the bulletin board of the State personnel office. They never reach the inner city or other places where qualified persons could apply if they knew about job openings.

Some widely used requirements for jobs in corrections select out applicants because they do not have extensive experience in specific correctional work. This requirement is most widely used for supervisory or administrative positions and results in perpetuation of a questionable seniority system. In many cases it works against bringing into management new employees with new ideas and the courage to champion change rather than perpetuate the status quo.

Residency requirements in this highly mobile society are counterproductive and have been ruled ineffective. As the Joint Commission on Correctional Manpower and Training pointed out, prohibition of lateral entry is forbidden, such hiring is impossible. As the Joint Commission on Correctional Manpower and Training pointed out, prohibition of lateral entry is one of the factors that helps make corrections a closed system. Such a system contributes to "a stagnant, rather than a dynamic, work force."

A challenge to unfair testing procedures for employment is upheld in the Supreme Court on March 8, 1971, in the decision regarding Griggs v. Duke Power Company (401 U.S. 424, 1971). The court held that selection processes must be specifically job related, culture fair, and validated. Most selection processes used by personnel offices throughout the country, and specifically in corrections, do not meet these standards. To rectify these poor personnel practices, the National Civil Service League proposed the Model Public Personnel Administration Law of 1972, which concerns these and other issues.

A task analysis of each job should be required to produce a job-related test. For example, the task analysis approach was used by the Western Interstate Commission on Higher Education for the job of parole agent. Each task was isolated, defined, and related to the total job function. The skills needed to perform that task were identified, and the appropriate training for each skill proposed. The report on the task analysis outlines the following method:

- In order to observe a number of parole agents in the performance of their jobs in a relatively short period, a fairly simple approach for the collection of job data is required. It can best be described as a three-step analysis:
  1. Meet the parole agent and inquire about his background and his personal approach to job performance.
  2. Observe activities of the agent for a period of time and literally walk or ride with him and even participate in the performance of actual tasks.
  3. Record the type of task performed, how often he performs it, the duration of the task, and the degree of difficulty involved in performing it.
- If such a task analysis were made of each major job in corrections, adequate predictive instruments could be developed to test applicants for job-related skills and knowledge.

- Most written tests do little more than assess the applicant's vocabulary and grammar and test his comprehension with rudimentary exercises in logic. They rarely ask job-related questions, and almost never ask questions about job performance. The test actually does select persons whose adequate job performance was predicted by that test.

- Careful task analysis in other human service agencies has shown that many tasks traditionally assigned to professional workers can be done, and done well, by persons with less than a college education. Corrections has done very little with realignment of tasks and restructuring of jobs so that nonprofessional workers can take some of the load now carried by professionals and thus spread scarce professional services. Moreover, many persons with less than a college education can be of special use in corrections, since they understand the problems of offenders who are likewise without higher education.

- Recruiting such personnel will help to reverse the racial and sexual discrimination that has occurred in staffing corrections. Recruitment efforts also should be directed toward hiring younger people who are finishing their education and interested in entering corrections as a career. This would reverse the current trend of hiring people who have entered corrections as career of second, third, or last choice.


Related Standards

The following standards may be applicable in implementing Standard 14.1.

8.4 Juvenile Intake and Detention Personnel Planning.
9.6 Staffing Patterns.
10.4 Probation Manpower.
12.2 Parole Authority Personnel.
13.3 Employee-Management Relations.

References


Standard 14.2

Recruitment from Minority Groups

Correctional agencies should take immediate, affirmative action to recruit and employ minority group individuals (black, Chicano, American Indian, Puerto Rican, and others) for all positions.

1. All job qualifications and hiring policies should be reexamined with the assistance of equal employment specialists from outside the hiring agency. All assumptions (implicit and explicit) in qualifications and policies should be reviewed for demonstrated relationship to successful job performance. Particular attention should be devoted to the meaning and relevance of such criteria as age, educational background, specified experience requirements, physical characteristics, prior criminal record or "good moral character" specifications, and "sensitive job" designations. All arbitrary obstacles to employment should be eliminated.

2. If examinations are deemed necessary, outside assistance should be enlisted to insure that all tests, written and oral, are related significantly to the work to be performed and are not culturally biased.

3. Training programs, more intensive and comprehensive than standard programs, should be designed to replace educational and previous experience requirements. Training programs should be concerned also with improving relationships among culturally diverse staff and clients.

4. Recruitment should involve a community relations effort in areas where the general population does not reflect the ethnic and cultural diversity of the correctional population. Agencies should develop suitable housing, transportation, education, and other arrangements for minority staff, where these factors are such as to discourage their recruitment.

Commentary

The point need not be labored that a correctional population where minority groups are highly overrepresented can hardly be well served by a staff that is overwhelmingly white. But most correctional personnel today are white.

In 1969, the Joint Commission on Correctional Manpower and Training reported that of the total number of correctional employees (111,000) only 6 percent were blacks, 4 percent Chicanos, and less than 1 percent American Indians, Puerto Ricans, or Orientals. All institution administrators in the adult correctional system were white. Since 1969, some changes have been noted. A few blacks now serve in administrative roles in adult corrections, but their number is greatly disproportionate to the black proportion of the population, let alone the black proportion of the correctional population.

Extremely small numbers of minority group members were found among managers, rehabilitation specialists, and line workers in 1969. It is impossible to state an ideal figure for a national standard in minority recruitment because of the array of programs and the varying number of minority clients and community residents. Judgments need to be made in each case, but the overwhelming evidence is that an imbalance exists and must be remedied.

The qualifications set by State and local personnel offices should be reexamined when there are problems in obtaining minority staff. New criteria might be used, such as years of service in ghetto programs, "self-help" efforts, and community service. The prerequisites of long years in correctional systems may be the least valuable of all requirements. It is certain to eliminate most minority applicants. Excesses often are given that qualified members of minority groups cannot be found. One State administrator from the Southwestern region told the press recently: "Of the 128 women inmates, 48 are black. There are no Negro matrons on the staff. We simply have no black applicants, or they don't meet the qualifications." Such remarks no longer can go unchallenged.

There is another problem regarding recruitment of minority staff. In the past, those few who were brought into the system felt pressure to become like their white counterparts. By doing so, they suffered as identity crisis with minority offenders. As black, Chicoan, and Indian offenders have become politicized, they increasingly have rejected traditional minority staff. Extreme conflict has resulted in some institutions. Black inmates want black staff with whom they can identify. The same is true of Chicanos and Indian inmates, probationers, and parolees.

Correctional agencies must become sensitive to this issue. They should abandon policies and practices that weaken identification between members of these groups and launch programs that capitalize on cultural differences as opportunities to improve their programs rather than as problems to contend with.

References


7. We Hold These Truths, Proceedings of the National Conference on Corrections, Richmond: Virginia Department of Justice and Crime Prevention, 1972.

Related Standards

The following standards may be applicable in implementing Standard 14.2.

10.4 Probation Manpower.

12.8 Manpower (Parole).
Standard 14.3

Employment of Women

Correctional agencies immediately should develop policies and implement practices to recruit and hire more women for all types of positions in corrections, to include the following:

1. Change in correctional agency policy to eliminate discrimination against women for correctional work.

2. Provision for lateral entry to allow immediate placement of women in administrative positions.

3. Development of better criteria for selection of staff for correctional work, removing unreasonable obstacles to employment of women.

4. Assumption by the personnel system of aggressive leadership in giving women a full role in corrections.

Commentary

The Joint Commission on Correctional Manpower and Training pointed out in 1969 that while women make up 40 percent of the national work force, they account for only 12 percent of clerks and secretaries. The majority of women work in adult and juvenile institutions that are segregated by sex; that is, they usually work in institutions for female offenders. In most State and Federal institutions for males, the only women employees are clerks and secretaries.

Discrimination against women as employees in correctional institutions for males has had serious implications for other correctional roles. The traditional tendency of corrections to select its managers and administrators from the ranks of institutional personnel (i.e., working up from guard to administrator), combined with the fact that the number of institutions for males is much larger than the number of institutions for females, has meant that women have been effectively eliminated from management and administrative positions. The few women correctional administrators serve only as wardens of female institutions.

The time is long overdue for a careful inspection of the assumptions and biases that have barred women from most positions in corrections. Correctional agencies must take a careful look at the tasks to be performed for each occupational category in their system to see if sex alone constitutes a bona fide occupational qualification.

In interpreting the prohibition against discrimination on the basis of sex in Title VII of the Civil Rights Act of 1964, the courts have given force to the guidelines of the Equal Employment Opportunity Commission of the Civil Service Commission. The Commission has put forth these guidelines:

References


4. We Hold These Truths, Proceedings of the National Conference on Corrections. Richmond: Virginia Department of Justice and Crime Prevention, 1972. (See particularly the presentation by William Nagel.)

Related Standards

The following standards may be applicable in implementing Standard 14.3.

8.4 Juvenile Intake and Detention Personnel Planning.

9.6 Staffing Patterns.

10.4 Probation Manpower.

11.6 Women in Major Institutions.

12.2 Parole Authority Personnel.

16.5 Recruiting and Retaining Professional Personnel.
Standard 14.4

Employment of Ex-Offenders

Correctional agencies should take immediate and affirmative action to recruit and employ capable and qualified ex-offenders in correctional roles.

1. Policies and practices restricting the hiring of ex-offenders should be reviewed and, where found unreasonable, eliminated or changed.
2. Agencies not only should open their doors to the recruitment of ex-offenders but also should actively seek qualified applicants.
3. Training programs should be developed to prepare ex-offenders to work in various correctional positions, and career development should be extended to them so they can advance in the system.

Commentary

Ex-offenders have knowledge of corrections and, like members of minority groups, often have rapport with the offender population that gives them special value as correctional employees. They have been through the mill and understand its effects on the individual.

In the past, innumerable laws have barred correctional agencies from hiring persons with felony convictions or even arrest records. While some States still have these legal barriers to the employment of offenders and ex-offenders, the greatest obstacles come through agency policy. In 1969, fully half of all correctional personnel interviewed in a survey for the Joint Commission on Correctional Manpower and Training objected to hiring ex-offenders as full-time correctional workers. The Commission report stated:

In light of the increasing emphasis being placed on service roles in American society, it is imperative that governmental agencies in general and correctional organizations in particular reassess their policies, practices and attitudes toward hiring of offenders and ex-offenders.

The success of the New Careers program has given support to this effort. New York, California, Washington, Illinois, and other States pioneered in the use of offenders and ex-offenders in correctional work. As participatory management of the correctional system becomes a reality, more offenders will find roles in corrections. That main ingredient in corrections—people helping people—should be expanded to include the recipients of the service in helping capacities.

This program is high-risk but potentially high-gain. The Joint Commission sounded the caution:

Opening up of governmental systems as an employment prospect for offenders and ex-offenders brings with it a certain amount of risk. The public, as well as the hired agency, should be prepared for the fact that some will not work well as correctional employees. The same is true, however, of the general population from which correctional

References


Related Standards

The following standards may be applicable in implementing Standard 14.4.

2.10 Retention and Restoration of Rights.
10.4 Probation Manpower.
12.8 Manpower (Parole).
16.17 Collateral Consequences of a Criminal Conviction.
Standard 14.5.

Employment of Volunteers

Correctional agencies immediately should begin to recruit and use volunteers from all ranks of life as a valuable additional resource in correctional programs and operations, as follows:

1. **Volunteers should be recruited from the ranks of minority groups, the poor, inner-city residents, ex-offenders who can serve as success models, and professionals who can bring special expertise to the field.**

2. **Training should be provided to volunteers to give them an understanding of the needs and lifestyles common among offenders and to acquaint them with the objectives and problems of corrections.**

3. **A paid volunteer coordinator should be provided for efficient program operation.**

4. **Administrators should plan for and bring about full participation of volunteers in their programs; volunteers should be included in organizational development efforts.**

5. **Insurance plans should be available to protect the volunteer from any mishaps experienced during participation in the program.**

6. **Monetary rewards and honorary recognition should be given to volunteers making exceptional contributions to an agency.**

**Commentary**

Probation actually began as a voluntary service in the mid-19th century, but since that time, corrections has used volunteers sparingly. In 1968 slightly less than one-half of the correctional agencies in the United States reported the use of volunteers. The Joint Commission on Correctional Manpower and Training found that the attitude of correctional personnel toward the use of volunteers depended heavily on their own experience with volunteer workers. In programs where volunteers have been used, paid employees feel that they have made a significant contribution and would like to see more of them. Where volunteers have not been used, employees are far from enthusiastic about starting to use them.

Volunteers have come largely from the well-educated middle class. These volunteers do contribute greatly to the field, but their lifestyle differs sharply from that of the members of minority groups who make up a large segment of the offender population—individuals who are poor, undereducated, and unskilled. This disparity suggests the need for two types of programs. On the one hand, recruiting of volunteers should be intensified among minority groups, the poor, and inner-city residents. On the other, training must be developed to give the traditional volunteer exposure to and understanding of lifestyles common among offender groups.

It must be remembered that volunteers can contribute much more than their services to correctional programs. Many of those now working as volunteers are “gatekeepers” in the community, persons who can help offenders and ex-offenders secure jobs, schooling, and recreation. Perhaps their greatest contribution to corrections lies in demonstrating that offenders are people who can become useful contributors to the community, people with whom it is a satisfaction to work. In sum, the volunteer can serve as a bridge between corrections and the free community, a bridge which is sorely needed.

Volunteers require supervision, direction, and guidance, just as other correctional employees do, and paid staff should be provided to manage their programs and activities. The development of volunteer programs, as well as other correctional programs, should be planned with the assistance of volunteers, who have a variety of expertise to offer.

Because volunteers may be involved in a wide variety of program activities with offenders, both in the community and in institutions, insurance coverage should be provided for them. Also, some funds should be budgeted to provide tangible rewards and a variety of means of honorary recognition for volunteers whose performances are particularly valuable.

**References**

5. The Royal Oak, Michigan, Project. (Series of reports on the volunteer program of the Court of Royal Oak, Mich., since 1966.)

**Related Standards**

The following standards may be applicable in implementing Standard 14.5.

7.3 Corrections' Responsibility for Citizen Involvement.
8.4 Juvenile Intake and Detention Personnel Planning.
12.8 Manpower (Parole).
Standard 14.6

Personnel Practices for Retaining Staff

Correctional agencies should immediately reexami

mane and revise personnel practices to create a fa

orable organizational climate and eliminate legi

timate causes of employee dissatisfaction in order
to retain capable staff. Policies should be developedthat would provide:
1. Salaries for all personnel that are competitive wi

h other parts of the criminal justice system as wel

as with comparable occupation groups of the pri

vate sector of the local economy. An annual cost-of-living adjustment should be mandatory.
2. Opportunities for staff advancement within the

system. The system also should be opened to pro

vide opportunities for lateral entry and promo

tional mobility within jurisdictions and across juris

dictional lines.
3. Elimination of excessive and unnecessary pa

perwork and chains of command that are too rigi

tly structured and bureaucratic in function, with

the objective of facilitating communication and de

cision making so as to encourage innovation and in

itiative.
4. Appropriate recognition for jobs well done.
5. Workload distribution and schedules based on

flexible staffing arrangements. Size of the workloadshould be only one determinant. Also to be includ

eared in such decisions as nature of cases, team as

signments, and the needs of offenders and the com

munity.

6. A criminal justice career pension system to in

clude investment in an annuity and equity system
declared minimum framework for each correctional worker. The system should provide movement within elements of the criminal justice system and from one corrections agency to another without loss of benefits.

Commentary

A survey conducted by the Joint Commission of the Correctional Manpower and Training examined employee satisfaction as well as dissatisfaction.

While generally positive about their jobs, correctional employees point out a significant number of causes for dissatisfaction. The most commonly expressed grievance is that there is "too much work." Excessive caseloads and overwhelming work conditions contribute to a feeling of "too much to do and too little time to do it." There is considerable concern over the inadequacies of the correctional system—that is, a keen awareness that the system fails for far too many offenders. Significant numbers of correctional employees see disorganization and lack of communication within and between agencies as detracting from job satisfaction. Lack of sufficient staff and financial resources, and too much agency-created red tape are frequently mentioned.

Half of all correctional employees feel they do not have much freedom in doing their jobs. In a national climate of increasing concern with self-determination, it is imperative for corrections to open up its internal operations and provide freedom of operation for its employees, thus paving the way for more active and meaningful achievement of professional goals.

Low pay is a common complaint throughout the system. There are abundant examples of salaries near the poverty line as defined by the Federal Government, and some salaries below that level. Many correctional employees have to hold two jobs to make ends meet.

Such a situation is obviously self-defeating. Correctional systems which hope to retain capable workers will see to it that salaries are competitive with those of comparable occupational groups in the State and are adjusted annually to meet changes in the cost of living. The personnel divisions of some State correctional systems now make annual salary surveys for this purpose.

Opportunities for advancement are essential to good job performance in any system. The manager who wishes to make the best use of his employees will be on the alert to spot those who have aptitude and/or skills (or could acquire them with proper training) to fill openings above their current level.

Sometimes, however, particularly in professional positions and in top management, the man most qualified to fill a vacancy (and possibly quite willing to do so) cannot be hired because the system is in no provision for lateral entry. This is one aspect of the closed system that characterizes corrections as a field.

Corrections should be opened up to permit entry from other jurisdictions and other elements of the criminal justice system.

Corrections is characterized by an excessively large line complement—guards, probation officers, parole officers, etc.—whose very numbers make advancement slow and difficult. Career ladders need to be structured to provide opportunities for capable employees to advance in their personal careers and to make greater contribution in keeping with their abilities.

The excessive number of line workers in corrections also creates an organizational atmosphere in which too many labor in obscurity. Correctional administrators should establish a system for seeking out and identifying high-quality performance and providing a range of devices for recognition of this performance—monetary awards, pay increases, letters of commendation, membership on planning and management committees of various kinds, participation in national conferences, and the like.

Workload standards are important in planning for recruitment and hiring. The concept of caseload standards has become particularly important in corrections as an attempt to define an equitable level of work and aid in setting goals for employee performance. In Standard 14.6, caseload standards have been developed and are based on numbers. Complexity of cases, capability of staff, geographic location of cases, and nature of case assignments are other determinants to be considered.

Assignment of staff to offenders on an individual basis should not necessarily be considered the best method.

A promising alternative is the team assignment, which brings to bear talents from caseworkers, psychologists, teachers, offenders, volunteers, and community workers. A team might be assigned to an area of the city where many probation and parole cases are found, or to an institutional unit or college.

Experimentation is needed to compare cases having no formal supervision with those having varying amounts and kinds of supervision. There is mounting evidence that some persons do better in corrections if they are not supervised by traditional staff. More study is needed. If this evidence is borne out, staff could be reassigned to other tasks such as job finding, community organization, client advocacy, and social action programs.

Institutional caseloads should be established to make maximum use of teams including counselors, line officers, offenders, volunteers, and community-based staff.

Vested rights in pension systems too often inhibit employees from moving from a correctional agency where they may have worked several years. To encourage mobility and the exchange of personnel between elements of the criminal justice system and correctional agencies, a pension system should be developed that would permit benefits to accompany the employee from one agency to another. Correctional agencies should allow for creative use of manpower which has never been a characteristic of the correctional field in general. Large custodial staffs walk the cell blocks, sit in gun towers, and search inmates. Their jobs are routine and boring, frequently resulting in cynicism about the entire system and particularly about the men and women in their care.

On the other hand, persons in institutional treatment roles are few in number, carry excessive case loads, and are required to handle enormous amounts of paperwork and duplicative report writing. In field offices, staff members carry very heavy caseloads, and clerical duties take much of their time. As noted in Chapters 10 and 12, caseload standards have been set by different bodies, but no agreement has emerged.

Several recommendations on workload distribution are in order.

Correctional agencies should experiment with workload determinants to arrive at an effective ratio of staff to offenders. Ratios in the past have been based on numbers. Complexity of cases, capability of staff, geographic location of cases, and nature of case assignments are other determinants to be considered.

Assignment of staff to offenders on an individual basis should not necessarily be considered the best method.
Participatory Management

Correctional agencies should adopt immediately a program of participatory management in which everyone involved—managers, staff, and offenders—shares in identifying problems, finding mutually agreeable solutions, setting goals and objectives, defining new roles for participants, and evaluating effectiveness of these processes.

This program should include the following:
1. Training and development sessions to prepare managers, staff, and offenders for their new roles in organizational development.
2. An ongoing evaluation process to determine progress toward participatory management and role changes of managers, staff, and offenders.
3. A procedure for the participation of other elements of the criminal justice system in long-range planning for the correctional system.
4. A change of manpower utilization from traditional roles to those in keeping with new management and correctional concepts.

Commentary

The aim of participatory management is to give all persons in the organization a stake in its direction, operation, and outcome. This concept is gaining support in practice. First, all those affected by the organization (prison, community-based facility, training school) join in training and development sessions to prepare for involvement in the system. Mutual problems are identified, and plans are made to resolve the problems and set goals and objectives. All roles are redefined to accomplish the newly stated organizational goals. Responsibility for role fulfillment is fixed, and results are measured over a period. Participatory management can best be defined operationally by describing its specific objectives:
1. To create an open, problem-solving climate throughout an organization.
2. To supplement the authority associated with role or status with the authority or knowledge of competence.
3. To locate decision making and problem-solving responsibilities as close to information sources as possible.
4. To build trust among individuals and groups within the organization.
5. To maximize collaborative efforts.
6. To increase the level of personal enthusiasm and satisfaction in the organization.
7. To increase the level of individual and group responsibility in planning and implementation.
8. To increase the incidence of confrontation of organizational problems, both within and among
groups, in contrast to “sweeping problems under the rug.”

In short, participatory management is a planned effort to change an obstructing organization into one in which individuals may pursue their own and the organization’s needs and objectives simultaneously.

When such a process is set in motion in a correctional facility, some immediate results may include elected inmate councils, diminished cleavage between custody and treatment staff, inmate-operated community facilities, and new roles for line staff.

One large-scale experiment with participatory management has been conducted at the Women’s Treatment Center in Purdy, Washington. The results are encouraging.

- Managers find their jobs shifting to a coordinating and facilitating function.
- Line staff undergo role shifts. They find less need for emphasis on custody and greater need for counseling skills and inclusion in self-help programs.
- Professional staff are freed to work directly with inmates having special needs or to provide assistance to staff and inmates in their new roles.
- Inmates develop self-government, self-help programs, and roles as aides and community liaison.

References


Standard 14.8

Redistribution of Correctional Manpower Resources to Community-Based Programs

Correctional and other agencies, in implementing the recommendations of Chapters 7 and 11 for reducing the use of major institutions and increasing the use of community resources for correctional purposes, should undertake immediate cooperative studies to determine proper redistribution of manpower from institutional to community-based programs. This plan should include the following:

1. Development of a statewide correctional manpower profile including appropriate data on each worker.
2. Proposals for retraining staff relocated by institutional closures.
3. A process of updating information on program effectiveness and needed role changes for correctional staff working in community-based programs.
4. Methods for formal, official corrections to cooperate effectively with informal and private correctional efforts found increasingly in the community. Both should develop collaboratively rather than competitively.

Commentary

Most correctional resources—dollars, manpower, and attention—have been invested in traditional institutional services outside the mainstream of urban life. As indicated throughout this report, the trend now is away from isolating the offender in large, rural prisons and toward treatment near his home. There are major obstacles to full implementation of this change, however, not the least of which are the tremendous implications for correctional personnel. As stated earlier, the majority of correctional personnel are now, and have been in the past, employed in institutions. Given the size, physical characteristics, and predominant institutional attitudes toward offenders, most of these staff have been trained and rewarded for a custody and control orientation. In addition, correctional staff have generally had a predominantly rural background and, in many cases, a lifestyle that has been heavily centered around institutional life. Thus, a dual problem is presented in switching to community-based corrections: a change in job function and a change in community of orientation.

Obviously, current staff cannot be dismissed and replaced by new staff. Nor can it be assumed that simply relocating and changing job descriptions will solve the problem. Correctional agencies that have made major shifts from institutional corrections to community corrections have learned this lesson the hard way. When insufficient attention has been given to staff in effecting these major program changes, problems have resulted. In some cases institutional staff have been notified only days or weeks before
the institution in which they had been working was closed. Naturally, the persons so affected have been angered, and some have become vigorous opponents of such moves. Such opposition may serve to slow or halt further implementation of community corrections. Thus lack of adequate anticipatory planning and retraining for staff may block program change.

Too often advocates of reform have concentrated solely on the political and social change strategies necessary to convince administrators and funders to change their priorities and emphasize community corrections programs. However, by the time agreement is reached on the desirability of moving toward such a change, in one sense it is already too late to begin thinking about the problems that will result from existing staff.

It is of critical importance for correctional administrators to acknowledge the changes in the wind and begin preparing for them immediately. The first step required is to gather an overall picture of current personnel, including data on education, training, and experience. Such a statewide correctional manpower profile can then be used in conjunction with other information as long-range planning is done. Such material can serve as a basis for developing comprehensive plans for retraining staff, both for those already relocated and in anticipation of future manpower requirements.

Much of this training will take the form of introducing correctional personnel to a new role—that of broker, resource manager, change agent, etc.—that will be required in community corrections. If training precedes actual relocation, consideration should be given to using rotating assignments as, for example, moving a group of institutional staff into the community with a cohort of parolees and later returning the staff to another institutional shift. Such a project is now being tried in California. Another possibility would involve utilizing institutional staff in expanded roles, such as carrying the functions of release planning and employment placement assistance from the institution into the community. Thus, personnel may adopt more fluid assignments so that "institutional staff" may have responsibilities that require working in the community on a part-time basis. Many variations are possible, but it is important that adequate provisions are made for giving those undergoing training an opportunity to utilize and expand their new skills.

Experimenting with new roles for correctional staff can also serve a valuable function in developing effective relationships with private correctional efforts in the community. Administrators should realize that beginning to work with community agencies and representatives should not wait until a complete transition to community corrections is achieved. In order to plan effectively for new manpower needs, it is necessary to work with community agencies to learn what services are presently available, what could be done by community groups, and what the critical roles to be filled by correctional personnel will be.

As new manpower programs and assignments are implemented, evaluation components should be included, at least on a sample basis, that will provide feedback on actual services performed, additional services needed, problems encountered, etc., as a basis for continuing planning and training.

References

12. We Hold These Truths, Proceedings of the National Conference on Corrections. Richmond, Virginia Department of Justice and Crime Prevention, 1972.
Standard 14.9

Coordinated State Plan for Criminal Justice Education

Each State should establish by 1975 a State plan for coordinating criminal justice education to assure a sound academic continuum from an associate of arts through graduate studies in criminal justice, to allocate education resources to sections of the State with defined needs, and to work toward proper placement of persons completing these programs.

1. Where a State higher education coordinating agency exists, it should be utilized to formulate and implement the plan.

2. Educational leaders, State planners, and criminal justice staff members should meet to chart current and future statewide distribution and location of academic programs, based on proven needs and resources.

3. Award of Law Enforcement Education Program funds should be based on a sound educational plan.

4. Preservice graduates of criminal justice education programs should be assisted in finding proper employment.

Each unified State correctional system should ensure that proper incentives are provided for participation in higher education programs.

1. Inservice graduates of criminal justice education programs should be aided in proper job advancement or reassignment.

2. Rewards (either increased salary or new work assignments) should be provided to encourage in-service staff to pursue these educational opportunities.

Commentary

Higher education for correctional personnel has posed two kinds of problems: the availability and correlation of educational programs; and recognition of work done by individuals who complete such programs. Obviously, higher education has the major responsibility for planning educational programs in criminal justice as in other fields, and some universities have taken the lead in establishing graduate criminal justice programs, as noted in the narrative of this chapter. But the State correctional agency must take responsibility for pointing out the special needs of its personnel to the education coordinating body.

With Law Enforcement Education Program loans and grants, many correctional personnel have been able to pursue academic studies. But colleges and universities have developed their programs independently of each other, and thus great divergence prevails. A correctional officer completing an associate of arts program at a local community college may not be able to enter a 4-year college and find a curriculum relevant to his needs. Furthermore, many of his course credits may not be transferable.

Even if he does pursue advanced degrees, most personnel systems have failed to respond positively to this personal staff development. Many have refused to redesign the job to take advantage of the new skills or to pay the person appropriately for his new abilities. Thus there is little incentive to do college-level work, and the correctional agencies are defeating their own attempts to secure better-trained personnel.

A plan was introduced in the Connecticut State Legislature in 1971 to provide financial incentive to correctional employees to pursue relevant academic work. The bill failed to pass.

While such a plan may not be feasible in some States, it is unrealistic to expect employees to do college-level work, frequently on their own time and money, unless they can see the possibility of official recognition of their efforts.

More detailed information on developing a State plan for coordinating criminal justice education is provided in the Commission's report on The Criminal Justice System.

References

1. Connecticut Legislature, Legislative Bill 612, 1971. "To establish an incentive program that will encourage correctional employees to continue their education."


Related Standards

The following standards may be applicable in implementing Standard 14.9.

10.4 Probation Manpower.

12.8 Manpower (Parole).

13.3 Employee-Management Relations.

16.5 Recruiting and Retaining Professional Personnel.
Standard 14.10

Intern and Work-Study Programs

Correctional agencies should immediately begin to plan, support, and implement internship and work-study programs to attract students to corrections as a career and improve the relationship between educational institutions and the field of practice.

These programs should include the following:
1. Recruitment efforts concentrating on minority groups, women, and socially concerned students.
2. Careful linking between the academic component, work assignments, and practical experiences for the students.
3. Collaborative planning for program objectives and execution agreeable to university faculty, student interns, and agency staff.
4. Evaluation of each program.
5. Realistic pay for students.
6. Followup with participating students to encourage entrance into correctional work.

Commentary

Young people are the targets of the internship and work-study programs now being offered in a number of social service fields. For purposes of this standard, internship can be defined as a period of practice in a clinical setting after a student has completed specific academic preparation, usually at the graduate level. As he works to gain proficiency in special skills, he is usually supervised by a qualified professional. An example is an internship in clinical psychology for correctional work.

Work-study programs now being conducted in the correctional field are typically offered jointly by a college or university and one or more institutions of the State's correctional system. Under the pattern developed by the Western Interstate Commission for Higher Education, undergraduates who have some interest in a career in corrections have a brief orientation, lecture, and study period on the campus during the summer and then go to an institution to do paid work under supervision. They continue study under supervision from the campus. These programs introduce students to the field under real-life circumstances, so that they can confirm or reject it as a career choice on the basis of experience.

Summer work-study programs have been the means of recruiting young people to a field that badly needs them. Of special interest are programs which recruit women and members of minority groups.

While intern and summer work-study programs are not new in other fields, they have been used sparingly in most adult correctional settings. Prison reform recently has gained popularity on the college campuses. Students are looking for ways to confront corrections—to cause changes. Often this search ends in angry rhetoric, further alienating the young people from the criminal justice system. Through internship and work-study programs students can participate in correctional practice and reform at the grass-roots—in prisons and juvenile institutions and in probation and parole services.

In 1972 the National Manpower Development Assistance Program of the Law Enforcement Assistance Administration gave top priority to internships in correctional settings in its newly adopted intern program. This movement can achieve valuable results in familiarizing students with corrections. It can serve both as a recruitment technique and as preparation for the role of concerned citizen.

References

Related Standards

The following standards may be applicable in implementing Standard 14.10.

10.4 Probation Manpower.
12.8 Manpower (Parole).
16.5 Recruiting and Retaining Professional Personnel.
Standard 14.11

Staff Development

Correctional agencies immediately should plan and implement a staff development program that prepares and sustains all staff members.

1. Qualified trainers should develop and direct the program.
2. Training should be the responsibility of management and should provide staff with skills and knowledge to fulfill organizational goals and objectives.
3. To the fullest extent possible, training should include all members of the organization, including the clients.
4. Training should be conducted at the organization site and also in community settings reflecting the context of crime and community resources.

5. Financial support for staff development should continue from the Law Enforcement Assistance Administration, but State and local correctional agencies must assume support as rapidly as possible.
6. Trainers should cooperate with their counterparties in the private sector and draw resources from higher education.
7. Sabbatical leaves should be granted for correctional personnel to teach or attend courses in colleges and universities.

Commentary

While low priority continues to be given to the development of correctional staff in some sections of the country, the picture is changing in other areas. With the advent of the Law Enforcement Assistance Administration and the use of block grants to States through statewide planning agencies, substantial funds have been pumped into corrections for staff development. But use of these funds is uneven, with many agencies failing to participate through lack of interest and others operating training programs of poor quality.

As pointed out earlier in this chapter, many agencies still use trainers who are not qualified for their duties. Also, the training function may be placed too far down the organizational ladder as to achieve this status or notice from management or line personnel. In some organizations, only selected personnel are designated to participate in training, while other personnel—particularly upper and middle management—are excluded entirely from such activities.

Failure to train managers is coming to be seen as a private enterprise as a real obstacle to the progress of the organization. The trend in business now is to give top and middle managers annual training as an executive development.

Correctional managers are in special need of such training for two reasons. First, the standard promotion ladder from guard to warden in institutions (and similar ladders in some community programs) does little to equip an employee with new skills needed as he heads a larger and more varied group of employees who perform more and more complex tasks. Moreover, the advancing correctional manager will have increasing contacts with other elements of the criminal justice system. Thus he needs a minimum of 40 hours a year of training in management skills and in the operations of police, courts, prosecution, and defense attorneys.

The need for orientation to any new job is well recognized. New employees in corrections will need at least 40 hours of general orientation. As they become more familiar with corrections and correctional problems, they will need another 60 hours of more specialized training during their first year. After that, at least 40 hours of training each year will be necessary to alert them to emerging issues and new methods in corrections.

Too often the training programs of corrections are conducted in classrooms or other places that we remote geographically and socially from institutions and community settings where the actual work of corrections is done. Corrections might well look to successful training programs for related types of work which have been conducted in those areas where the persons with whom the trainers will have to work are located. For example, one Colorado program to train employment service professionals for work with former prisoners received a grant to conduct a run-down section of Denver.

Some of the most useful innovations in training are coming from the academic community and from private management and staff development firms, which have developed valuable concepts and methods of training. Much of the literature that is useful to correctional trainers has come from higher education and from professional management associations.

The proposed National Institute of Corrections should serve as a clearinghouse and package of training resources.

Funds for training will probably continue to come from LEAA. But State and local correctional agencies must face up to meeting the bulk of training costs as part of their regular budgets.

References


Related Standards

The following standards may be applicable in implementing Standard 14.11.

14.1 Recruitment of Correctional Staff
14.2 Recruitment from Minority Groups
14.3 Employment of Women
14.4 Employment of Ex-Offenders
14.5 Employment of Volunteers
14.6 Personnel Practices for Retaining Staff
Chapter 15
Research and Development, Information, and Statistics

Since World War II, a massive empirical attack has been launched on problems inherent in controlling offenders and reducing criminal behavior. Some problems have been solved, others better formulated, because of a succession of studies. Much remains to be learned, but the record of achievement insures that corrections never again can be the same. The impact of research has drastically modified assumptions and changed practice. The impact of research can be used as a foundation for new approaches to the use of information in the disposition of offenders.

Every correctional agency of research is required to meet corrections' continuing needs. First, research must be incorporated as an integral instrument of correctional management. Modern administration depends on the collection and analysis of information as a basis for policy formulation and a guide for specific decisions. No information system can replace the decisionmaker, but availability of selected information, carefully interpreted, offers an invaluable aid to his reason and judgment. Every correctional manager should be afforded the tools of research methodology and the degree of objectivity an agency research program can provide.

Second, there is need for research done outside the agency. Not all sources of innovation can be found within the confines of any one agency or system. Continued improvement of corrections can be expected only from the application of new ideas and models derived from basic research and prototype projects. The support of such research by national funding agencies insures contribution of ideas from the private sector, the academic community, and other sources. Also required is a continuing hospitality to the conduct of research in the operating correctional agencies.

Research alone cannot create a new day in corrections. It offers the administrator opportunity to learn from the mistakes of others. The administrator's task in attempting to meet needs as they arise is to utilize all tools with which innovations are forged.

HISTORICAL PERSPECTIVES

Housekeeping, budgeting, and audit have always required managers to maintain accounts and statistics. Students of penal history can find crude data surviving from the early 19th century. For the most part, these statistics were maintained to report on past years and to project future needs. Professional accuracy was neither maintained nor claimed. Analytic techniques were not introduced until contested administrators saw the need for statistical projection in planning and implementing programs for expanding offender populations.

Statistical analysis raised questions about practice. In the early 1950's, reviews of data in several States suggested that the costs of incarceration might be reduced by increasing the use of probation and parole. Clearly, if experiments of this kind were to be tried, steps would have to be taken to insure that public safety would not be impaired. Results of such innovations would have to be documented and verified. From the first, it has been an accepted principle that significant changes in corrections must be supported by evidence that public protection has not been diminished thereby.

This principle established a continuity of statistical analysis. The effectiveness of correctional programs has been assessed for many years by counting the participants who return to criminal behavior. Thus, recidivism has become the ultimate criterion of the success of correctional programs. An agency's capability of carrying on this evaluation is fundamental to operational control. Unfortunately, few correctional agencies are equipped to conduct this kind of analysis. There are serious obstacles to systematic collection of data on recidivism. Most of these obstacles can be traced directly to fragmentation of the criminal justice system. Even the best statistical bureaus are blocked from attaining complete coverage of recidivism.

Statistical analysis of correctional operations has opened questions that cannot be answered by statistics alone. A statistical tabulation will present the record of an uncontrolled photograph. It will not explain what it presents, nor will it indicate changes that might improve results.

Research and statistics are operationally interdependent. Without the experimenter's methods of research, the meaning of the statistics would be lost. Indeed, decisions as to which statistics should be collected must be based on the theoretical judgment of their significance. Existence of a responsible statistical system in an agency will facilitate research. Most successful correctional research is the product of systems in which statistical operations are accepted as part of the administrative culture.

The history of research related to penal problems can be traced from the years immediately after World War I. It is a brief history, but it boasts successes beyond the expenditure of effort and resources. In the twenties and thirties Sheldon and Eleanor Glueck initiated the empirical test of programs by examining the experience of those exposed to them over considerable periods. This work continued in the present as concern about the effectiveness of programs has heightened interest in their assessment.

Thus, a considerable amount of evaluative research has accumulated. Most of it has examined the usefulness of specific treatment methods in achieving offender rehabilitation. The influence of these studies has played a critical role in development of correctional policy. Few studies have culminated in unquestionable findings, but the absence of significant conclusion has itself been significant. It is especially noteworthy that treatment program tests have been conducted in a wide variety of incarcerative settings without establishing the rehabilitative value of any. The consistency of this record strongly indicates that incarcerative treatment is incompatible with rehabilitative objectives. This conclusion is tentative, but influential. It is responsible for the present wave of interest in developing community-based alternatives to incarceration.

Mounting evidence of the ineffectiveness of correctional treatment programs for confined offenders has led to a new body of opinion about the role of the prison. This consensus holds that use of incarceration should be limited to the control of offenders from whom the public cannot be protected in any other way. It is further held that the changing of offenders into responsible citizens must take place in society, not behind prison walls. Although it is appropriate to provide prisoners with opportunities for self-help, there is no evidence that treatment prescribed and administered by institutional staff has any positive effect.

The impact of this consistent finding in recent correctional research cannot be overstated. In some States complete reorganization of correctional services has resulted. Many members of the bench and bar have changed their views about the disposition of offenders. The Nation will have to support prisons for many years to come, but the reasons for doing so have been altered as a result of examined experience.

BASIC RESEARCH COMPONENTS

Research is the process of acquiring new knowledge. In all science it begins with description of the objects of study. In most social sciences, description calls for measurement of events and processes. Description of a prison, for example, might require discrimination of an enormous number of events comprising the flow of offenders through the process of differential control. As events and processes are accurately described over an extended period, it becomes possible to attempt an explanation of
The interaction between persons with sets of events so that outcomes may be predicted. From this level of understanding, it becomes apparent that the system can be modified or that new strategies may influence the outcome of events. From this level of understanding, it is clear that the system can be altered or that new tactics may influence the outcome of events.

From an explanatory standpoint, the problem of prediction is related to the concept of "information." In essence, the explanatory procedure facilitates evaluation of process, developing criteria for measuring success in goal attainment.

If we define a system as the first strand in correctional self-study, experimental research also has provided us with a different level of understanding. It has been found that there is too little experimentation in corrections, perhaps because theorists have been slow to recognize the value of the correctional system as a laboratory. Experimental work conducted by Warren in California, McCorkle in New Jersey, and Empey in Utah have demonstrated the relatively feasibility of various alternatives. A number of these innovative researchers based their program assumptions on well-developed behavioral science theory. None of the theoretical positions supported their innovations. Therefore, much research has been conducted without major revision. Nevertheless, each innovation has shown clearly that wide ranges of offenders can be programmed safely for many years in the community. Recidivists attributable to community programs has not exceeded results obtained by extended incarceration. The gains possible from management by systematic changes have been based on these findings that have been slow in coming, but the impact of these studies on correctional thought is fundamental.

The increased emphasis in the analysis of corrections is reflected by a series of studies of prison communities from widely varying viewpoints. The early work of some researchers represented the powerful forces that socialize confined offenders to the artificial circumstances of prison life. These observations were followed by the theoretically oriented work of Sykes and Messinger.1


4 Studt, Messinger, and Wilson6 and Goffman.7 These studies have documented the forces inherent in confinement which oppose favorable behavior change. They confirm clinical impressions of much longer standing and suggest the trend of evaluative research outlined above.

The combined impact of this research on correctional policy has been far-reaching and cumulative. In essence, the causes of the high redistribution of offenders from institutional to community programs under the Probation Subsidy Act of New Jersey. Similarly, the devastation of Massachusetts' juvenile correctional facilities has demonstrated the impact of research on policies that are supported only by tradition.

It is impressive that studies producing such similar effects have been so scattered.7 To this day, few correctional agencies have organized their own research sections. The notion that research should be an instrument of administration is widely accepted, but its implications have yet to be explored fully. If research is to be a necessary component of sound administration, much correctional research will be done, but its nature will change. It is important to consider the direction of these changes. A host of proposals on studies to improve the quality of management can be expected. Current management theory stresses continuous research for organizational changes and information of future requirements. The work of Drucker, Forrester,11 and many other management scientists has demonstrated the gains possible from management by objectives, performance budgeting, and accountability for results. (See Chapter 13.)

The historical focus of the correctional agency was to administer punishment. The administration was not expected to concern itself with results. Aside from industrial, vocational, and educational programs, it has been incidental to control of offenders. Administrators have seen that maintenance of control and absence of disorder and scandal have substituted the limits of public expectations of correctional service.

There is reason to believe that the situation is changing. The executive and legislative bodies have been concerned with experimentation of new ideas and strategies, thus applying to criminal justice the administrative techniques used in the business world. The use of computer technology is increasing. The shift in emphasis will call for different order of research. The stress on results requires information processing and data reduction. It means that the evaluative studies and the experimental research will be responsible for devoting considerable time to statistical calculations. The logistical and personnel problems of computer operations. Recent studies by Hill indicate the feasibility of a generic model for a corrections information system, despite differences in policy and practice among correctional agencies. Development of such a generic model will aid assimilation of the new managerial ideology of planning and review.

Uses of Information

An information system for corrections must supply data for an enormous number of individual decisions. Decisions about the classification of offenders—e.g., custodial requirements, employment, and training—are common to every correctional agency. In prisons and reformatories, decisions must be made about housing, discipline, work assignments, and control. Many are so routine that, if properly identified, they are delegated to the inmates or other individual staff members. If they are seen to be decisions at all, each action requires certain information for fairness and efficiency.

In virtually all correctional agencies these cases determine the basis of information from a cumbersone, usually printed file. Its use is so clamy that record study often is supplanted by intuition. Clearly if decisionmakers


7 Peter Drucker, Managing for Results (Harper and Row: 1964).


are to benefit from information, a transition from informal to formal quality control must be made. Hill puts the problem aptly: "If it is generally recognized . . . that information requirements for management have been difficult to identify. This is not necessarily because of management reluctance to specify its information needs but rather because management cannot always anticipate what it will need in the future." Because Hill was concerned with the information needs of correctional administration, he undertook a survey of claimed and actual requirements. The diversity of needs reported by administrators making the same kinds of decisions would have precluded implementation of any system if only claimed data needs were to be provided. Hill therefore recommends creation of a system in which it is possible to examine the interrelationships between data used and decisions made." "The challenge of verifying information requirements will introduce new elements of rationality to the system it serves. Studies of the actual use of information in criminal justice decisionmaking indicate that the number of items required will be surprisingly small.

Quality Control

The idea of a formal quality control capability still is new to most correctional administrators. Until now they have relied on informed intuition and spot inspections to guarantee maintenance of operational standards. An information system can assure compliance with standards projected by agency plans and budget. Processing rates can be established for significant periods. For example, the number of previous investigations in a probation office or boys in a vocational training program can be projected as norms. A later check will determine how many actually were employed as machinists and how many become recidivists. If the persons trained as machinists commit fewer crimes than others, it may be roughly indicative of the program's value.

At the second level is the explanatory evaluation, in which research instruments are introduced to facilitate statistical comparisons beyond checking expectations against observed outcomes. Each program has special features that must be allowed for if its progress is to be understood. Provision in the system for all the special features of all the programs is necessary to complete the system and the reporting requirements that support it. However, the generic problem of correctional evaluation calls for a solution in terms of a generalization of the population exposed. The intent of explanatory evaluation is to distinguish (1) those special features of a program that make a difference in outcomes, and (2) others on whom programs are and are not effective.

Design of a Model Correctional Information System

Design details of an information system do not concern the layman. For a comprehensive account of the problems and their solution, see Hill's volume study, Correctionalities, already cited. Despite the hazards of a little knowledge, administrators should understand the general characteristics of an information system that effectively utilizes all current technological knowledge. Hill's studies specify the following essential capabilities as being both technically required and technically feasible:

- Point-in-time net results.
- Period-in-time reports.
- Automatic notifications and reports.
- Statistical/analytical relationships.

Point-in-Time Net Results

At any point in time, the system should be able to deliver routine analyses of program status. Such analyses depend on having the following information:

1. Basic population characteristics such as offense data, age, race, originating jurisdiction, educational status.
2. Program definition and participants.
3. Organizational units, if any; for example, probation district offices, institutions within statewide systems.
4. Personnel characteristics.
5. Fiscal data such as costs and budget projections.

With this information in the system, necessary figures such as population accounting, program participation, and staff coverage at the time the report is submitted can be derived routinely at intervals selected by the administrator, or on his emergency demand. Design of reports of this kind calls for close collaboration of the administrator with the information system designer.

Period-in-Time Reports

The point-in-time report freezes the data at some specific time so the administrator will know the status of activities under his jurisdiction on the demand date. The period-in-time report provides a summary of movements, events, and actions in a specified period. The movement of a population, the amount and flow of expenditures, and occurrence rates of actions or events can be delivered periodically for review.

Few administrators attempt to manage operations without such reports, usually prepared manually. The information system assures that the reports will be current, statistically correlated as required, and delivered on demand.

The focus in this aspect of the system is on events: the admission of a new inmate, a transfer, his hearing before a parole board, his release on parole, his transfer from one parole agent to another. When aggregated, data of this kind provide an accounting of a system's movement that is essential to rational planning and control. To maintain such a system, the following kinds of data must be stored:

1. Summary of offender events and results of

Automatic Notifications

As suggested above, the information system should generate management exception reports for immediate delivery. Such reports are initiated automatically by conditions that vary from standards previously established for the system. Four kinds of exception reports are of particular value to the manager:

1. Volume of assignments to programs or units varying from standard capacity.
2. Movement of any type that varies from planned movement; for example, number of probation awards granted for a specified period, probation revocations, staff resignations, commitments to jail as a condition of probation.
3. Noncompliance with established decision criteria. If policy prescribes that certain kinds of offenders should not be assigned to maximum security institutions, the assignment criteria can be specified in the system so that assignments in violation can be reported immediately for administrative review.
4. Excessive expenditures; for example, any expenditures in excess of a specified period. Such reports can be prescribed for completion of any process. When an individual is in process too long, a report will be generated. For example, if juvenile offenders are not to be held in detention for more than 30 days before a court hearing, reports can be generated to alert the chief probation officer of the approach and nearness of the limit.

This automatic notification system can be programmed to include requirements sufficient to inculcate the administrator with care in taking steps to reduce unnecessary expenditures. Judicial design of the automatic notification capability will enable the administrator to avoid many kinds of surprises and emergencies. The notification reports also will constitute a useful basis for the researcher in the conduct of program analysis.

Statistical/Analytical Relationships

The interrelationships of data are critical to the
interpretive process review. Not all interrelationships are significant enough to warrant continuous study, but many analyses should be available regularly for audit and planning. For example, the system should report to the administrator the number of probation or parole failures chargeable to given programs. It may be of occasional interest to know if a given system is effective, or if the number of new cases charged is increasing or decreasing, but a quarterly report on this relationship probably will be unnecessary. Regular reports should be programed and responses to special queries should be readily retrievable.

The Technology of Information Systems

A system with the capabilities outlined is easily achievable with current information technology. Such a system has been feasible for at least 5 years, but there have been obstacles to its implementation in corrections agencies. The first has been lack of money; the second, failure to perceive the usefulness of an information system.

Benefits to management and research easily justify the considerable capital outlay for equipment and software and the less significant maintenance costs. Correctional agencies cannot be expected to increase their effectiveness or achieve full partnership in the criminal justice system without competent information services. Without adequate information bases, correctional systems are notoriously static in program and planning. It could not be otherwise. Changes of significance cannot be planned intelligently without some empirical identification of need. Unless some statistical basis can be found in system trends and changes, there can be no basis for innovation but opinion. The resistance to change with gently without some empirical identification in program and planning.

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Problems of Implementation

This chapter has urged participation of correctional personnel in the "information revolution." In historical perspective, there is reason to believe that the information revolution will be as momentous for society as the industrial revolution two centuries ago. Without understanding the drastic changes in management concepts this benign revolution is bringing about, administrators can cripple themselves and their agencies.

Until the advent of the new technology, information tended to be enormously expensive because it had to be processed manually. It was usually incomplete and depended on the ability of the administrator's desk. Now information can be made available to the administrator in enormous quantities and with speed and accuracy heretofore inconceivable. There are three dangers inherent in this prospect.

The first is that the information will not communicate. The administrator must be equipped to use what he gets. For the most part, he will not receive what he asked for, which will be more than he can use unless he has been rigorously selective. He therefore must question what reports he needs, why he needs them, and in what form they can be most useful to him. Since the potentiality of the information system is more than he requires, the administrator must limit his production to what he really needs. He must require his staff to do likewise.

The second danger is that the potential to free financial management from the unyielding number will be ignored because available material is interesting and suggestive. The significant services of the latter are not in themselves an adequate reason for the administrator from analysis of manually processed information. This level of analysis is the characteristic activity of most administrators. With accurate, well-processed reports delivered by computer equipment, the administrator can become free to observe, reflect, and consult. But if he uses the information system to complacency, his style of operation is regressive. Use of the information system should reduce drastically the time devoted to report writing.

The third danger is that the information system will create a static system of its own with special resistances to innovation. Unless information review creates a basis for innovation in the minds of the staff, the system is not achieving its potential. It should never be implied that desirable changes in the program cannot be undertaken because the information system might have to be changed.

Administrative Controls

Correctional data collection is especially vulnerable to misdirection. Some data must be drawn from unreliable sources. Other data are susceptible to incorrect recording, for example, dates, identification numbers, and special codes. An information system that replaces manual operations without providing for verification and editing will be a dubious use of a computer.

Both concepts and equipment in computer operations lend themselves to the installation of verification procedures. Full advantage should be taken of the opportunity to improve methods of recording information for processing. But while the computer can reduce error by reducing the number of times manual processing of data occurs and by verification of procedures, human fallibility will continue to justify utmost vigilance. The administrator's active emphasis on accuracy is the best assurance that vigilance will be maintained. Only his insistence on verification processes can keep mistakes to a minimum.

Administrators also must protect the system from unauthorized access. Interfaces with other criminal justice data banks must be maintained. But while the computer is designed to handle sensitive material it should discourage interfaces with systems outside criminal justice or response to queries from any but specifically authorized persons and agencies. Precaution must be taken to protect files and equipment from intrusion.

Interagency Relationships

A useful correctional information system will provide the administrator with an important tool for decision making. Information and specialized management data of significance outside the agency. As already suggested, the state of correctional information technology supports the development of statewide or regional information depositories. Terminals will serve cooperating agencies. In the interest of national policy, the professional services of other States and jurisdictions will be held available to the New England.

At the same time, development of information systems to serve courts and police is proceeding. The feasibility of creating an information system to serve all criminal justice interests has not been determined. It is not certain whether advances in corrections will lead to the economy would accrue from such an imposing development.

At this juncture, when necessary design elements of the correctional information system seem reasonably clear, it is possible to define three principles that should govern future strategy.

First, if the correctional information system is to be designed as an independent entity managed by correctional personnel, provision must be made for interface with systems in other States and regions for exchange of information on clients moving from one jurisdiction to another.

Second, an independent correctional information system will draw some data from information systems serving police and courts and will contribute data in return. Whether this requirement is to be served by a basic data bank serving three separate information systems or by interfaces with police and court systems depends on the resolution of problems that seem to be barely defined. But the correctional information system will have to design interfaces for use by courts and police.

Third, if a consolidated criminal justice information system is to be designed, it must be capable of providing full support for both management and case decisionmaking in corrections. A system not capable of meeting these requirements should be unacceptable.

STATISTICS

New concepts and technology for the delivery of information to management have been considered. But research and statistics constitute only two uses to which information must be put. Historically, information for management has been primarily the responsibility of the statistician. Today, the statistician becomes a user, rather than only the processor, of information. It is therefore important to distinguish between the functions of an information system and the professional services of the statistician.

"Statistical" is defined by "the art of learning from a body of data." The method of data in collection, analyzing, and displaying information and making interpretive inferences therefrom. This method comprises a wide range of procedures used by the statistician. Although many of these procedures can be adapted for the information system, many special analyses should be accomplished individually.

Interpretation of the enormous volume of information contained in the system depends on the ap-
Evaluation of Program Achievement

Collaborating with operating staff and research social scientists, the statistician should be responsible for inspecting and standardizing methods of achievement in the information system. Reliability of measurements used by the system should be reviewed periodically. This review will be especially important if predictive development is to result in a more valid and reliable comparison of expectations with observed outcomes.

This evaluation technique is well suited to standard use by information systems. A standard base-expectancy table is established to predict results of programs for groups, using criteria such as recidivism or completion of training. Such a device will be capable of assigning any given subject to a class or group of like-subject groups by the statistical weighting of aggregated characteristics. Group expectations can then be compared for any given subject, and a forecast made for their performance. This device is useful for a variety of purposes, although its primary purpose is a device for determining allocation of resources.

Use of base expectations for comparison with observed outcomes may be thought of as a "soft" method of evaluation. But its economy, in comparison with the classical control group procedure, is considerable. It eliminates the need for routine management of research controls over extended periods. Comparison of predicted with observed outcomes affords a rough estimate of program effectiveness. For example, if the average expected recidivism of a group of offenders exposed to a behavior modification program is 50 percent, but the observed outcome is 25 percent, with 25 percent of the sample achieving complete success, a controlled evaluation with similar results is continuing to be effective. It may also provide a rough estimate of the value of a program that has not been evaluated under control.

This kind of evaluation has many limitations. The predictive device is valid only to the extent that the group observed is typical of the population used as the basis for the standard. For example, if the group to be studied has been selected by accepting only those who possess a "good attitude toward treatment," completion with a population containing a large number of subjects with a "bad attitude" will be invalid.

A second objection to the use of predictive devices is the rest on the tendency of the predictive base to deteriorate. The applicability of a prediction under circumstances prevailing in Year One will not necessarily be the same for the circumstances prevailing in Year Ten. Accordingly, it is good practice to audit the accuracy of the predictive device by least-squares methods.

A third objection is that predictive devices can be used only for general indications of program effectiveness. The administrator should take this into consideration, when applying the results of predictive devices to program planning and budgeting. To expect predictive devices to be the basis for program evaluation would be unrealistic. The predictive device is intended to estimate the probability of occurrence of an event, and the administrative staff can define contingencies and make estimates from this probability.

The study of differential effectiveness is a particularly significant requirement in correctional evaluation. In the introduction of a new system, it cannot be applied to the information system (for example, an age group, an offense category, an educational status), much can be done to assure that evaluations will be differentiated. But some classifications will be experimental aspects of the research. In such cases, statistical procedures used in information systems are designed and evaluated.

Despite this, it is not unreasonable to recommend for discrimination of program effectiveness if provision also is made for analysis and controlled investigation to verify trends. The method should not be attempted without supervision of a professional statistician.

The statistician's participation in controlled research on program effectiveness will be discussed in this chapter.

Determination of Workload Requirements

Most correctional systems still determine workload requirements by tradition instead of rational analysis. With new management principles, planning and budgeting are based increasingly on analytic concepts such as cost-benefit analysis. Criteria and measurement have not been standardized for any of these concepts. Much experimental work must be done to achieve a commonly acceptable analytic model.

Program budgeting has been an aspiration of many administrators, but it has been hindered by technical problems. Most of these problems can be traced to difficulties in defining goals. The multiplicity of goals in corrections and the apparent conflicts among them make resolution of these difficulties improbable.

But even in the present imperfect status of correctional statistics, application of program budgeting concepts to the study of agency policy sheds some light on the best workload distribution. For example, recent statistical studies in California showed that substantial savings could be made by reducing parole time for many classes of offenders from an average of more than two years to a one-year maximum. In this case, nine years at the end of one year closely approximated the goal of a one-year maximum. Statistical analysis over a number of years was necessary to confirm this conclusion. The impact on workload as a result of this policy change obviously was large.

It also is clear that many kinds of differentiation can be made in the correctional workload. Most of these differentiations will have implications for resource allocation as well as for treatment. Some of these differentiations may be argued to be perhaps too complex to consider. Others require constant medical treatment, psychiatric supervision, maximum custody, or frequent surveillance. A statistical study of the incidence of special requirements and the resources for meeting them can assure that needs are met without wasting resources. It cannot be said that this level of workload analysis is frequently encompassed in correctional evaluation. The statistical analysis of effort and results still is the exception rather than the rule.

Projection of Future Requirements

The statistician's most elusive goal is projection of future trends and requirements. Because corrections is a program areas do not have control over intake and outgo, workload projection is especially difficult. Unexpected intake can result in disastrously overcrowded prisons and jails. No statistician can claim sufficient accuracy in projecting population movement for any period under prevailing conditions in corrections. Nevertheless, much can be done to establish the consequences of defined contingencies.

The study of contingencies is the essence of sound statistical projection. Reliance on straight-line projection is a pitfall for the statistician who assumes that past and present rates of growth or decline will be the best guide to future conditions. This kind of guidance has resulted in disastrous overcrowding conditions in some correctional systems. In others, new institutions have been built, only to stand unused for years for lack of inmates to fill them.

Statistical study of contingencies depends on a sequence of inquiries asking: "If this condition, then what consequences when?" A wide range of conditions must be considered in this projections model. Criminal law may impose harsh or lenient sanctions. The parole board's release policy may alter the rate of releases. Inmates may return to institutions for varying numbers of years.

Any long-range plan not based on at least this level of statistical sophistication should not be considered a plan at all. The statistical assignment. Such plans for capital outlay are one of the most difficult assignments. Such plans may envisage construction involving many billions of dollars. Working together, statisticians and administrative staff can define contingencies and establish options for various possible outcomes. The plan should provide for systematic annual comparisons of status with expectations, from which changes in plans can be assessed. A well-designed plan based on straight-line projection is nothing less than maladministration.

Choice of Decision Alternatives

Most operational decisions are determined by policy rather than information and statistics, but...
policymaking should depend increasingly on the sta-
tistics, since a test of process and outcome. If it does not correspond to goals, then modifications of process must be investigated.

There has been a common procedure for the statistician to estimate the impact of programs. However, such measurements can be made reliable. The impact on the much less under­taken decision without reference to so easily measurable statistics.

In these examples, the importance of accurate information cannot be increased be­cause of public opinion. However, statistical study of the consequences of such increase will help de­termine the true impact of the legislation. Legislative and policy decisions in corrections have potential impact on two areas. In the fiscal­management area, the impact is direct and easily traced. There can be no excuse for making a policy decision without reference to so easily measurable an impact. The impact on the much less under­stood behavioral effectiveness is difficult to measure or predict. It may be learned, for ex­ample, that a new policy will require 10 new em­ployees for a particular program. The monetary cost of this decision can be easily determined. The im­pact of the decision on the program’s effectiveness is much more difficult to assess. Provision for sta­tistical reports involves constructing congruent processes of policy changes will influence development of models by which such measurements can be made reliable.

Construction of Statistical Instruments

Construction of base expectancy tables already has been done by predicting instru­ments that can be used in an information system. Explanations leading to more useful predictive de­vices are under way. Predictive techniques are ex­tremely useful when the concept is well defined. However, the validity of base expectancy formulas cannot be applied to any individual or any group, but what is available is limited to the system’s capability to record routinely. The research investigator must focus on the antecedents or consequences of an event in order to explain it. His role is to draw on his knowledge of similar events to determine what must be known in order to describe and account for the event under study. The system may accu­rately record the criminal history, demographic characteristics, and sentence of a man convicted of homicide. To make decisions about him and persons like him, much more must be known about his motivations and behavior. Aggregation of these de­scriptive details for significant categories of offenders is a fundamental task of research.

Similarly, consolidation of information into sta­tistical reports constitutes an excellent picture of the state of a system as a whole, of its experience with the offenders it controls, and of the conse­quences of its policy and decisions. Such reports cannot provide the administrator with a descrip­tion of the system in sufficient detail to enable him to make decisions about his system. In order to make such details. Those elements of the system that are functioning as expected can be left alone. The information system can give him better assurance of satisfactory operations than he ever could have from personal-inspection and staff reports. But where change is needed, detail will be required that cannot be obtained from these reports. Inasmuch as these data, the researcher pro­vides for fuller description of the agency’s process. His effort is guided by the statistician in describing similar processes for explana­tory purposes.

An example may clarify this principle. The in­formation system may report a sudden increase in the parole violation rate. It may also report that most of this rise can be accounted for by excep­tionally poor parole officers. But until research is done to explain the situation, the explanation must be speculative.

If description is the process of accumulating
sufficient information to explain events and processes. The researcher is not in a position to provide the information to produce the understanding necessary for the task of policy and practice. Understanding his results, therefore, is more than a matter of interpreting facts. The researcher can describe events and processes, and he can relate his description to accepted social science principles. He can even establish new principles, but the possibility of reality is always, in the end, understanding is shared. To the explanations the researcher derives from his perception of reality must be added the moral, administrative, and fiscal considerations observed by the administrator. The researcher may account for an increase in recidivism by attributing it to a new parole supervisor's interpretation of policy. He may show that the interpretation is not justified by data. But if the police and courts have urged the new supervisor to do this, and convinced he may do it, there may not be a simple matter.

This section will focus on the functions of evaluation and innovation. It will show that research is fundamental to both. The statistical comparisons on which evaluative information is generated for administrative review must be derived from accepted principles of measurement. These principles depend on satisfying answers to the questions: "What is an adequate description?" and "What is a sufficient explanation?"

Creation of an information system and management of a comprehensive statistical apparatus are obvious. But there is also a need for explanation and explanation of events and processes. They alone are not sufficient for these purposes. The philosopher may convince us that a full description and explanation of a natural event always will elude our grasp. But criminal justice services constitute a corner of the universe in which certainty can be more closely approached than it is now.

**Program Evaluation**

The requirement of program evaluation capability within the information and statistics system has been emphasized. Such capability is feasible now, but it far exceeds that available in even the most advanced agencies. The difficulties of evaluating this functional level should not mislead the administrator into believing that the ultimate evaluative requirements have been met. Accomplishment of this goal will give him a monitoring service. For control, this service will be a vast contribution to a new level of administrative effectiveness. The administrator will know where corrective action is needed, and how urgently. He will not know the reasons for change in program outcome, nor will he point out to him what actions he should take. His past inspections and review of operations may suffice for action, but many occasions will arise when evaluative research will be necessary for full understanding of satisfactory solutions to anomalies. This use of research staff should be encouraged.

**Evaluation is the measurement of goal achievement.** It must measure and measure the program's achievement of the overall objectives. This type of evaluation, for example, might determine whether an increased period of incarceration resulted in a reduced recidivism rate. Such evaluation usually is not concerned with effects on individuals; the concern is to define the benefit of the total program. The value of the indeterminate macroscopic measure is limited.

The study of subordinate goals is much more profitable. But whatever the level of goals to be achieved by the system, they must be precisely specified. This requirement seems obvious, but it is not always clear that a program is related to its stated objective. A recent study by Kasebaum, Ward, and Wilner 14 demonstrates the point. These investigators were engaged to study the effectiveness of group counseling in reducing recidivism. A meticulously classic research design was applied to the problem, but no relation between program and recidivism or nonrecidivism could be discovered. The first question was whether there was any reason to suppose that such a relationship might exist. The project staff also explored the more radical hypothesis that the program director had not produced a model consistent enough to study. It is not enough that the goal be clearly defined and logically related to the program. It also is necessary that the methodology be sufficiently consistent in definition to establish a clear relationship to the objective.

**Research** evaluation research is adapted from the experimental model in the natural sciences. It is assumed that the population to whom the program under study is to be introduced will be defined rigorously. A research selection produces an experimental group, to which the program is administered as an independent variable. All other conditions being equal, the program's success is measured by a dependent variable. Almost always in correctional programs this variable may be recidivism. Cost is determined. This step is determined. This step is determined. This step 15

**Hierarchy of Evaluative Research**

A hierarchy of evaluative research illustrates this principle. The best analysis of this hierarchy is to be found in Stufflebeam's work 16 Suchman 17 has pointed out the discrepancy in the assumption of trainees would be documented in the same way that a variable in the natural sciences can be maintained within defined limits of control. Such an assumption of control is not without value to the policymaker. He may not know what the program contributes to achieving recognition of the goals, he will have a rough idea of whether he can afford it.

2. **The second evaluation level is the measurement of performance.** The question here is whether the criteria have been met. In the case of the vocational training program, the success criteria would be the number of trainees placed in a new job, and the level of profit in the time allotted. The significance of this simple level of evaluation should not be overlooked. Too many correctional administrators are unable to say how their programs are operating at this basic level. Obviously no highly specialized research apparatus is necessary for this kind of evaluation. Such a compariorn cannot be maintained by the corrected information system.

3. **At the third evaluation level, the adequacy of performance is determined.** This step begins determination of the program's value for offenders exposed to it. In the study of the vocational training program, the program's value for those who achieved the desired proficiency and proved to be employable in a related occupation after release would be determined. Until integration of information systems is more improved, however, was an individual an individual's need would be necessary to deliver this level of assessment. The conceptual basis for the determination of program value here may be added, it is a complex relationship that can elude our understanding is clear, but few such evaluations of correctional programs have been accomplished.

4. **The objective at the fourth evaluation level is determination of the efficiency.** This is the level of assessment that characterizes most evaluative research in corrections. Unfortunately, a shortcut methodology is most frequently employed. The correctional staff and performance has been achieved, thereby reducing the value of the conclusions made. Assuming that effort and performance are documented, much can be learned about whether programs have definable value compared with other programs administered to comparable groups.

In the vocational training program example, it might be discovered that the expected number of trainees reached the specified minimum productivity level. It was employed in the time allotted. But the planner will have more questions for the researcher. He now wants to know, "Did this employability make any difference?" Is it possible that a comparable group of offenders who did not receive this expensive training might have a recidivism rate just as low?" Other, less crucial questions fall into this category. It might be asked

Lifted level of vocational proficiency for a varied class of training outcome, which could be documented in the same way that a variable in the natural sciences can be maintained within defined limits of control. Such an assumption of control is not without value to the policymaker. He may not know what the program contributes to achieving recognition of the goals, he will have a rough idea of whether he can afford it.

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whether a lower and less expensively achieved proficiency level might have produced the same number of employable trainees. Could the minimum proficiency level for reliable job placement be reduced? Would it be less costly, more intensive, or of high quality? The answer to these questions is not yet known. The policymaker, the vocational training director, and the researcher must collaborate carefully in lending strength and formulation of issues so answers will lead to constructive decision.

5. Finally, the most elaborate form for evaluative research will include the study of process. Is the research design directed at the links between processes and results also will provide assessment of performance adequacy and efficiency. The purpose is to find out the relative contributions of processes to goal achievement. Although such a study ordinarily will be initiated to settle administrative issues, this kind of analysis often will produce findings of scientific significance.

There are four main dimensions of study with which process analysis usually must be concerned: Attributes of the program related to success or failure.
- Recipients of the program who are more or less benefited.
- Conditions affecting program delivery.
- Effects produced by the program.

The study of process in the vocational education context may be initiated by considering the effectiveness. Is it possible, for example, that not enough time was given to demonstrating the use of tools? Were classes too large for individual attention? Does comparison of the success of different instructors in conducting the training reveal anything?

The second category of inquiry would call for a study of the trainees. Can factors be found that separate the successful from the unsuccessful? What happens to them after they leave? Did failure in the program have adverse effects on subsequent conduct?

The third study dimension would require investiga
tion into the success of the program itself. Might an expansion of the program for three months achieve better results than half-time assignment for six months? What was the effect of compensatory assignment on the number of offenders who could be handled more efficiently with the resources available? Can better results be achieved by voluntary assignments?

The fourth approach to process study leads to the secondary effects of the program, which, of course, are of great importance to correctional planning. A before-and-after comparison of attitudes toward work and authority would shed light on the usefulness of changes in socialization. Another study might be directed to the attitudes of the program failures. Still other studies might examine the influence of the instructors as role models for the trainees.

The structure and requirements of evaluative research in corrections have been discussed at length in previous chapters and, for the reasons already stated, will be analyzed in detail in the cases.

Numerous theoretical issues are involved in the effective evaluation problem. The large amount of literature on prison communities documents many of these issues and even suggests the resolution of some. Although numerous modifications have been made during the last quarter century, few have been derived from theoretical propositions. Humanitarian and economic motives have combined to produce governmental concerns, community demands, conflicting personnel and institutional demands, work-release, and probation subsidy. The objective of each of these innovations was reduction of the enormous economic waste of incarcerations and of some of the needless suffering it imposes on offenders and their families. The principle underlying each of these innovations called for a simple pragmatism in testing. The only requirement was that a less costly control of offenders be imposed without decreasing public safety. Many administrators, though, believe that related controls will have reduced rehabilitative effects in themselves, but the significant success criterion is a low level of criminal incidents involving program participants.

What has contributed to the conservative selections of offens.

The position of innovation in change of offender behavior offers much less reason for confidence. Theories about change of human behavior by agents that are not supernatural are of recent origin. There are few relatively unobjectionable commentaries on behavior other than corrections. Because change is so much to be desired, much effort has been given to adapting the practices of behavior change to the peculiar characteristics of the offender. These attempts have been derived from the limited range of socialization theory. This range consists of three principal groups of theories on which practice can be based.

The first group of theories is grounded on the belief that human behavior is influenced more powerfully by administrative punishments. This belief is so deeply embedded in the general perception of human nature that our whole system of criminal jurisdiction rests upon it. Despite popular consensus on the validity of the rewards-and-punishment theory, the punitive measures applied have never achieved predictable success. The program has failed to achieve the expected results.

The second category of program involves the most intense behavior of the offender. The objective is to achieve the offender's rehabilitation. The principal factors to which failure can be attributed are the ineptness of treatment, the inability of the technique to the psychological conditions addressed, lack of clarity as to the kinds of insights desired, and the overwhelming adverse social conditions faced by many offenders. Despite these failures and the cogency of the argument that effective decision, few programs have been produced in such an effective manner.

The third group of theories is the least developed. It comes under the heading of "reintegration," a concept supported by the Corrections Task Force of the President's Commission on Law Enforcement and Administration of Justice.

This set of ideas is based on the theory that a change in the nature of the offender's relation to the society should be accomplished by a change in the offender himself, to be sought. The focus therefore is on the interaction between the offender and his surroundings. The objective is to achieve a fully productive relation. This belief is so deeply embedded in the general perception of human society that our whole system of criminal jurisdiction rests upon it. Despite popular consensus on the validity of the rewards-and-punishment theory, the punitive measures applied have never achieved predictable success. The problem of the correctional apparatus should be to help the offenders find useful roles and attitudes at rehabilitation by psychological changes. The difficulty with these theoretical positions is that so far they have not lent themselves to a clearly identifiable operational technique. The prior logic of the theory is persuasive, so far as it goes, but the need for empirical evidence is pressing.
and there should be increasing interest in deriving
innovations from it.

The foregoing sketch of theoretical positions by no means exhausts all possible models available to
correctional development. Two main approaches might
account for this constraint. First, a theory of
sufficient power to support the social restoration of
the offender has not been discovered. It is possible
that there is no such group of theories which
can account for the entire offender population. Second,
replace the planned changes of offenders or, alternately,
to provide for their reintegration without change.

Another consideration is that some attributes of
the current correctional experience and sitting seem
to rule out the possibility of such change or re-
integration. A method for resolving these problems
has yet to be devised. The importance of achieving
a resolution is increasing clearly.

MAJOR CURRENT RESEARCH ISSUES

Measurement in Correctional Research—

The paradox of correctional measurement is the
existence of a criterion variable that is easily re-
corded, simple to measure, and logically relevant
but that also obscures research. Unlike any other
social service system, corrections possesses in re-
cidivism a criterion whose salience is universally
agreed upon.

There has been considerable variation in the
way of the measure has been measured. A standard
definition is needed. The main factors should be
considered in developing recidivism statistics: the
nature of events to be counted, categorization of
the behavior, and conditions under which counts
are to be included, and duration of the follow-up period.

If the objective of the correctional apparatus is
recidivism by reduction of recidivism, then all
criminal acts committed by offenders who are
or have been under correctional supervision shoulde counted as recidivism. But what is a reliable
measure? The choice is between an arrest reported
by the police and a conviction reported by the courts.
The police argue for counting recidivism by arrests,
the basis that arrests represent observed behavior
whereas the judicial process results in much
inaccurate behavior being excluded from a recidiv-
mist count based solely on convictions. Correc-
tional administrators argue that recidivism should
be measured by convictions alone because many
arrests may represent erroneous attribution of in-

legal behavior to the highly visible released offender
or probationer.

In an integrated criminal justice information
system, arrests will be related to prosecutions and
not to court convictions. This problem is especially
marked when arrests are the data for recidivism. In
the objective that neither the behavior of the offender
nor its significance is determined by court action;
In a system of law based on presumption of innocence,
such verification is essential.

Recidivism should be measured by convictions.
A conviction is a well-defined event in which a
recorded action has been taken by the court.
Further, by measurement by convictions is estab-
lished practice in corrections. It is desirable to
maintain this continuity in statistical practice. This
position is not meant to discourage measurement
of arrests or a study of the relationship of arrest
rates of offenders to release rates. The significant
reasons for such studies must be assessed in light of a
realistic view of the nature and validity of the data
used.

Another consideration is as to the nature of events
to be included relates to technical violations of
probation or parole. Technical violations based on
administrative action alone should be excluded from
a general definition of recidivism because they are not
established formally as criminal acts. Rather, they are a result of error or carelessness which may
indicate parole policy more than correctional
effectiveness. (See Chapter 12.) Technical violations
in which a recipient is excluded from a program
resulted in an adverse change in an offender’s legal
status should be collected but maintained
separately from data on recidivism.

A second consideration is that a technical violation
measure relates to the degree of seriousness to be
identified and their significance. The recidivist event
may vary in seriousness from a booking and dis-
misal of a minor offense to conviction for a major
felony. Many correctional administrators will argue
that success should be measured in terms of a
reduction in seriousness of an offense pattern or an
increase in the period of law-abiding behavior be-
tween offenses. This logic is not persuasive. If the
objective is to improve the offender’s behavior, or at least establish successful control, nothing in its operation can or should be aimed at
convicting major offenders into lesser offenders. A
program aimed at recidivism or reinstatement
should be directed at a positive result. An offense
above a determined level of seriousness must be
charged against the system as a failure because the
program has succeeded in reducing recidivism. The
problem lies in prescribing a level of seriousness
that separates those criminal acts so minor or non-

serious as not to merit public attention from those
major or serious enough to be reported.

There are several reasons for not using present
crime groups in a definition of recidivism. First,
several different definitions may be needed, currently
which include criminal acts into categories based on
the gravity of the offense. (See Chapter 16.) If this
approach is not realistic, it is possible that a simple
rule which decides what the offense cate-
gories should be included in recidivism rates.
At
be present time, however, there is no commonly
accepted categorization. Different bodies utilize
various groups such as misdemeanors and felonies,
violent and nonviolent offenses, crimes against
property and against persons, or serious and non-
serious offenses as defined in the FBI’s “Uniform
Crime Reports.” Furthermore, these terms are used
to specify different acts in different jurisdictions.

The third reason for not employing a technical
explanation is that neither the behavior of the offender
nor its significance is determined by court action;
In a system of law based on presumption of innocence,
such verification is essential.

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retrieval of criminal histories becomes an actuality, but not before.

Somehow, through no new offense has been committed, the offender may have become a public dependent of some other kind. He may be a client on welfare rolls, a patient in a mental hospital, or an alcoholic on skid row. All these co-offenders, while not technically correctional failures, can hardly be termed correctional successes.

The researcher has found that the most frequent, fallacious inclusion in a success roster is the offender who endured the program without benefit but for various reasons managed to shirk by the law or avoid detection in the commission of new crimes for the follow-up period or who did not require correctional services to begin with. It is easy to claim such individuals as successes, but unless the success can be related to the program in some demonstrable way, the claim is an illusion of fact.

If we define success in such a program as a correctional success, some offenders do benefit from programs in which they participate. Their number is not likely to increase unless we study the processes that produced favorable change. To decide that these individuals are statistically identical with the spurious successes will obscure what may be learned from their favorable outcome.

The first problem is that recidivism can tell us nothing about correctional failures. Inevitably it is linked as the dependent variable in the study of program effectiveness. The logic is compelling. If the object of penal process is reduction of recidivism, then achievement of the reduction determines whether the effort was worthwhile.

The second problem in a study of recidivism is to take into account the heterogeneity of the population. Offenders vary from those without hope of adjusting to those whose prospects preside a likelihood of success. The criterion is merely comparing the incidence of recidivism from year to year, these distinctions barely make a difference. But, if the task is to define a correctional effectiveness, inclusion of the certain failures and successes without distinguishing them from those with whom an element of change is possible has little likelihood of proving anything severe impaired.

The third problem is maintenance of relevance to the experimental and control groups. Consider again the vocational training program used as an example in an earlier section. The program's logic from the planner's viewpoint will lead to employability. If the logic is unaltered, and for which he was trained in the reformatory, he will be motivated to enjoy the benefits of a law-abiding life and less inclined to return to criminality. This is a plausible sequence of assumptions and worthy of test. Unfortunately, documentation is difficult, and isolation of conceptual and behavioral changes in some offenders are likely to be statistically insignificant. The researcher probably will not follow the program's logic to the end. A crude assumption may be made that the program is ineffective if a significant number of those exposed failed to complete it. But the failures may include those who are being assisted by the program and others who were not. The distinction is subtle, and the resulting interpretation of success or failure of the program is flawed. The researcher may undertake a program that is not only beneficial in reducing recidivism but that is also beneficial in terms of postrelease employment as well as those who were appropriately assigned and dropped out during the first month of training. Unless the study simultaneously controls for success and failures at each point, nothing can be learned from the failure to understand the process by which the program may have produced.

A fourth, but closely related, problem is the limited inference that can be made from the study of failure. Much can be learned from unraveled predictable failure, but if only the considerations with failure are emphasized, then its explanation obstructs the study of success. Avoidance of failure is not identical with any trend of logic with promotion of success. No probation ever improved its service through the exclusive study of its failures. Because they are frequent and expected, the failures of corrections are less enlightening than most.

From the foregoing, three rules can be formulated for the measurement of corrections:

1. The study of recidivism as a measure of correctional effectiveness is primarily of administrative use in the determination of whether objectives and expectations have been realized.

2. The study of program success is essential if research is to contribute to increased correctional effectiveness.

3. The discrimination of program failures from expected failures is essential to understanding recidivism. The discrimination of program success is equally essential, but these successes must be individually verified, not inferred from statistical class.

Improvement of Evaluation

Evaluation is not novel to the correctional administration. It is an older, tried, or at least observed, method. A considerable number of assessments placing professional opinions and judgments in jeopardy. A familiar and accepted evaluation model now exists for these programs. Consider again the vocational training program used as an example in an earlier section. The program's logic from the planner's viewpoint will lead to employability. If the logic is unaltered, and for which he was trained in the reformatory, he will be motivated to enjoy the benefits of a law-abiding life and less inclined to return to criminality. This is a

attention can be given to process, and with useful multitudes.

A new research paradigm stresses discovery of the intersection in the longitudinal careers of these two boys that will bring about the most favorable growth. The outcome of the interaction of all these factors will have developed. From such an understanding comes discovery of the limits of what can be done to recidify the offender and protect the public.

The rigorous belief in research as the only true criterion of evaluation and in the experimental model as the only acceptable methodology will be increasingly impractical. The task is difficult and must be approached with utmost caution. Other processes outside anyone's control also are at work at the same time. So far as possible, all these processes must be defined. The interaction taking place produces events that set new processes in motion. This complexity must be ordered and its consequences to the offender or to society will lead to the most favorable set of results for the various categories of offenders defined by decision-makings. If we are to be helped by psychotherapy but there is persistent uncertainty as to which offenders need help and how much they are helped. The preponderance of the research strongly suggests that most offenders are not corrected to law-abiding ways by psychotherapy.

The emphasis since World War II on programs derived from psychosomatic models thus comes into serious question. It is important that this activity be maintained and that research continue to elucidate in that light. Generalizing from the present body of research, the following propositions seem to hold:

1. Involuntary treatment of offenders by individual or group counseling does not produce results reflected in recidivism measurement.

2. Application of the sickness label to any offender without supporting diagnosis does not increase the effectiveness of the correctional process.

3. There are weak indications that some of-
fenders—those more mature, more intelligent, and more socialized than average—can benefit from psychological treatment, if they are motivated to participate.

This is not an encouraging position. Nevertheless, it has several implications for further research. These findings, being essentially negative, provide a basis for further study. They do not constitute a platform for action. Unless it is concluded that the situation is hopeless, that human beings cannot help each other, exploration of the handling processes must be continued by following the clues presently available. The findings listed herein are drawn from studies using efficiency criteria, as outlined in an earlier section. Until the study of treat­ment processes is carried out by differentiating categories of offenders and their interactions with specific institutions, the signs of delinquency and promises that juvenile delinquency and adult crime rates may be substantially reduced by new initiatives—all of them the result of more effective custodial intervention—may be less than the truth.

One complication has been the difficulty of isolating delinquency from other factors, such as poverty and unemployment. The findings listed above are drawn from studies using efficiency criteria, as outlined in an earlier section. Until the study of treatment processes is carried out by differentiating categories of offenders and their interactions with specific institutions, the signs of delinquency and promises that juvenile delinquency and adult crime rates may be substantially reduced by new innovations that may well lead to the development of more effective custodial intervention—may be less than the truth.

Most techniques of behavior modification have been generated either in the mental health or in educational use. Although their application to the correctional situation is not necessarily inappropriate, sufficient attention has not been given to the nature, scheduling, and limits of the feedback available in the correctional apparatus. Thus the use of tokens for behavior modification in a reformatory may not be a salable approach for an approach that works well in mental hospitals, where the problem of manipulation for secondary gains is not so prominent.

The explorations conducted so far furnish a basis for continued study of an ancient correctional problem: the nature of incentives and punishments in changing behavior patterns. Most of the offender population is now managed in community-based programs, and the proportion will increase. Therefore, future research in operant psychology should be directed toward making behavior modification techniques available (subject to experimental scrutiny) to parole officers and other institutional agencies engaged in the treatment of the offender in the community.

A familiar hazard lurks in this strategy. It is tempting to urge the correctional policymaker to hope for more than he can get from a promising intervention. Operant psychology will not transform correction into a success story. Psychologists working in this field should not encourage the hope that all offenders will respond consistently enough for continued study of an ancient correctional problem: the nature of incentives and punishments in changing behavior patterns. Most of the offender population is now managed in community-based programs, and the proportion will increase. Therefore, future research in operant psychology should be directed toward making behavior modification techniques available (subject to experimental scrutiny) to parole officers and other institutional agencies engaged in the treatment of the offender in the community.

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sponsible for creation of the system and its development to meet changing demands. He should be supported by at least one professionally qualified systems analyst to design the structural details, and programmers and machine operators needed for the routine operation of equipment.

The statistical service should be integrated with the information system. It should be supervised by a professional statistician competent for the collection, analysis, and display of statistical tables. He should have enough staff to audit information and to take corrective action when errors seem to be indicated by anomalies in the data.

The independence of the research staff is essential to its usefulness. The chief should be accountable directly to the agency executive. The relationship of research staff to policy and decision making must be fostered by direct access to the agency executive and to the chiefs of other staff sections.

An almost unique problem in public administration is the relationship of agency information systems to computational services. It is uneconomical for any correctional agency to operate its own computer, although some agencies still have exclusive use of equipment. The trend in most States is toward the shared use of a computer with other government agencies. The trend is the relationship of agency information systems to computational services. It is uneconomical for any correctional agency to operate its own computer, although some agencies still have exclusive use of equipment. The trend in most States and large counties is toward the shared use of a computer with other government agencies. The trend in most States is toward the shared use of a computer with other government agencies. The trend in most States is toward the shared use of a computer with other government agencies.

The economies achieved by this arrangement are obvious; no correctional agency can occupy the full potentiality of a large computer. As long as the sensitivity of the data is adequately protected, there is no reason to resist a generally beneficial evolution of information technology.

As the concepts of a truly comprehensive correctional information system are seen more clearly, statewide or regionwide information systems become attractive prospects. The concepts and technology are now available, but no concerted attempt has been made to create such a system. An early review of capabilities and requirements should be made to determine whether the benefits would justify implementation.

A completely comprehensive local and regional information system would interface with a national criminal history file. This file, being developed under the auspices of the Federal Bureau of Investigation and the Law Enforcement Assistance Administration, will facilitate orderly management of comprehensive information services. Its usefulness in principle will be great. In practice it will depend on how well participating agencies cooperate in sharing information.

Correctional Research in the Smaller Agency

The preponderance of correctional service is carried out by counties, not by Federal or State governments. Most metropolitan agencies are large enough to maintain information and statistics sections of their own. Smaller agencies should have minimum information-processing capabilities. Separate staff might not be justified, but with some investment in a computer terminal and some training of administrative staff, a reasonable information and statistics capability can be expected.

This kind of management should be facilitated by State government. The State should store local data with access provided through agency terminals and no loss of local autonomy. Control of the system should be in the hands of representatives of participating agencies. Admission to the system should be voluntary, but benefits should be clear enough to encourage membership. A share of the development costs should be borne by the State or regional consortium. The move toward unified correctional systems also will help alleviate the problem of incorporating small agencies.

The usefulness of this service depends on training and motivating agency personnel. The skeptical sheriff and the overburdened probation officer will not involve themselves, even nominally, unless it is worth their while. The claim that additional staff is needed must be authentic. Unless they are trained, agency personnel will benefit from the system, no matter how carefully it is designed. Ways must be found to meet these requirements realistically through grants-in-aid and administrative extension services.

Standard 15.1

State Correctional Information Systems

Each State by 1978 should develop and maintain, or cooperate with other States in the development and maintenance of, a correctional information system to collect, store, analyze, and display information for planning, operational control, offender tracking, and program review for all State and county correctional programs and agencies.

1. Statewide information systems should be feasible for the larger States. Local and central correctional components (facilities, branch offices, programs) of all sizes should be included in such systems. Regional (midstate) systems should be feasible for smaller States.

2. In all cases, the State or regional system should store local data, with access provided through terminals at various points throughout the State. Control of the system should be in the hands of participating agency representatives. Until unified correctional systems are established, admission to the system should be voluntary, but benefits should be clear enough to encourage membership. A share of the development costs should be borne by the State or regional consortium.

3. In States where data processing for the department of corrections must be done on a shared computer facility under the administration of some other agency, the programmers and analysts for the department should be assigned full time to it and should be under the complete administrative control of the department of corrections.

4. The department of corrections should be responsible for maintaining the security and privacy of records in its data base and should allow data processing of its records only under its guidance and administrative authority. This should not be construed as prohibitive, as the department of corrections should encourage research in the correctional system and provide easy access to authorized social science researchers. (Only information that would identify individuals should be withheld.)

5. The information-statistics function should be placed organizationally so as to have direct access to the top administrators of the department. The director of the information group should report directly to the agency administrator.

6. The mission of the information-statistics function should be broad enough to assume informational and research support to all divisions within the department of corrections and to support development of an offender-based transaction system.

Priorities of activity undertaken should be established by the top administrators in consultation with the director of the information system.

Commentary

Achievement of correctional objectives depends on definition and execution of plans directed to their accomplishment. Plans must be based on reliable current information related to sequences of
decisions to be made in their execution. At each step in the administration of a correction plan, large amounts of information must be digested and related to decision options.

Data collection, analysis, and display for correctional decisionmaking has been a laborious process carried out manually and having limited value for most decisionmakers. Availability of equipment and technology for comprehensive information systems will enable correctional administrators to plan and review operations more effectively. Because information requirements in corrections differ from those of other criminal justice areas, design and implementation of independent information systems to serve the specific needs of corrections is recommended. However, the system should be designed in such a way as to support development of an integrated offender-based transaction system. (See the Commission's report, The Criminal Justice System, on information systems.)

Data characteristics required by correctional systems are sufficiently generic that statewide systems should be feasible for the larger States. In such systems local and central correctional components of all sizes would be included within one comprehensive system, with various terminals feeding into the centralized State system. Regional systems can be established for smaller States, especially where there is a large flow of interstate traffic as in New England.

At present, the preponderance of correctional service is carried out by counties, not by Federal or State governments. Until unified State correctional systems are achieved, most metropolitan agencies are large enough to maintain information and statistics sections of their own. Smaller agencies should have minimum information-processing capabilities. This may not be justified, but with some investment in a computer terminal and some training of administrative staff, a reasonable information and statistics capability can be expected.

Economically, the department of corrections usually cannot justify its own computer. The trend in most States and large counties is toward shared use of a computer with other government agencies. As long as the sensitivity of the data is adequately protected, there is no reason why computer centers should not be established to serve many uses.

Regardless of who administers the computer installation, the analysis and programming staff must be under the direct control of the information-statistics group within the department of corrections. Even if the computer installation is under the control of another agency, corrections still has the responsibility to limit access to its data base and to develop software to meet its information and analysis needs.

Limiting access to data does not mean that social science researchers should not be encouraged to utilize corrections data. As long as the information is not reported in such a way that specific individuals can be identified, full access should be allowed in order to expand the knowledge base of corrections.

The major purpose of a corrections information and statistics function is to support administrative decisionmaking. To accomplish this purpose, the director of the group that oversees the information system must have direct access to key decisionmakers in the department. The chief of the section should be accountable directly to the agency executive.

Information is needed throughout the correctional organization for planning, research, and daily decisionmaking. Each division within the department has its own responsibilities and goals that consume most of its available resources and time. Yet each division acts on the common population from a different perspective. As a result, conflicts about priorities and direction are bound to arise. This political situation can be resolved only by top administrators who are in a position to view the overall situation and measure its effect against departmental goals. In this role they require informational support.

An information function located in a subordin­ate division of the department would be under pres­sure to concentrate its activities on the priorities of that division. Political pressure resulting from its location within a division may produce one-sided informational support for a policy decision and make the activities of the information group relatively useless. It is thus of primary importance that the information function be organizationally independent.

References

Related Standards
The following standards may be applicable in implementing Standard 15.1.

6.1 Comprehensive Classification Systems. 13.2 Planning and Organization.

Standard 15.2
Staffing for Correctional Research and Information Systems

Each State, in the implementation of Standard 15.1, should provide minimum capabilities for analysis and interpretation of information. For all but the largest components (facilities, branch offices, programs), a small information and statistics section capable of periodic reports on the consequences of policy and decisionmaking will suffice. Larger components will benefit from having a professional staff capable of designing and executing special assessment studies to amplify and explicate reports generated by the information system. Staffing for research and information functions should reflect these considerations:

1. Where the component's size is sufficient to support one or more full-time positions, priority should be given to assigning an information manager who should have minimum qualifications as a statistician. The manager should have full responsibility for coordination and supervision of inputs into the system. He also should edit, analyze, and interpret output material, preparing tables and interpretive reports as indicated.
2. Where the size of the component does not warrant the allocation of full-time positions to information and statistics, one professional staff member should be designated to perform the functions outlined above on a part-time basis.
3. The manager of the State information system should use members of his staff as training officers and technical consultants. In States where unifica­tion has not been achieved, these persons should be responsible for familiarizing county and local correctional administrators and information staff with system requirements and the advantageous use of output.

4. Other steps to achieve effective communication of information include the following:
   a. Researchers and analysts should be given formal training in communication of results to administrators. Such training should include both oral and written communications.
   b. The training program of the National Institute of Corrections should include a session for administrators that covers new techniques in the use of computers, information, and statistics.
   c. Where feasible, management display centers should be constructed for communication of information to administrators. The center should have facilities for graphic presentation of analyses and other information.

Commentary
Research and statistics are operationally inter­dependent. Without the explanatory methods of research, the meaning of the statistics would be lost.
Indeed, decisions as to which statistics should be collected must be based on a theoretical judgment of their significance. Existence of a responsible statistical system in any agency will facilitate research. Implicit in the standards developed from this chapter is the expectation that correctional managers must use research if the necessities of change are to be met effectively. It is not necessary to have a large scientific capability in every correctional agency. For all but the largest agencies, only a modest information and statistics section is needed, if it is capable of periodic reports on the consequences of policy and decisionmaking. The occasional need for complex evaluative studies can be met by contract research. Furthermore, even the most amply staffed agency research section cannot with propriety perform some kinds of research. For example, where policy decisions must be made about the redistribution of effort at different governmental levels or among several agencies, it is inappropriate for a research group to perform the supporting analysis.

Analysis of statistical information concerning correctional operations will be of little use unless it is interpreted for administrative review and action. Each correctional agency with access to an information system should have assigned staff members capable of reviewing processed information and interpreting it for administrative and managerial staff.

Interpretation of the large volume of information contained in the system depends on application of professional expertise. This kind of skill always should be available in large systems. The information system staff should include at least one individual qualified as a statistician to assist the administrator in such functions as:
- Evaluation of program achievement.
- Determination of workload requirements.
- Projection of future requirements.
- Construction of special statistical instruments.
- Analysis of problem areas.

These functions do not exhaust the possibilities of a professional statistical service. Nevertheless, they are a sample of the range of capabilities the statistician can provide. It is particularly important that the professional staff be capable of systems analysis and design in order to adapt the generic correctional information system to the special situation of any correctional agency. These skills will continue to be required when the system is operating. It is essential to the production of useful information that the system be readily adaptable to changing administrative conditions.

For small agencies, however, statistical capability can be assigned to interested or professionally trained personnel who are also assigned to another part-time function. Such employees should be provided with familiarization materials, usually prepared under State auspices, to insure a minimum of competence for the performance of interpretive duties.

State information system management should include, in addition to the operational control and development staff, persons designated for training county and local professional staffs in use of the system and interpretation of output. Development of information and statistics is useless unless they can be communicated effectively to decisionmakers. Raw data cannot be understood in terms of their implications for policy unless supported by analysis and interpretation. As important as it is to privatemime information, it is more important to communicate the results and disseminate the analysis in a form that can be understood and used by those who make policy decisions.

Formal procedures should be established to facilitate the dissemination. Special training in communication—both oral and written—should be a requirement for all researchers and analysts. Training in the use and application of the information should be supplied to all administrators. The level of sophistication of the decisionmakers will dictate the relative use of the information-statistics system.

References

Related Standards
The following standards may be applicable in implementing Standard 15.2:
13.3 Professional Correctional Management.
13.2 Planning and Organization.
14.11 Staff Development.

Standard 15.3
Design Characteristics of a Correctional Information System

Each State, in the establishment of its information system under Standard 15.1, should design it to facilitate four distinct functions:
1. Offender accounting.
2. Administrative-management decisionmaking.
3. Ongoing departmental research.
4. Rapid response to ad hoc inquiries.

The design of the correctional information system should insure capability for provision of the following kinds of information and analysis:
1. Point-in-time net results—routine analysis of program status, such as:
   a. Basic population characteristics.
   b. Program definition and participants.
   c. Operational units, if any.
   d. Personnel characteristics.
   e. Fiscal data.
2. Period-in-time reports—a statement of flow of change over a specified period for the same items available in the point-in-time net results report. The following kinds of data should be stored:
   a. Summary of offender events and results of events.
   b. Personnel summaries.
   c. Event summaries by population characteristics.
   d. Event summaries by personnel characteristics.

Commentary
An information system for corrections requires accounting for an enormous number of individual decisions—decisions about the classification of offenders, housing, discipline, work assignments, and many minor decisions that require certain information for fairness and efficiency. Correctional agencies typically make these decisions from a cumbersome, usually disorganized file.
The information in the file is so confused that it often must be supplied by intuition. Clearly, if more knowledgeable decisions are to be made, more readily usable information must be provided.

An information system includes the concepts, personnel, and supporting technology for the collection, organization, and delivery of information for administrative use. An information system should be capable of collecting data for statistical use and providing itemized listings for administrative action. Although these capabilities are conceptually simple, there is much to be gained by organizing for computer operations.

Computerized information and statistics systems for corrections should serve four distinct functions: offender accounting, administrative-management decisionmaking, ongoing departmental research, and rapid response to ad hoc inquiries.

The need for offender accounting is inherent in the notion of supervision. Because corrections is responsible for control of its population, it must have available the information that locates its population. Administrative decisions concerning institutions and the programs to be carried out within each are heavily dependent on recognizing the characteristics of the facilities' populations. For example, offender job placement would be greatly facilitated by an accounting system that characterized each offender.

The use of information to support administrative-management decisionmaking is discussed in the following description of the report capabilities an information system should have. All of these reports (point-in-time net results, time-evolution reports, automatic notifications, and statistical-analytical relationships) are designed to aid in the correctional decisionmaking process. In fact, the primary goal of an information-statistics system is to support administrative decisionmaking.

An information system should support agency research. Evaluation of program effectiveness depends on statistical analyses of the program's contents and outcomes. The system must allow collection of special study and sample data. Similarly, research can help explain the meaning of statistics and lead to refinements in the information and reporting system.

At any time, the information-statistics system should be able to deliver routine analyses of program status—point-in-time net results. The point-in-time report provides the administrator with data at a specific point in time, the demand data. The period-in-time report provides the administrator with data over a specified period—the movement of a population, the amount and flow of expenditures, and occurrence rates of actions or events. The focus of both reports is on events—new admissions, transfers, parole hearings, parole releases—an accounting of a system's movement essential to rational planning and control.

A system with this capability also will be able to provide a wide variety of demand information. The system should also generate exception reports, initiated automatically by conditions that vary from standards established for the system.

The interrelationships of data are critical to the interpretive process. Regular reports should be programmed, and responses to special queries should be readily retrievable.

References

Related Standards
The following standards may be applicable in implementing Standard 15.3.
6.1 Comprehensive Classification Systems.
10.2 Services to Probationers.
12.6 Community Services for Parolees.
13.2 Planning and Organization.
15.1 State Correctional Information Systems.

Standard 15.4
Development of a Correctional Data Base

Each State, in the establishment of its information system under Standard 15.1, should design its data base to satisfy the following requirements:

1. The information-statistics functions of offender accounting, administrative decisionmaking, ongoing research, and rapid response to questions should be reflected in the design.
2. The data base should allow easy compilation of an annual statistical report, including sections on population characteristics tabulated for given points in time, a recapitulation of population movement for the full year, and an analysis of recidivism by offense and other characteristics.
3. The data base should include all data required at decision points. The information useful to corrections personnel at each decision point in the corrections system should be ascertainable in designing the data base.
4. The requirements of other criminal justice information systems for corrections data should be considered in the design, and an interface between the corrections system and other criminal justice information systems developed, including support of offender-based transaction systems.
5. All data base records should be individual-based and contain elements that are objectively verifiable by a clerk. The procedures for coding data should be established uniformly.

6. The integrity and quality of data in each record is the responsibility of the information group. Periodic audits should be made and quality control procedures established.
7. The corrections information-statistics system should be designed and implemented modularly to accommodate expansion of the data base. Techniques should be established for pilot testing new modules without disrupting ongoing operations of the system. Interactions with planners and administrators should occur before introduction of innovations.
8. Data bases should be designed for future analyses, recognizing the lag between program implementation and evaluation.
9. The results of policies (in terms of evaluation) should be reported to administrators, and data base content should be responsive to the needs of changing practices and policies to guarantee that the all-important feedback loop will not be broken.
10. The initial design of the corrections data base should recognize that change will be continual. Procedures to assure smooth transitions should be established.

Commentary
Development of the data base is the key to a successful information-statistics function in correc-
ions. The data base must contain elements that produce information necessary for decisions. To satisfy the four service needs, the data base must be composed of individual records, each made up of standardized elements of codable data.

Criminal justice, information and statistics systems have been under conceptual design and prototype demonstration over the past few years. These systems require a corrections segment of data to complete the picture of criminal justice administration.

The next five years will see the development of comprehensive data systems at the State level across the Nation. A new Law Enforcement Assistance Administration program requires development of complete offender-based transaction statistics systems to describe criminal justice operation. A major segment of such systems will be the corrections input.

If the correctional information system is to be designed as an independent entity, provision must be made for interface systems in other States and regions for information exchange on clients moving from one jurisdiction to another.

An independent correctional information system will draw some data from information systems serving police and courts and will contribute data in return. The correctional information system will have to design interfaces for use by courts and police.

If a consolidated criminal justice information system is to be designed, it must be capable of providing full support for both management and case decisionmaking in corrections. A system not capable of meeting these requirements would be unacceptable.

The armory of statistical instruments also should include change indicators. Time-series lines reflecting correctional population movements will aid decisionmaking. It will be useful to maintain continuity in computing and recording rates of commitment of various correctional programs. They should be standard features of the program audit that should be conducted as part of the planning cycle.

An important instrument to be designed by the statistician is the agency's annual statistical report, which is of importance to orderly policy evolution. It should include sections on population characteristics, tabulated for given points in time; a recapitulation of population movement for the full year; and an analysis of recidivism by offense and other characteristics. Although the administrator should determine the study guidelines, he should be guided by the statistician's recommendations for analysis and display.

For years, much of the data available on offender has been collected in narrative form by various observers and compiled into an individual "record." Much of this information is subjective and not consistently recorded for all individuals. The records of an information-statistics data base must be controlled and consistent. All data should be codable by objective procedures. To the extent possible, States should cooperate in development of standardized definitions and codes to facilitate meaningful comparisons, national compilations, and offender-based transaction systems. Individual identities must be maintained to assure that the use requirements are met.

Administrative control of the information assembled is of vital importance. Correctional data collection is especially vulnerable to misinformation. Some data must be drawn from unreliable sources. Other data are susceptible to incorrect recording. For example, dates, identification numbers, and social security numbers. An information system that replaces manual operations without provision for verification and editing will be a dubious asset to administrators. Both concepts and equipment in computer operations lend themselves to the installation of verification procedures. Full advantage should be taken of the opportunity to improve methods of recording information for process. But while the computer can reduce error by reducing the number of time manual processing of data occurs and by verification procedures, human fallibility will continue to require utmost vigilance. The administrator's active emphasis on accuracy is the most effective assurance that vigilance will be maintained.

Administrators also must protect the system from unauthorized access. Interfaces with other criminal justice data banks must be maintained, but maintenance of security in handling sensitive materials should discourage interfaces with systems outside criminal justice or response to queries from any but specifically authorized persons and agencies, such as social science researchers.

Requirements for information and analysis will change over time. As they do, the data base must be able to expand and change to accommodate the new needs. Tests of the efficiency of systems to the system must be possible without disruption of ongoing operations. In addition, feedback from administrators must influence the structure and output of the information-statistics system.

Already, the need for conventional data bases expansion becomes evident when reviewing the new correctional programs that are being proposed. Halfway houses and work furlough programs carry their own demands for information and evaluative statistics.

As new theories about the variables that influence correctional outcomes become more solidified, new data elements will need to be collected, for research and evaluation require historical data.

In corrections, today's programs cannot be evaluated for three to five years. Therefore, it is necessary to systematically capture data that will be required for analyses five years hence.

The information-statistics system must provide feedback to administrators on the results of their policies and actions. It must foretell how decisions might be made differently. As administrators and planners develop new methods and programs in response to the feedback they are receiving, other data will be needed to continue this feedback process.

References


Related Standards

The following standards may be applicable in implementing Standard 15.4.

6.1 Comprehensive Classification Systems.

10.2 Services to Probationers.

12.6 Community Services for Parolees.

13.2 Planning and Organization.

15.1 State Correctional Information Systems.
Standard 15.5
Evaluating the Performance of the Correctional System

Each correctional agency immediately should begin to make performance measurements on two evaluative levels—overall performance or system reviews as measured by recidivism, and program reviews that emphasize measurement of more immediate program goal achievement. Agencies allocating funds for correctional programs should require such measurements. Measurement and review should reflect these considerations:

1. For system reviews, measurement of recidivism should be the primary evaluative criterion. The following definition of recidivism should be adopted nationally by all correctional agencies to facilitate comparisons among jurisdictions and compilation of national figures:

Recidivism is measured by (1) criminal acts that resulted in conviction by a court, when committed by individuals who are under correctional supervision. The measurement is based on the number of events released from correctional supervision within the previous three years, and by (2) technical violations of probation or parole in which a sentencing or parole authority took action that resulted in an adverse change in the offender's legal status.

Technical violations should be maintained separately from data on reconvictions. Also, recidivism should be reported in a manner to discern patterns of change. At a minimum, statistical tables should be prepared every 6 months during the 3-year followup period, showing the number of recidivists. Discriminations by age, offense, length of sentence, and disposition should be provided.

2. Program review is a more specific type of evaluation that should entail these five criteria of measurement:

a. Measurement of effort, in terms of cost, time, and types of personnel employed in the project in question.

b. Measurement of performance, in terms of whether immediate goals of the project have been achieved.

c. Determination of adequacy of performance, in terms of the program's value for offenders exposed to it as shown by individual followup.

d. Determination of efficiency, assessing effort and performance for various programs to see which are most effective with comparable groups and at what cost.

e. Study of process, to determine the relative contributions of process to goal achievement, such as attributes of the program related to success or failure, recipients of the program who are more or less benefited, conditions affecting program delivery, and effects produced by the program. Program review should provide for classification of offenders by relevant types (age, offense category, last expectancy rating, psychological state or type, etc.).

Evaluative measurement should be applied to discrete, defined cohorts. Where recidivism data are to be used, classifications should be related to recidivism and technical violations of probation or parole as required in systems reviews.

3. Assertions of program or system success should not be based on unprocessed percentages of offenders not reported in recidivism figures. That is, for individuals to be claimed as successes, their success must be clearly related in some demonstrable way to the program to which they were exposed.

Commentary

Performance measurement is critical to evaluative program review. Standards of measurement should be uniform for external review and comparison. This requirement is especially important for fund-granting agencies, which must make decisions about program support on the basis of evaluated operational performance. Unless these measurements are based on standard criteria, reviews cannot be valid, nor can comparison be made when necessary.

A distinction is made between system review and program review. In a system review, performance of the entire system in achieving its goal is the object of measurement. In a program review, effectiveness of the program in the achievement of its immediate objective must be measured. This kind of evaluation calls for identification of specific goals and appropriate measures for determining whether they are achieved. While this level of measurement is necessary for program control, the program's contribution to the system's success in meeting its goals also must be measured. This latter measurement must be made with the scale by which the system is measured.

Recidivism is recognized universally as a useful criterion for correctional measurement, but there has been considerable variation in the way recidivism has been measured. A standard definition clearly is needed. Three main factors should be considered in developing recidivism statistics: the nature of events to be counted, categorization of the behaviors and degrees of seriousness to be included, and duration of the followup period.

Recidivism should be measured by recidivism in corrections. Technical violations of probation or parole based on administrative action alone should be excluded from a general definition of recidivism because they are not established formally as criminal acts. Technical violations in which a sentencing or parole authority took action that resulted in an adverse change in an offender's legal status should be collected but maintained separately from data on reconvictions.

A satisfactory resolution of the degrees of seriousness to be identified and included in recidivism statistics has yet to be developed. The problem lies in prescribing a level of seriousness that separates those criminal acts so minor as not to merit public attention from those serious enough to be reported. Different jurisdictions currently use varied sets of offense groupings, and there is no mutually exclusive set of groupings that is commonly accepted. Nor is it sufficient to report recidivism on the basis of length of confinement to which a recidiv­ ing offender is sentenced. Given the move toward using confinement as the disposition of last resort, some fairly serious criminal acts may not result in confinement and therefore be excluded from such a definition. Until these problems are resolved, all recidivism should be reported by type of offense and type and length of disposition.

Measurement of recidivism should be pursued for 3 years after release of the offender from all correctional supervision. While this is an arbitrary figure, it is chosen because the few recidivism studies that have followed offenders more than 3 years have shown that most recidivism occurs within the first 3 years of release from supervision. It is also important that results from followup of offenders be fed back to administrators as is possible. Finally, it is unreasonable to hold corrections accountable for the behavior of ex-offenders indefinitely. The 3-year figure is not meant to discourage reporting over longer periods, which would provide valuable control information concerning recurrences after the 3-year period. Most important here is to have a standard reporting period throughout the country so that comparisons can be made.

Standards of performance in corrections previously have been based largely on the collective subjective opinions and judgments of administrators. While elements of subjective consensus should not be eliminated entirely from the process of standard setting, objective statistics of events to be counted could provide more guidance. Research to validate measurement and to determine optimum performance standards should be expedited in the interest of improving sentencing policy, setting expenditure priorities, and providing more effective services to offenders.

The requirement of program evaluation capability within the information and statistics system can be achieved immediately. Accomplishment of this goal will give the administrator a monitoring service.
For control of operations, this service will be a great contribution to a new level of administrative effectiveness. The administrator will know where corrective action is needed and how urgently. Thus, functional evaluation may measure the agency's achievement of all its objectives. Five categories of criteria should be used in such evaluation.

At the most primitive level of evaluation, one merely measures effort. These measurements are made in terms of cost, time, and types of personnel employed in the programs studied. Information of this kind is essential to the study of a program's economics but tells nothing about its usefulness.

The second evaluation level is the measurement of performance. The question here is whether immediate goals of the program are achieved, such as the number of individuals completing a program in which they were enrolled. Such information is simple to collect and lets administrators know how their programs are operating at this basic level.

At the third evaluation level, the adequacy of performance is determined. This step begins determination of the program's value for offenders exposed to its evaluation at this level is of crucial importance to the administrator and the public. It offers a more refined measurement than that of the "success" or "failure" reported by recidivism. Criteria such as positive attitude change, educational improvement, and better interpersonal relations can be reported. Until integration of information systems is much improved, individual followup of some kind will be necessary to deliver this level of assessment.

The objective at the fourth evaluation level is determination of efficiency. This is the level of assessment that characterizes most evaluative research in corrections. Unfortunately, a shortcut methodology omitting the study of effort and performance has been achieved, thereby reducing the value of the conclusions made. If effort and performance are documented, much can be learned about whether programs have definable value compared with other programs administered to comparable groups.

Finally, the most elaborate form for evaluative research will be the study of performance levels of the program related to success or failure; recipients of the program who are more or less benefited; conditions affecting program delivery; and effects produced by the program.

Great caution should be used in making claims about correctional success. In point of fact, recidivism can tell us only about correctional failures. Unless research and statistics can tell us about how individuals were affected by different programs and how they later developed as "successes," correctives cannot be expected to move forward significantly.

Avoidance of failure is not identical by any stretch of logic with promotion of success. The attributes of specific programs that had positive impact on specific offenders must be identified. Furthermore, discrimination of program failures from expected failures is essential to understanding recidivism. Discrimination of program success is equally essential, but these successes must be individually verified, not inferred from statistical class. That is, the fact that a cohort of released offenders had a recidivism rate of 40 percent does not mean that the correctional system can claim a 60 percent success rate for its programs.

References

Recommendation:
A National Research Strategy Plan

Statement of Recommendation
Federal granting agencies active in correctional research should join immediately in preparation of a coordinated research strategy in which general areas of interest and activity are delineated, objectives are specified, and research priorities defined. This strategy should be published and reviewed annually.

The national research strategy should include at least the following four kinds of research support:
1. National Corrections Statistics. The National Institute of Law Enforcement and Criminal Justice or some other body should initiate a consolidated annual report including data on population characteristics and movement of both adults and juveniles through detention and correctional facilities, probation, and parole. Exact dimensions of the report and its strategy required to achieve it should be developed by a representative group.
2. Maintenance of Program Standards. Emphasis should be placed on monitoring the implementation of national performance standards as recommended in this report. Funding agencies should pay close attention to the degree to which agencies adopt performance standards derived from objective statistical measurement and the extent to which they are validated and utilized.

Commentary
Correctional research is not coordinated at any level of government. Both academic and agency researchers have lacked guidance on priorities, and
research has not been systematically encouraged by granting agencies.

Activity in correctional research at the Federal level is spread among numerous agencies. The result is little coordination of policy development or research strategy. Although duplication of research coverage in some fields is an obvious consequence, there is no systematic attempt to exchange information or to assure that policy is consistent and understood.

The vastly improved information systems recommended for national implementation will create an unprecedented need for concerted research. Gener- generally, experience has shown that it is impractical for even the largest agencies to maintain permanent staffs capable of innovative and interpretive research. There have been a few exceptions, but most such studies have been supported by external fund-granting agencies, often at the initiative of local staff, and always with local collaboration.

This record indicates the need for a national research strategy. Funds should not be awarded without an expectation of specific achievement, an expectation that should be based on the improvement of correctional conditions.

A nationally understood research strategy does not exist. Agencies granting funds for correctional studies have not had a strategy more detailed than an individual preference for certain kinds of investigation. Such preferences do not relate to a definition of need or a broad consensus on purpose.

Research in corrections should be directed at the improvement of effectiveness, defined here in terms of remedial socialization of the offender as measured by his successful reintegration. Its accomplishment depends on the maintenance of data systems for measurement, evaluative research of existing new interven-tions, and administrative and program innovations.

The intention is not to eliminate the support of serendipitous research. However, it is strongly recommended that steps be taken as soon as possible to create a logical and coherent basis for assigning research priorities. An annual report reviewing the status of research and operations, giving fresh consideration to priorities and defining opportunities for development, would produce a significant advance in the stimulation of interest and activity in correction.

These requirements indicate the need to concentre the attention of funding agencies on four kinds of research support. The following four categories should constitute the national research strategy:

1. National Correctional Statistics. With implementation of correctional information systems throughout the country, preparation and publication of an annual report reflecting the size of correctional systems, intake and release rates, amount of time served, and other data will be a simple matter. This report will enable both analysts and the general public to ascertain the status of correctional systems, to compare effects of policy differences and crime rates from State to State, and to draw inferences about trends and changes.

Such reports should not attempt to establish national rates or totals. They should reflect each State’s position as to correctional programs.

The design of the series should be developed with the collaboration of an advisory group of correctional administrators and statisticians and representative academic research scholars. This advisory group should be a permanent support to the uniform correctional report, reviewing its content annually and recommending changes in procedures or format that might make the series more useful to its public.

2. Maintenance of Program Standards. Standards of performance in corrections hitherto have been based on subjective opinions and judgments of experienced administrators. The Manual of Correctional Standards of the American Correctional Association represents a consensus of such authority. These elements of subjective consensus neither can nor should be eliminated entirely from the process of standard setting. However, guidance on performance standards can be derived to a large extent from objective statistical measurement. Where such measurements can be designed, they should become the basis for achievement standards. Research to validate measurement and to determine optimal performance standards should be expedited in the interest of improving sentencing policy, setting priorities for expenditure, and treating offenders humanely. Some studies of this kind have been initiated by the National Institute of Law Enforcement and Criminal Justice.

3. Study of Trends in Correctional Program Change. Corrections is characterized by a rapid, wide-ranging evolution in values and structure. Some changes are generated outside the correctional services. They influence the nature of objectives and the processes chosen to achieve them.

Most of these innovations have far outstripped interpretive research. Thus, for example, the last decade has seen a focus on various forms of community-based corrections. These programs have been generated pragmatically, usually with little or no reference to theory or experience. To this day, neither the concepts nor the method to evaluate or develop these programs with research support has been found. Many are expensive and elaborate; they cannot survive without proof of their effectiveness, which is impossible to demonstrate at a moment’s notice.

Similarly, the increasing emphasis on probation should motivate a great deal of innovative research for development of a probation service technology. Hardly anything of this kind is in sight, and the need is pressing.

Leadership of funding agencies is essential to the coordination of research with spontaneous development. Without this leadership, good ideas poorly executed will perish along with the hopeless idea that never should be implemented. Research alone will not save corrections, and without an effort to coordinate its deployment with the natural processes of change, the old evils of panaceas planning and objectiveness management will persist.

4. Facilitation of Innovation. Clinical treatment personnel have initiated most correctional innovation, with supporting research usually included as a late afterthought. For example, widespread interest in behavior modification programs has not been accompanied by research that could be described by any stretch of the imagination as definitive. Scattered explorations by isolated investigators have enthusiastically documented activity without assessing consequences. Unless the innovator himself perceives the need for controlled research it will not be undertaken. Responsibility for this high-handed state of affairs rests on funding agencies, on correctional managers, and on innovators themselves. It will not be remedied until funding agencies require the study of process to begin at the beginning.

This emphasis does not necessarily require that every innovative project have its own research and evaluation component in order to receive Federal funds. The money might be better spent if given to a few organizations which can carry out extensive research and evaluation and serve as a model for others. Another alternative is to set up teams to do evaluations or assist agencies in doing them.

Funding agencies also must provide a continuing strategy development. Such a process consists of a cycle in which review of the state of the art and development of research in relevant sciences are considered together so that specific areas for concentration in future research can be defined. This process never has been applied to correctional research strategy. Funding agencies must be responsible for discovering how the order and purpose they favor for corrections can be achieved through their own strategic planning.
Chapter 16

The Statutory Framework of Corrections

Law is the foundation on which a good correctional system is based. Indeed, it is doubtful whether an effective correctional system could exist without a good statutory foundation. But the reverse is not true. Good law will allow good administration; it will not assure it. If appropriate programs are authorized, but poorly funded, poorly administered, or poorly staffed, then little benefit will result.

It is difficult to quantify statutory reform in crime reduction terms. Legislation can authorize or prohibit; it cannot implement. Corrective statutes must seek to authorize an effective correctional system and prohibit the abuse of individual rights.

In developing standards for correctional legislation, it is necessary to bear in mind that correctional "law" has three components in addition to statutes. These are: constitutional enactment, court decisions, and administrative rules and regulations. Thus all three branches of government have a hand in shaping the structure of correctional "law." The first problem in recommending a statutory framework, therefore, is to decide which component can best handle the particular issue being considered. If the decision is that the matter should be covered by statute, the question then becomes one of the intent and content of the law. The narrative of this chapter explains how a legal system for correctional programs should be developed and what "essentially legal" problems arise. The standards developed at the chapter's end are of two varieties, general and specific. Three general standards enumerate what types of issues are appropriate for legislation and general correctional law reform. The remaining standards are specific and deal directly with substantive correctional issues. They provide examples of how certain correctional issues can be resolved by legislation.

CORRECTIONAL CODES AND THE CORRECTIONAL PROCESS

The correctional code includes statutes governing sentencing, probation, incarceration, community-based programs, parole, and pardons. These statutes are the foundation on which a criminal corrections system is built. Short of constitutional restrictions, the legislature has wide latitude in determining the nature of the correctional code and its substantive provisions. Seldom, however, has a legislature considered broad questions of the role and limitation of legislation when enacting statutes affecting correction.

In most States, statutes governing corrections cannot be considered a "code." They are collections of statutes enacted at varying times under varying conditions to solve specific and often temporarily controversial problems. The lack of consistency, comprehensiveness, and direction of these statutes has forced the correctional system to develop in spite of the statutory framework rather than because of it. To some extent the legislature has lost its rightful control over the governmental agencies involved. In other instances, progressive correctional administration has been frustrated by unrealistic and outmoded statutory restraints.

The Purpose of Legislation

Correctional legislation has one essential task—allocation and regulation of governmental power. In the context of criminal corrections the power to be allocated and regulated is substantial. An individual who violates criminal law subjects himself to possible deprivation of those attributes of citizenship that characterize free societies. Allocation and regulation of correctional power is a sensitive undertaking for a legislature in a free society. The potential for abuse of that power is apparent and real; the potential for effective and constructive reform of criminal offenders is less clear.

Authorizing Correctional Power

The ability to exercise control over criminal offenders is dependent on authorizing legislation. The initial decision in enacting correctional legislation is to determine for what purpose and in what manner and shifts as ends sought and the means allowed.

Possible functions for the correctional system are apparent: (1) punishment of individuals who breach society's rules; and (2) reduction of crime. The first may be justified on the basis that rules require effective enforcement mechanisms. Law violations, when violations are not properly applied by government, may stimulate private retributive actions. Thus government through the criminal law legitimizes and institutionalizes private retributive feelings.

The second goal for corrections is reduction of crime. Correctional power may reduce crime in two ways, by deterring potential lawbreakers from criminal conduct or by operating on existing offenders in such a way as to cause them not to commit further crimes. Difficult questions are posed regarding the means to attain either of these two correctional goals. Satisfaction of community retributive desires involves issues of the intensity of correctional power. What level of punishment is required to assure public desire for retribution? Is the infliction of human misery and degradation required?

The means available for crime reduction vary. This would again pose questions of the intensity of punishment required.

Rehabilitation of criminal offenders is another corrections approach. Based on the theory that offenders commit crimes at least in part because of a lack of skills, education, or motivation, rehabilita­tion requires the correctional agency to provide programs to overcome these deficiencies and assist the offenders' reintegration into the free community. However legitimate each of these ends and means is, not all can be implemented compatibly by a single correctional system. The level of punishment necessary to satisfy some retributive feelings may be counterproductive in reducing recidivism. Conditions that, in theory, would increase the deterrent effect of corrections also may reduce the system's ability to change offenders constructively. More imp­ortant, the failure to choose which theory is to pre­dominate in a correctional system may result in inconsistent and competing programs that assure failure to attain any goal.

Each of the various punishment theories has been prominent at some time in corrections history. It is, however, difficult to find an instance where the legislature has made the conscious choice of theory. In fact, the thrust of a particular correctional system is generally determined by correctional personnel and shifts as the personnel changes. These broad public policy decisions should be made by the legis­lature after appropriate public debate. They should not be delegated either consciously or through in­action to administrators.

Legislatures have had some impact on the selec­tion of correctional ends and means. In many States, statutory provisions assume implicitly a par­ticular policy for corrections. However, this assump­tion is not uniformly applied. Some statutory requirements facilitate rehabilitation programs; other statutes make implementation of such pro­grams difficult. To have an effective correctional system, it is not only appropriate, but essential that the legislature (1) establish uniformly and comprehensively the "public policy" on corrections and the general goals and approaches for the exercise of correctional power, and (2) legislate consistently with that declaration.

The Instruments of Correctional Power

The legislature's second major task in legislating for corrections is to create and organize the instru-
ments for correctional decisionmaking. The goals of correctional agencies and the quality of their personnel are decisions only the legislature can make. Only after the correctional system's goals and methods are determined can the nature of the instruments for their implementation be considered adequately.

Organization

Once a consistent and comprehensive goal for the correctional system is established, the system's organization is dictated by that goal. Comprehensiveness in planning and programming requires a unified organization. It is not surprising that, with no consistently stated goal for corrections, correctional agencies grew in a haphazard manner. In many States, each correctional institution was created separately, with separate administration. Prison confinement was the predominant response to criminal behavior. Each new reform, generally a reaction to the harsh conditions of incarceration, seemed to require a new governmental agency independent of the prison administration.

Probation developed as an arm of the sentencing court and subject to its control. Persons were not "sentenced to" probation; the sentence to confinement was modified. The courts viewed probation as a device to keep certain deserving offenders out of the correctional system, rather than as a more appropriate and effective correctional technique.

The recognition that institutional confinement has limited utility for the majority of criminal violators makes probation a more attractive correctional alternative. It does not alter the standard sentence, with confinement reserved for the dangerous offender. On the other hand, probation staff will draw on institutional resources. The use in coordination of short-term diagnostic commitments prior to sentencing is one example.

Institutional programming will be required to respond to the failures of probation programs. Judicially imposed sentences of partial confinement, where an offender remains under community supervision during a day or night, will require close cooperation between probation and institutional staff. Coordination and mutual understanding between all correctional personnel will become increasingly important. Continuing court supervision of the probation system inhibits the coordination required.

Sentencing courts do have an interest, however, in maintaining some control over the development of presentence reports, a function now generally performed by probation officers. The presentence report forms the basis for the court's sentencing decision. The report may also contain the sentencing recommendation of the probation officer. There may be good reasons for separating the presentencing investigation function from that of supervision of probationers. Studies indicate that where one officer does both, time-consuming investigations will interfere with his ability to supervise probationers. A person directly responsible to the sentencing court could perform the investigations, thereby making it possible for him to examine in other judicial functions such as bail investigations.

In many States, parole agencies developed independently. To moderate long prison sentences, parole boards were established and given authority to release some offenders from confinement: ent if they agreed to supervision in the community. Parole was viewed as getting the offender out of the correctional system rather than altering the nature of his correctional program. Parolee supervision in the community was administered in several instances by a board of parole rather than by the correctional agency. It remains under a board in 18 States.

Parole, like probation, is one of several correctional tools. Prison programs should prepare an offender for parole and other aftercare programs—for reintegration into the community. Imaginative use of parole conditions, such as a requirement that the parolee meet on a regular basis with parole officers, could result in more effective and efficient institutional personnel directly. Effective and efficient parole planning and programming require close coordination with all other correctional programs. If, for example, juvenile and institutions developed independently and remain autonomous in several States. Numerous factors apparent to account for this division of correctional services. For example, the separate Parole, Administration, and the agency often willing to support new and innovative programs for juveniles than for adults. Proponents of juvenile programs find it politically expedient in the present penal system, if only because most offenders convicted of felonies previously have been convicted of a misdemeanor. In a California survey conducted for the President's Commission on Law Enforcement and Administration of Justice (the Crime Commission), 74 percent of those entering a State prison on their first felony conviction were found, in a "two-source" study, to have been convicted of misdemeanors. Thus the State correctional system inevitably must respond to the failures of misdemeanor correctional programs. Coordinated planning and administration will assure a consistent approach toward individual offenders who graduate through the system of corrections from the misdemeanor to the felony level. Local jails generally are characterized by idleness, hostility, and despair. They are, for the most part, devoid of correctional programs. Except in large metropolitan areas, there are insufficient resources to develop and maintain effective programs. Probation services are minimal or nonexistent. Work-release programs are scarce. Vocational or educational training programs are lacking. Since the jails are operated for the most part by law enforcement personnel, there is little professional correctional training and little incentive for inmates to integrate local misdemeanor facilities into the State correctional system. Such integration is imperative because, as the Crime Commission concluded, "it is not feasible in most States to expect that advances... will be made as long as jails and misdemeanor institutions are administered separately from the rest of corrections." 1

Corrections, if it is to be effective, can no longer be viewed as a group of separate and diverse entities independently exercising power over a criminal offender. Rather, it must be viewed as a system comprised of various components that must operate in a consistent and coordinated way. These components are interconnected; the planning and performance of one will affect the others directly.

The correctional code should unify the administration of all correctional facilities and programs under one agency on the State level. That agency should have responsibility for probation, confinement facilities, community-based programs, and parole. The present system, in most of the week, with misdemeanants, and, where appropriate, those confined awaiting trial.

The major problem with total unification of all elements of the correctional system is the board of parole. As community-based programs implemented by institutional staff expand, the board will increasingly lose its role. That agency must be insulated from institutional pressures and perspectives in order to perform this function. However, a different approach to the need for coordination in planning, resource allocation, and evaluation, the board of parole may be administratively part of the unified State corrections system. Where this form of organization is adopted, the board must remain autonomous in its parole decisionmaking functions. Methods for assuring such independence are discussed in Chapter 12, Parole.

Personnel

Once the elements of the correctional system are merged, the legislature should be set to see that they are staffed with personnel having appropriate qualifications. The qualifications required for a given position will depend primarily on the goal and


methodology of corrections as contested by the legislative. If police qualifications are to be the keystones of the system, then little expertise is needed. However, if reintegration of the offender into the community is the system's goal, then certain professional qualifications become important.

Drafting legislation to assure that programs are staffed with competent personnel is a difficult task in the political arena. Recruitment and retention of competent staff require legislative action providing for three factors: adequate compensation, appropriateness of qualifications for those employed, and job security.

In many States, legislatures have set the salaries for top management correctional personnel. This creates a rigid system that precludes negotiation to induce a qualified person to accept a position or to retain one if he is offered additional compensation. Legislation should avoid conferring specific salary levels but should grant flexibility to the appointing officials to compete for the most qualified person within authorized appropriations.

Corrections is a politically sensitive function of government. Good correctional legislation requires that personnel recruitment be insulated from political patronage. However, as long as the government, corrections should be responsive to public attitudes. Political patronage is improper to the extent that persons are appointed to a position by the governor with the advice and consent of the legislature. A standard means of striking the balance of statutory qualifications for a particular office are another.

Legislative attempts to dictate qualifications for correctional staff positions take several forms. Many favors given to those who are variously categorized according to management positions including the chief executive officer of the correctional agency, probation or parole officer, and the rank and file personnel. These qualifications range from broad provisions directed toward assuring some minimum professional experience to specific requirements regarding academic and professional training and experience.

Precise statutory qualifications for most positions are difficult to draft. The more specific they become, the less likely qualified persons will be able to become ineligible. The system becomes more rigid and less adaptable to changes in the nature of correctional personnel. It is important to remember that the qualifications of correctional personnel in South Carolina are "qualifications and training which will help him to manage the affairs of a modern penal institution." S. C. Code Ann. Sec. 55-399 (1963).

The statutory qualifications for the director of corrections provide that he "shall have a degree in sociology, psychology, social science, or some related field and have had for a period of at least three years experience in the field of correction or a related field." W. Va. Code Ann. Sec. 62-13-3 (1966).

Thus, the system must provide for professional expertise, but it is particularly susceptible to abuse and to arbitrary and mechanical decision making. Disparity in the treatment of substantially similar offenders is likely to occur. The exercise of discretion is particularly important that corrections maintain its ability to progress. New techniques, new concepts, and new programs require experimentation. Only through discretion can the system both experiment with untested theories and modify its programs and services to reflect advances in knowledge and technology.

On the other hand, unchecked discretion, no matter how beneficially exercised, creates its own hazards. It is particularly susceptible to abuse and to arbitrary and mechanical decision making. Disparity in the treatment of substantially similar offenders is likely to occur. The exercise of discretion is particularly important that corrections maintain its ability to progress. New techniques, new concepts, and new programs require experimentation. Only through discretion can the system both experiment with untested theories and modify its programs and services to reflect advances in knowledge and technology.

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The control of discretion...

Law has always recognized the need for discretion to temper the rigidity of rules. It is impossible to develop rules that will achieve just results in all cases to which they may be applied. The crime of armed robbery, for example, may be committed by a professional criminal or a teenager responding to a dare from his peers. Unique considerations and varying circumstances require that some discretionary power exist.

The control of discretionary power requires the executive discretion of the correctional administrator. A response to this unique power because it is continually at the mercy of his or her discretion. Abuse of discretion destroys any possible constructive relationship between the correctional staff and the offender.

The Control of Discretion

The absence of controls on the wide range of discretion conferred on administrative agencies has long produced conflict. Our Constitution and traditions reject the exercise of unbridled power because of its potential for abuse, not because such power inevitably leads to bad decisions or exploitation. The "due process" clauses of both the fifth and fourteenth amendments require a response to potential abuse of discretionary power. Our system of government creates a presumption against the exercise of discretion.

should authorize flexibility in procedures for the selection and charge. Although some job security is required to build a strong career service, experimental programs utilizing ex-offenders, lay volunteers, and minority group members in correctional roles should be authorized and encouraged.
power, which can be set aside only for the most compelling reason.

In the context of criminal corrections, the threat of imprisonment should be a necessary disciplinary measure or an option to be used only after less severe measures have been tried and have failed. Such measures should be designed to prevent the growth of criminal activity and to protect the public from further harm.

The decision to parole an offender should be based on a careful evaluation of the offender's character, the nature and circumstances of the crime, the offender's prior record, and the likelihood of successful rehabilitation and reintegration into society.

Statutory criteria for decisionmaking should be clearly stated in the law, and the decision should be made by a duly appointed entity, such as a parole board, with authority to grant or deny parole. The criteria should be objective and measurable, and they should be applied uniformly to all offenders.

Decisions regarding parole and other forms of correctional sanction should be made by a knowledgeable and experienced parole board or similar entity, with the advice and input of professionals in the field of corrections.

The general act regulating administrative agencies is equally applicable to the correctional system but often is ignored. These acts provide a rational approach to administrative action through rules and regulations, and they should be adopted and used by correctional agencies.

The thrust of the administrative procedure acts is to provide for the protection of due process against arbitrary or inappropriate decisionmaking. In a free society it is required to arise in full discussion. Under most acts, major policy decisions by an agency are in a variety of ways. Persons affected by a rule have an opportunity to present argument or comment on the rule before it is enacted. Adopted rules are placed on file and made available to the public.

Most correctional decisions are not otherwise regulated by statutory criteria are susceptible to some kind of rule- making procedure. The flexibility of rulemaking and the ease with which rules can be changed to adjust to changing circumstances would protect against unnecessary interference with the rulemaking process.

The procedure likewise would provide a valuable means of allowing offenders and the public opportunity to participate in and influence the formulation of critical correctional policies. Ability of offenders to participate in decisions directly affecting their liberty is a vital and fundamental concern. The procedures developed to enforce the rules, for most offenders, are necessary and essential.

The legislature should provide for the protection of the public in its interest to adopt and use rules that should be made in a manner that is free from political influence. The rules should be based on objective and measurable criteria, and they should be applied uniformly to all offenders.

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assuring a check on the actions of each. In some agencies review is periodic and informal. In others, there is a formalized procedure. The reviewing decision made by correctional staff. These procedures are designed to assure top management that established policies and standards are carried out by the staff. Legislation is not required to provide this form of review, and rigid legislatively imposed procedures are not essential.

Specific legislative provisions authorizing offenders or other interested parties to initiate a review procedure should be enacted. Some correctional agencies have been slow to adopt internal mechanisms whereby offenders may challenge staff decisions. This loss a natural tendency to support the actions of a staff member over an offender. However, if the offender is to be protected from arbitrary or mistaken actions on the part of the staff, he must have a means of effectively challenging decisions against his interests. He, more than anyone else, has an interest in seeing that established criteria are followed. He is likely to know when decisions are made that are inappropriate or based on findings contrary to fact.

Since it is in the public's and the agency's interest that correctional decisions have a constructive effect on the offender, both should support mechanisms whereby offenders may seek to challenge staff decisions. A natural basis for such decisions, an erroneous or arbitrary decision is not constructive; it breeds resentment and disrespect for society and its institutions. In formulating a procedure for offender-initiated review of decisions, the legislature and the correctional agency must agree that the procedure not only must arrive at fair decisions but also must appear to do so from the offender's perspective. Review procedures can vary in formality and extent of appeal, but the decision to deny a complaint to a superior of the decisionmaker constitutes a review procedure.

An offender. The procedures should be open, to any interested person who is not officially connected with the correctional administration. More formalized grievance procedures are envisioned where a formal complaint is filed and a hearing is held to resolve a disagreement. Some decisions may be appealed to a mixed board of offenders and correctional staff. The offender and the staff should be able to hear each other.

Review of discrepant powers by courts is another alternative. Traditionally, courts were reluctant to consider the appropriateness of correctional decisions and generally abstained from involvement in the internal administration of prisons and other correctional institutions, as not previously, in recent years courts have shown an increasing interest in the procedures and practices employed for the care of criminal offenders. Most court decisions have tested inmate complaints against constitutional requirements. However, with the development of statutory criteria and more effective use of rule and regulations, courts could review decisions not challenged as unconstitutional. They may be appropriate agencies to enforce legislative directives.

The nature of the procedure for review should depend on the importance of the decision to the life, liberty, or property of the offender. Minor decisions need not be subjected to judicial review as long as a simple, informal, and fair internal review procedure is available. Some disciplinary decisions such as temporary suspension of inmate privileges would not require judicial intervention. Assignment to a particular cell or dinner shift normally would not raise substantial issues, although regulations announcing how cells are assigned may do so.

On the other end of the spectrum, decisions having a direct bearing on the length of time an offender will serve require more rigorous procedures for protecting the offender's interest. The initial sentencing decision requires procedural safeguards, including the presence of counsel. Appellate review of sentencing is becoming a reality in many States. The decision to revoke probation requires formal procedures and is amenable to judicial review. The United States Supreme Court recently held in Morrissey v. Brewer, 408 U.S. 471 (1972), that the Constitution requires certain procedural formalities for revocation of parole.

Some institutional decisions have a direct effect on the sentence of the offender. Disciplinary procedures (3) must provide an offender with a clear explanation of his loss of credits and tell him how credits can substantially extend an offender's sentence. Procedures safeguards against arbitrary action should be required, and, in the absence of a formal and impartial internal procedures, judicial review seems appropriate.

A number of decisions indirectly affect the offender's sentence and eligibility for parole. Assignments to particular situations for certain programs, including community-based programs, may deny the actual parole date substantially and substantially affect the parole availability of an offender. An offender should have some protection from erroneous or arbitrary decision of this nature.

The Correctional Procedure Act, as discussed later in this chapter provides a useful illustration of the enactment of judicial review of critical administrative decisions. It provides that in a contested case a person aggrieved, after exhausting all applicable review procedures, may seek judicial review of the basis for judicial review which seems appropriate for implementation in correctional decisionmaking.

(a) The court shall not substitute its judgment for that of the agency, nor determine facts in a case in light of the evidence on question of law. The court may affirm the decision if substantial rights of the applicant have been prejudiced by errors of law. The administrative findings, inferences, conclusions, or decisions are:

(1) in violation of constitutional or statutory provisions;
(2) in excess of the statutory authority of the agency; or
(3) made upon unlawful procedure; or
(4) affected by other error of law; or
(5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The most immediate and substantial impact that a legislature can have in the correctional process generally is to develop and enact a code of administrative justice along the lines just discussed. A consistent and fair approach to structuring and reviewing discretionary decisions will serve the interests of the offenders, the public, and the correctional system. Fair decisions based on adequate procedures and information are good correctional decisions. Decisions that appear fair to those affected are good correctional decisions. On the other hand, decisions are essential if corrections is to have any effect in reducing recidivism and decreasing crime.

**Penal Codes and the Correctional Process**

The penal code includes the statutory provisions that designate an activity as criminal and prescribe the applicable criminal sanction. The penal code has a direct and influential effect on the corrections component of the criminal justice system.

**Substantive Provisions**

The penal code defines the clientele of the correctional process. It determines in a general way the type of person who will journey through the correctional system. Criminalization is a conduct that has been defined as being against the law will result in a criminal conviction. The person convicted then becomes a client of the correctional system. If the prison population is growing, the decision of what to do with the offender now becomes the responsibility of correctional agencies. The penalty provisions affect the assumption that imprisonment is the normative criminal punishment.

Those statutes establishing criminal conduct also determine the type of correctional programs required. To the extent that different activities reflect different personality or social defects, making an activity criminal imposes the obligation to insure that a correctional program is available to meet these defects. If alcoholism is made a criminal offense, the correctional system should have programs for alcoholics.

Often the normally prescribed criminal sanctions are inappropriate. For example, there is little likelihood that putting persons guilty of nonsupport, because the family of the offender remains impoverished.

The major impact of the penal code on corrections is in determining the gross number of offenders entering the system. As noted in Chapter 3, criminalization of a wide range of activities in the United States has overburdened the correctional process. The failure to discriminate between categories of personnel and to establish priorities for the correctional system has forced the correctional system to spread resources thinly among those who, either may not need correctional treatment at all or who will be least likely to benefit from it. Inability to concentrate resources on offenders who present a clear threat to lives or property is no help to the preservation of public safety.

In the juvenile area, persons who have committed no criminal offense often are included as correctional clients. In some States, dependent and neglected children are subject to incarceration in institutions for delinquents. Client diversity creates the need for program diversity that may or may not be administered compatibly.

When framing criminal offenses and revising outdated criminal codes, the following factors should be considered:

1. Impact on the correctional system;
2. Level of correctional resources required and available for the potential clientele; and
3. Utilization of correctional resources.

Penalty Provisions

Statutes defining criminal conduct generally specify the limits of the sanction that may be imposed for violations. In many States, these limits are phrased in confinement terminology. The standard clause at the end of a criminal statute reads: "... and upon conviction thereof shall be sentenced to imprisonment for not less than one nor more than ten years." Such provisions reflect the assumption that imprisonment is the normative criminal penalty.
sancion. The increased use of community-based supervision through probation and the development of partial confinement and other alternatives to incarceration recognizes that total confinement is unnecessary and inappropriate for many offenders. Maximum and minimum terms thus take on new significance in as they influence and are influenced by changes in the correctional process.

Effect of Maximum Sentences on Corrections

Most criminal codes, either modern or antiquated, provide for maximum sentences for various criminal offenses. Establishment of these maximum sentences has a direct bearing on the development and success of correctional programs. Legislatively imposed maximums are used to establish the length of time for which an offender is subject to correctional power. From a purely correctional standpoint, it could be argued that the legislature should not impose any maximum. The sentence for every offense would be for life with correctional authorities making discretionary decisions terminating their control when an offender's rehabilitation is complete. This model is based on a pure form of individual treatment. Commission of an offense provides the rationale for unlimited treatment. The legislature would not be forced to scale the sanction by the gravity of the offense or to reflect the individual's potential for community reintegration. These decisions would be delegated to other agencies, either courts or correctional officials.

In fact, however, society does have a scale of values attributing greater severity to some criminal offenses than to others. This discrimination reflects retributive notions that can be reflected through differing maximum terms. Differentiation of the length of the sentence on the basis of the seriousness of the offense reflects societal notions of fairness as well. Retributively aside, it would appear unjust for the judge to convict an individual for a single murder and to be deprived of his liberty for a substantially longer period than an individual who commits armed robbery.

Maximum terms reflect values in addition to correctional policy. Our system of government long has regarded governmental intervention in individual lives as well to be without purpose or cause. And the government's intention to intervene for the good of the individual rather than for punishment seldom has been found to be sufficient cause to extend the period of intervention. The maximum limit of state control over the individual, reflected in the criminal statutes, places time restrictions on control and may be related directly to the nature of the program or the offender. This would tend to force planning for correctional activities to contemplate concentrated rather than extended programs.

There is a growing recognition of the fact that inequality of sentences directly undermines correctional programs. Offenders who receive excessive sentences, as compared with other offenders who committed relatively similar offenses, are not receptive to correctional programs. The justification that the sentence is "individualized" generally is not accepted by the offender. Lack of legislatively imposed maximum sentences, graduated in relation to the gravity of the offense, increased in relation to the diversity, length, and inconsistency of present maximum sentences may account for the present unsuitability for State legislatures to enact minimum sentences.

The minimum sentence imposed by statute serves only to affect the offender adversely. Since the minimum term generally determines parole eligibility, it prolongs confinement unnecessarily. This overenforcement results not only in ineffective use of valuable resources that might be allocated more appropriately to other offenders but also may undermine seriously the progress of an offender.

Most States now provide for maximum sentences other than life imprisonment for most offenses. It is generally agreed, however, that most sentences are far too long. There is, for the vast majority of offenders, no justification for long maximum terms. Studies of the American Law Institute, the National Council on Crime and Delinquency, and the American Bar Association have urged that no maximum sentence be longer than 5 years except for the few who present a threat to society for more than 5 years. American sentencing statutes now tend to set the maximum for a particular offense with the intent to reflect the threat the community might consider. American sentencing statutes now establish the maximum for a particular offense with the intent to reflect the threat the community might consider.

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offender and the public tends to undermine our system of criminal justice.

The Idaho Supreme Court recently held legislatively decreed mandatory sentences in violation of the Idaho constitution. The court stated:

A judge is more than just a finder of fact or an
examiner of the inexorable rule of law. Ideally, he is also
the keeper of the conscience of the law. For this reason
he is given discretion in sentencing, even in the
most serious felony cases, and the power to grant proba-
tion. The court determined that rehabilitation, particularly of first
offenders, should usually be the initial consideration in
the imposition of the criminal sanction. Whether this can
be better accomplished through the parole system or some
other means, it can best be achieved by one fully aware of
all the facts, particularly concerning the defendant in each
case and not by a body far removed from these considera-
tions.

Similar decisions in other jurisdictions would not be
unexpected.

EFFECT OF COMMUNITY-BASED
PROGRAMS ON CORRECTIONAL
CODES

The growing recognition that achieving behavior
change among criminal offenders can be enhanced by
community-based programs rather than by in-
situtional sanctions has numerous effects on correc-
tional legislation. Many present statutory provisions
were based on the assumption that, unless prohiba-
tion was granted, the sentence of the offender would
be served in a state penal institution. A small percentage
would be granted "furlough" through early parole.

The judicial sentence generally was structured in
terms of confinement to a specific institution for
a specific period of time. Since the offender was
under a court order of "imprisonment," specific
statutory authority was required to effectuate an
order to release. Since the parolee was assumed to
mean confinement behind walls, any type of pro-
gram removing an inmate from the prison required
specific statutory authorization. Many States gave
authority for the warden to remove the prisoners
in case of fire or other emergency. Specific legislation
was thought to be required for trustees, for allowing
offenders to work from the prison to a nearby prison
farm, and other close custody programs conducted
outside the prison walls. The two major community-
oriented correctional programs, probation and parole,
are encumbered with elaborate statutory provisions.

Statutory Authority

Because of this history, community-based pro-
grams emanating from institutions should have
specific statutory authority. Many sentencing statutes
have been changed recently to provide for senten-
cing offenders to the custody of the director of
corrections. Under these statutes, it could be argued
that no further authority is necessary for assign-
ment of an offender to any location, including the
community, as has been done in the past. However, to
allay questions of authority or responsibility, commu-
ity-based programs should be authorized by statute.

This does not mean that each type of program
need be specified. With income, living experience,
and new and different programs will con-
tinually be developed. Essentially, the statute should
authorize the director of corrections or other appro-
priate official to "extend the limits of confinement" of
a committed offender for a wide range of pur-
pose. This would authorize work, education, and
vocational training release programs and furloughs.
Transfer of offenders to community-based halfway
houses also would be proper. In juvenile correc-
tions, such broad authority would authorize foster
homes and educational and other programs with a
community orientation.

Correctional administrators need broad discretion
in developing such programs and selecting offenders to
participate in them. These programs need the active support of community members.
The community's suspicion of and prejudice against it
makes it necessary to plan carefully and negotiate
skilfully to obtain community cooperation and re-
sources. The correctional administrator will need
flexibility to move into programs as such resources
become available. Legislative restraints on the na-
ture or type of community-based programs can
impede the development of these programs sub-
stantially.

Administrative Discretion

In authorizing community-based programs, the
legislature will face a number of questions involving
the exercise of administrative discretion.


* Only the offense and not the individual offender, any
amounts upon which a public safety
must be the result of a generalization of the of-
fee itself. Such generalizations cannot enhance
public safety; they can only impede it.

Community-based programs are short-run risk-
using programs. Lengthy confinement without gradu-
ated programs of release creates greater risks. An
offender, while struggling with a lesser risk to
be public safety than one living in the community.
The offender who participates in a gradual re-
turn to society through a variety of community-based
programs experiences a lesser risk in the long run
than the offender who serves a long prison term
and then is released shrewdly without supervision.
There is certainly the temptation to exclude par-
is convicted of certain offenses from participa-
tion in these programs, as has been done in the
use of probation and parole. All such temptations
should be resisted. If no other alternative, the Board
of parole should be given discretion in these programs,
but the legislative assignment of such discretion
must be accomplished either by allowing an offender to
receive parole or by assigning the offender to a
community-based program. Such programs are
authorized to facilitate the offender's success.
initiate a hearing before the board for the specific purpose of determining the administrator's refusal to assign him to a community-based program or by refusing to board periodically to review the record and history of each offender. The board would allow a review of not only community-based participation but also parole eligibility.

The purpose of fairness in revocation of community-based privileges lies at the heart of the growing tension between legal requirements and community trends. Of course, probation and parole revocation now require procedural safeguards, including the right to a hearing, notice of the charges, and an opportunity to present the offender's side of the case.

**Due Process Requirement**

As the correctional system changes from a confinement/total freedom system to a system of gradual diminishment of governmental restraints through various types of programs, the movement toward procedural due process will extend further into the correctional process. When the alternative to confinement was parole supervision, revocation of parole produced a dramatic change in the status of the offender. It was one that called for procedural safeguards against administrative abuse.

The impact has been twofold: A similar impact on the offender, the revocation or modification of community-based privileges demands some legal restrictions on governmental arbitrariness. If current trends continue, judicial decisions will eventually require the development of such restraints. Case-by-case examination of the nature of such restraints by judicial decisions inevitably results in a transition period of uncertainty and a less than comprehensive solution. The requirements of due process are flexible enough to allow some legislative flexibility in established procedures that will protect the offender's interest and at the same time will allow the efficient operation of correctional programming.

An offender can be removed from a community-based program without good reason. This is a simple enough statement, but it contains difficult implications. The determination of whether there is good reason involves: (1) whether certain procedural requirements: (1) the offender should know what the reason is; and (2) he should be able to present evidence to the decisionmaker in the event the reason is not founded on fact. Adequate provisions implementing these procedures should be required by correctional legislation.

**Use of Community Resources**

The assignment of offenders to the community also contemplates that nongovernmental community resources will be utilized as a critical component of the correctional program. Traditionally, governmental functions may be delegated, in whole or in part, to a private agency or individual. Among the ramifications of this for the correctional code are the following:

1. Statutory authorization for the correctional administrative agency to designate community resources, generally on a contractual basis, is essential. In some jurisdictions, the right to contract for private services may not be considered an implied power of a governmental agency and thus should be expressly provided for in the statute.

2. Statutory authorization should be conferred for transferring custody in fact if not in law to a private party or organization. It is preferable to have the offender remain in the custody of the correctional agency as a matter of law for purposes of determining sentences, paroling, revoking community privileges, and revoking community privileges. However, where private resources are utilized, the offender may be in the actual control and supervision of private individuals. In addition to the ability to transfer custody, the following other legal issues should be resolved by legislation:

- Power of arrest. May the private agency or individual supervising an offender have the power to arrest him should he violate the conditions under which he was placed in the community? On balance, the discretion given to the power to private individuals has serious consequences. Other than the arrest privilege private individuals already have under common law, trained law enforcement officers should be relied upon if arrests become necessary.
- Civil liability. Does the private agency or individual obtain, by performing a governmental function, the immunity enjoyed by a governmental officer? For example, if an offender escapes from a community program and injures a third party, what recourse should the injured party have against the agency or individual responsible for the offender's care? Legislation should either establish the standard of care required of private individuals or agencies participating in community-based programs; stipulate that existing civil statute be applied; or provide that the government will indemnify the individual or agency against loss; or authorize the corrections agency to contract with regard to the liability issue.

**Sale of Goods**

In addition to affirmative provisions authorizing community-based programs, some present statutory provisions must be revoked as an undue restraint on the development of such programs. The two major areas where statutory reform is essential are: laws restricting the use of prison labor; and laws restricting the occupational or governmental privileges that may be granted to those convicted of criminal activity.

Most States and the Federal government have specific provisions restricting the sale of prison-made goods. The Federal provision prohibits the transport in interstate commerce of goods or merchandise manufactured in whole or in part by prisoners "except within correctional institutions or parole or probation." 16 Federal laws generally prohibit the sale or offer for sale of goods or merchandise manufactured wholly or in part by prisoners "except convict or parolees on parole or probation." These statutes were enacted when probation and parole were the only community-based programs envisioned.

Important for consideration is that newly developing work-release programs and other community-based efforts do not fit comfortably under the category of "probation" or "parole." Thus the provisions restricting the sale or transportation of goods manufactured by prisoners indeed may limit severely the type of employment available for offenders under work-release programs. Although the language is obscure enough to argue reasonably that they do not not apply to campus, the ambiguity is sufficient to suggest either outright repeal of these provisions or at least modification to exempt community-based correctional programs.

**Restrictions Due to Offender Status**

Equally restrictive are specific provisions that preclude an offender from the legal privileges of all sorts. In many jurisdictions, restrictions prohibiting those convicted of crimes from entering a given occupation have proliferated far beyond any legitimate, property or governmental interest. The further extension of licensing provisions that restrict ex-offenders from areas of employment will make correctional programs increasingly more difficult.

Civil death statutes may also have a direct impact on community programs. As the offender becomes more integrated into the community, he will obtain in addition to the responsibility of citizenship, many of the burdens of societal living. It is to be expected that his need for access to the courts on civil matters arising out of his employment or other community programs will increase and at times may be critical to his success. Statutes that prevent, either from the offender's integration into the community will reduce the effectiveness of community-based programs without serving any societal interest.

16 U.S.C. Sec. 1761.

**MODEL ACTS**

The drafting of a comprehensive correctional code of the scope envisioned here is a substantial undertaking. However, a wide variety of model laws generally consistent with the standards and purposes here stated are available. Discriminating use of these proposals will facilitate the development of a draft for legislative consideration. Many of the model acts are accompanied by commentaries and reference stating the arguments for and against specific provisions and citing secondary material that can be consulted. Thus, much of the preliminary work of code reform has already taken place and is readily available.

The most significant models are discussed here briefly. No attempt is made to analyze in detail the specific provisions of each. The discussion is intended to indicate the scope and general thrust of the various proposals.

**Model Penal Code**


The Model Penal Code, promulgated by the American Law Institute, is the foundation for most other model codes developed since 1962. Although other organizations have added to or modified some provisions, its basic framework and approach have set a standard against which all other proposals are measured.

The Model Penal Code primarily is a proposal for substantive criminal law reform. However, the drafters recognize that the definition and classification of offenses is a part of the criminal law and its regulation is in the interest of the community. The Model Penal Code is the only comprehensive code which is available to the states, and it is likely to be adopted in whole or in part by nearly all states. The code is a major contribution to the body of knowledge relating to the organization and administration of probation, parole, and community corrections. It is a major step toward an integrated system of correctional services in the United States.

The Model Penal Code has several deficiencies. In some organizational areas it is too detailed for smaller correctional systems. Moreover, it does not consistently provide procedures for judicial review of critical correctional decisions.

Several recent developments and innovations are not included. Work release, although provided for...
short-term offenders, is not authorized for felons. There generally are no provisions stating the rights of offenders. The recent expansion of correctional litigation and the courts' new willingness to redress offenders' grievances have occurred since the code was published. Thus, although the Model Penal Code still is an extremely useful tool in correctional law reform efforts, it requires some modifications. Earlier tentative drafts of the code include commentaries on the various sections and other useful background information.

NCCD Model Acts

Model acts in several fields which have been proposed by the National Council on Crime and Delinquency are available from NCCD at 411 Hackensack Ave., Hackensack, N.J. 07601.

The National Council on Crime and Delinquency has promulgated a number of model acts relating to correctional programs and organization. They generally are models in scope and directed toward a small part of the entire correctional code. Thus, they do not provide a model from which a comprehensive code can be developed. However, the individual provisions are useful models for particular problems and, in some instances, offer alternatives to the Illinois Penal Code. The various relevant acts are as follows:

1. Model Sentencing Act (1963). This model covers presentence investigations and sentencing alternatives for felons. Alternative provisions for sentencing minors also are included. The act does not provide for the organization of any correctional agency directly toward the actual imposition of sentence. Criteria for each sentencing alternative are very general and do not approach the specificity of those in the Model Penal Code.

The Model Sentencing Act was promulgated specifically in response to certain features of the Model Penal Code. Because the code requires a 1-year minimum for a sentence to confinement, the act provides for no legislative minimum. While the code provides for a parole term over and beyond the term of confinement, the act does not provide for parole.

The Model Sentencing Act is currently being revised.

2. Standard Probation and Parole Act (1955). This provides only a basic framework for a probation and parole system. It does not provide for criteria for probation and parole decisions. Although once an important model for State legislation, it generally has been superseded by the more extensive and continuing development of parole codes.

4. Model Act for the Annullment of a Conviction of a Crime (1962). This act is a useful model provision for annulling criminal convictions to minimize the collateral consequences including judicial relief.

5. A Model Act for the Protection of Rights of Prisoners (1972). This recently promulgated act illustrates possible provisions for protecting offenders from the grossest forms of governmental abuse. Directed toward prison conditions, it provides legislative protection against inhuman treatment, regulates solitary confinement, outlines disciplinary and procedural formalities, requires a grievance procedure, and establishes visitation rights. The act also provides enforcement mechanisms including judicial relief.

The act is an excellent model for the issues it covers. However, legislative action regarding a much broader range of what can legitimately be called "offenders' rights" is appropriate and desirable. Provisions implementing various constitutional requirements including freedom of speech, religious exercises, and access to the media should be included. Thus, although the act is a useful model for specific provisions, it should not be considered an all-inclusive statement of the rights of offenders.

Illinois Corrections Code


The code, although directed primarily at the substantive criminal code, does contain model provisions relating to major sentencing decisions, including parole. The draft develops a wide variety of sentencing alternatives and specific criteria governing the imposition of each. The draft is patterned after the Model Penal Code but includes some additions and alterations in the criteria proposed. A procedure is provided for removing disqualifications and disabilities imposed by law as a consequence of conviction.

Uniform State Laws

Proposals of the National Conference of Commissioners on Uniform State Laws are available from the Conference, 1155 East 60th St., Chicago, Ill. 60637.

The Conference has promulgated three acts relating to correctional law.

1. Uniform Act on Status of Convicted Persons (1964). This statute provides a model for removing many of the disqualifications and disabilities imposed by law for conviction of a crime. The act has been adopted by the Conference.

2. Model State Administrative Procedure Act. This proposed statute, enacted in several States, is a general provision designed to regulate discretion in all State administrative agencies. It provides a useful model for developing a code of administrative justice for the correctional system.

3. Uniform Juvenile Court Act (1968). This proposed act governs primarily the creation, jurisdiction, and procedures of the juvenile court and only indirectly includes provisions related to correctional programs. The act does provide a list of sentencing alternatives as well as provisions for probation and parole. The act is brief and does not provide specific criteria governing the imposition of each. The act is patterned after the Model Penal Code but includes some additions and alterations in the criteria proposed. A procedure is provided for removing disqualifications and disabilities imposed by law as a consequence of conviction.

State Correctional System


Patterned after the NCCD State Correctional Services Act, this act is designed to "provide for a more systematic State-local approach to corrections by ex-
panding State administrative and supervisory responsibilities and by increasing State financial and technical assistance.” The proposal governs only the organization and programs of the department of corrections.

Legislative Guide for Juvenile Programs

The first three standards are of a general nature dealing with approaches and principles. The remainder primarily illustrate application of the first standards to specific correctional issues.

Two preatory statements are necessary to explain the proposed standards. The historical separation of juveniles and adults has provided, at times, a different rhetoric for correctional agencies and programs. Juveniles are not “convicted” and “sentenced” but rather “adjudicated” and “placed” or “committed.” Programs also have varied. In many States “after care” for juveniles is granted by institutional staff; adult parole is conferred by a board of parole.

Most of the differences for juvenile offenders result from conditions in adult corrections that are inappropriate for any age group, adult or juvenile. The solution is not to exempt juveniles but to reform the system as applied to all correctional clients. The standards herein, unless they specifically state otherwise, should be applicable to both adults and juveniles.

Not all persons subject to correctional power have been convicted of a criminal offense. Persons awaiting trial frequently are confined. The standards protecting convicted persons would in many States “after care” for juveniles is granted by institutional staff; adult parole is conferred by a board of parole.

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functions. Corrections is a continuum of interacting and mutually dependent programs. During his sentence, an offender may participate in a variety of these programs. To be effective, correctional legislation must provide a comprehensive and consistent statutory foundation.

Corrections exists uncomfortably between two competitive community attitudes. The first, a desire for retribution for the violation of existing social rules, would tend toward harsh and punitive measures for criminal offenders. The second, a desire that the correctional system return to the community individuals who will avoid further criminal conduct, dictates far more humane and constructive correctional programs.

These two community attitudes are not compatible; punitive measures have not resulted in lower recidivism and less crime. It is the legislature's responsibility to direct the governmental response to criminal corrections. It should do so in clear, unmistakable language.

Society has no interest in punifying those individuals awaiting trial who have not been convicted or adjudicated delinquent. The least drastic measures that assure their appearance for trial should be imposed upon such persons.

Few statutes require a punitive policy toward criminal offenders. However, few legislatures have declared, in strong and consistent legislation, that the public policy of their State's correctional system is nonpunitive; that the reintegration of the offender into the community. Correctional administrators often are reluctant to experiment with risky but potentially beneficial programs without specific legislative approval.

It has not been shown that positive correctional programs designed to educate, train, or otherwise provide offenders with full opportunity to lead law-abiding lives are the ultimate answer to correctional problems. However, these programs do result in less misery and degradation than purely punitive measures, with little increase in danger to public safety. These factors alone indicate that a policy of utilizing such programs should be established.

References


Standard 16.2

Administrative Justice

Each State should enact by 1975 legislation patterned after the Model State Administrative Procedure Act, to regulate the administrative procedures of correctional agencies. Such legislation, as it applies to corrections, should:

1. Require the use of administrative rules and regulations and provide a formal procedure for their adoption or alteration which will include:
   a. Publication of proposed rules.
   b. An opportunity for interested and affected parties, including offenders, to submit data, views, or arguments orally or in writing on the proposed rules.
   c. Public filing of adopted rules.

2. Require in a contested case where the legal rights, duties, or privileges of a person are determined by an agency after a hearing, that the following procedures be implemented:
   a. The agency develop and publish standards and criteria for decisionmaking of a more specific nature than that provided by statute.
   b. The agency state in writing the reason for its action in a particular case.
   c. The hearings be open except to the extent that confidentiality is required.
   d. A system of recorded precedents be developed to supplement the standards and criteria.

3. Require judicial review for agency actions affecting the substantial rights of individuals, including offenders, such review to be limited to the following questions:
   a. Whether the agency action violated constitutional or statutory provisions.
   b. Whether the agency action was in excess of the statutory authority of the agency.
   c. Whether the agency action was made upon unlawful procedure.
   d. Whether the agency action was clearly erroneous in view of the reliable, probative, and substantial evidence on the record.

The above legislation should require the correctional agency to establish by agency rules procedures for:

1. The review of grievances of offenders.
2. The imposition of discipline on offenders.
3. The change of an offender's status within correctional programs.

Such procedures should be consistent with the recommendations in Chapter 2, Rights of Offenders.

Commentary

Development of administrative agencies resulted from the need for flexibility, discretion, and utiliza-
tion of expertise in exercising governmental functions. Criminal corrections is an appropriate, but not an unusual, example of the reliance on administrative agency discretion rather than statutory rule.

The rapid development of administrative agencies at the Federal level in the 1930's stimulated reform efforts to assure that procedural devices were created to protect individual and property rights from abusive, arbitrary, and erroneous administrative decisions. By 1946, Congress enacted the Federal Administrative Procedure Act providing substantial procedural protection for affected individuals. The Model State Administrative Procedure Act adapted for State administrative agencies has been enacted in whole or in part in more than 25 States. Most other States have some regulatory statutes governing the actions of State agencies.

The concepts developed by these statutes rarely have been applied to administrative agencies dealing with criminal justice. However, for the most part, the language of these statutes indicates that they are applicable to criminal justice agencies.

A major factor in the oppressiveness of correctional institutions and other correctional processes is the unchecked power government exercises over individuals committed to its custody. Constitutional standards embodying the principle that government efficiency is not of a higher order than individual freedom have been flaunted, intentionally or misguidedly. Correctional efforts are undermined if an offender has not, or does not believe he has, been treated fairly and equitably. Hostility is generated against not only the correctional agency but the "system," including the society to which the offender inevitably returns.

Procedures designed to structure and confine discretionary decisions need not unnecessarily interfere with the agency functions. Experience under the Federal and model State acts has demonstrated clearly the utility and effectiveness of the procedural regulations contained therein. Applying them to the correctional system should cause no serious disruption in present programs and, when fully implemented, should increase the effectiveness of programs designed to influence criminal offenders to accept society and its rules.

The threat of the procedures required by the acts is to document and publicize agency actions. The best protection against arbitrary decisionmaking in a free society is the requirement of openness and discussion. Major policy decisions developed by the agency and formulated in rules are publicized and the offenders and other interested parties, including the public, are allowed to comment thereon. In contested cases affecting substantial rights of individuals, including offenders, the agency is required to de-

velop and publish standards for decisionmaking and a system of recorded precedents to guide future actions.

Judicial review, which provides the opportunity to test whether the agency followed its own criteria and statutory procedures, acts as the final check on arbitrary or erroneous decisions. As noted earlier, the courts recently have abandoned the hands-off doctrine that had served as the foundation for unsupervised correctional decisionmaking.

The procedures developed in the standard recognize both the abandonment of the hands-off doctrine and the desirability that judges refrain from substituting their own judgment in every case for that of the corrections professionals. The procedures here allow professionals to establish their own standards consistent with statutory and constitutional requirements. The court's role then is to assure that the agency abides by its own standards.

In many instances, a grievance procedure that has the confidence of the offenders will alleviate the need to utilize more formal and time-consuming methods of testing the appropriateness of correctional decisions. Most correctional institutions do have grievance procedures. Often, they are informal and distrusted by offenders. The close confinement characteristic of most adult prisons and the regulation of all aspects of the lives of the inmates inevitably will lead to frustrations and grievances—some legitimate, others not. Unattended grievances lead to hostility, as dramatically illustrated at recent uprisings at institutions.

The development of formal grievance, discipline, and change-of-status procedures, while no assurance against further trouble within prisons, at least may alleviate some tensions that otherwise would exacerbate inmate uneasiness. In addition, known procedures operate as a check on the exercise of arbitrary power by institutional staff and keep top management aware of conditions within various facilities and programs.

References


Related Standards

The following standards may be applicable in Standard 16.2.

2.12 Disciplinary Procedures.
2.13 Procedures for Nondisciplinary Changes of Status.
2.14 Grievance Procedure.
13.1 Professional Correctional Management.
Standard 16.3

Code of Offenders' Rights

Each State should immediately enact legislation that defines and implements the substantive rights of offenders. Such legislation should be governed by the following principles:

1. Offenders should be entitled to the same rights as free citizens except where the nature of confinement necessarily requires modification.
2. Where modification of the rights of offenders is required by the nature of custody, such modification should be as limited as possible.
3. The duty of showing that custody requires modification of such rights should be upon the correctional agency.
4. Such legislation should implement the substantive rights more fully described in Chapter 2 of this report.
5. Such legislation should provide adequate means for enforcement of the rights so defined. It should authorize the remedies for violations of the rights of offenders listed in Standard 2.18, where they do not already exist.

Commentary

During the last few years, courts have overcome their own reluctance to review offenders' complaints and have rejected doctrines that deprived offenders of all rights and left them dependent on the benefice of correctional administrators. The number of cases defining prisoners' rights is increasing rapidly; the end is not in sight. Corrections is not alone in this reexamination of the relationship between government agencies and the people they serve. All social institutions have been subject to the same reexamination of the legal status of persons in their charge.

In the past it was assumed—and at times judicially decreed—that an offender forfeits all rights at the point of conviction. Courts now declare that "a prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law."

Courts have struggled with fashioning appropriate remedies to accommodate this change. They have utilized injunctions prohibiting specific practices and have declared entire prison systems unconstitutional. Legislatures should respond with a comprehensive statement of the rights lost by confinement and procedures designed to implement and enforce retained rights. Otherwise, the courts will continue the slow, painful, and expensive process of accomplishing this task through case-by-case litigation. The inevitable period of uncertainty, of abrupt change, and of allocation of valuable and scarce correctional resources to litigation can be minimized by carefully conceived legislation.

References


Related Standards

The following standard may be applicable in implementing Standard 16.3.

2.1-2.18 Rights of Offenders.
Standard 16.4

Unifying Correctional Programs

Each State should enact legislation by 1978 to unify all correctional facilities and programs. The board of parole may be administratively part of an overall statewide correctional services agency, but it should be autonomous in its decisionmaking authority and separate from field services. Programs for adult, juvenile, and youthful offenders that should be within the agency include:

1. Services for persons awaiting trial.
2. Development and implementation of a formation-gathering and research system.
3. Institutional confinement.
4. Community-based programs, whether prior to or during institutional confinement.
5. Parole and other aftercare programs.
6. All programs for misdemeanants including probation, confinement, community-based programs, and parole.

The legislation also should authorize the correctional agency to perform the following functions:

1. Planning of diverse correctional facilities.
2. Development and implementation of training programs for correctional personnel.
3. Development and implementation of an information-gathering and research system.
5. Periodic reporting to governmental officials including the legislature and the executive branch.

6. Development and implementation of correctional programs including academic and vocational training and guidance, productive work, religious and recreational activity, counseling and psychotherapy services, organizational activity, and other such programs that will benefit offenders.

7. Contracts for the use of nondepartmental and private resources in correctional programming.

This standard should be regarded as a statement of principle applicable to most State jurisdictions. It is recognized that exceptions may exist, because of local conditions or history, where juvenile and adult corrections or pretrial and postconviction correctional services may operate effectively on a separated basis.

Commentary

Today, correctional programs are developed as separate entities. Institutions are administered apart from parole programs. Probation is attached to the courts and administered by them. In some States, each correctional institution is administered separately, with only some loose form of coordination at the top.

At present, in 23 States, adult and juvenile corrections are administered by separate agencies. In 15 States, parole supervision is administered under an agency other than the agency administering institutional programs.

The most consistent separation of correctional programs is that between misdemeanor and felony corrections. Most local jail facilities designated for confinement of misdemeanants are administered by local law enforcement agencies. In only five States are jails administered by a State agency.

Unification of all correctional programs will allow the coordination of essentially independent programs, more effective utilization of scarce human resources, and development of more effective, professionally operated programs across the spectrum of corrections. In a few States, where separate adult and juvenile programs are operating effectively in a coordinated manner, actual formal unification is less urgent but should be sought in the long run.

The board of parole presents the major problem in unification. As community-based programs expand, the board will cease to be the only agency with authority to dramatically decrease the level of confinement. It will increasingly act as a check upon institutional decisions that prejudice individual offenders from community programs. In this review capacity, the board should retain its independence from institutional control and influence.

The correctional agency should be granted broad discretion and powers to develop, organize, and administer its programs. The kinship of powers considerations, in connection with this standard are those essential for the administration of the agency. Although the responsiveness of the agency and its ability to change times will affect the individual offender, he has little direct connection with the organizational charts, personnel training programs, planning of facilities, and research and evaluation functions. The offender may provide useful insights into all of these activities, but his need for protection against arbitrary decisions involving organizational functions is slight. Thus broad discretion in these areas would seem appropriate.

In some States, and in some proposed model acts in the Model Penal Code, many organizational decisions are enacted into law. Article 401 of the Model Penal Code establishes various divisions within the department of corrections and outlines their functions. Since the power of administration is a useful tool and since no one system of organization is universally appropriate, the task of the legislature and the executive branch should serve to encourage the agency to perform that task.

The power to contract with private individuals and agencies for the utilization of resources in correctional programming may, in some States, require specific authorization. This is important authorization as private community-based resources become increasingly accessible.

References


Related Standards

The following standards may be applicable in implementing Standard 16.4.

6.1 Comprehensive Classification Systems
7.1 Development Plan for Community-Based Alternatives to Confinement
Standard 16.5

Recruiting and Retaining Professional Personnel

Each State, by 1975, should enact legislation entrusting the operation of correctional facilities and programs to professionally trained individuals. Legislation creating top management correctional positions should be designed to protect the position from political pressure and to attract professionals. Such legislation should include:

1. A statement of the qualifications thought necessary for each position, such qualifications to be directly related to the position created.
2. A stated term of office.
3. A procedure, including a requirement for a showing of cause, for removal of an individual from office during his term.

For purposes of this standard, "top management correctional positions" include:

1. The chief executive officer of the correctional agency.
2. Members of the board of parole.
3. Chief executive officers of major divisions within the correctional agency, such as director of probation, director of parole field services, and director of community-based programs.

This standard assumes a unified correctional system that includes local jails used for service of sentence. In the event that such a system is not adopted, the definition of Item 3 immediately above should include the chief executive officer of each correctional facility including local jails. The foregoing legislation should authorize some form of personnel system for correctional personnel below the top management level. The system so authorized should promote:

1. Reasonable job security.
2. Recruitment of professionally trained individuals.
3. Utilization of a wide variety of individuals, including minority group members and ex-offenders.

Legislation affecting correctional personnel should not include:

1. Residency requirements.
2. Age requirements.
3. Sex requirements.
4. A requirement that an employee not have been convicted of a felony.
5. Height, weight, or similar physical requirements.

Commentary

As corrections shifts its emphasis from custody to reintegration, the need for professionally trained personnel increases. In the past, many State correctional jobs were patronage positions changing abruptly with
changing political fortunes. Even today, in a few States, the correctional system is administered on the policy level by a lay board with no professional expertise.

There is a growing body of professional correctional administrators operating State correctional systems. Yet legislation creating correctional positions still reflects earlier conditions. In 30 States, the director of corrections or his equivalent serves at the pleasure of the appointing officer. In 14 States, no statutory qualifications for the director's position exist.

For the American jail, the chief administrator generally has no correctional expertise. Except in larger metropolitan areas, law enforcement officers operate the jail; in many States, the chief law enforcement officer is an elected official.

The top management of a correctional system is in a sensitive political position. Most correctional programs, particularly those that are community-based, involve short-run risks for long-range gain. While a correctional administrator will be effective only if he retains the confidence of the public over the long run, he must be protected from short-lived political attacks.

Insulation from public pressure with assurance of continuing competence requires a difficult balance of interests. A number of steps can be taken that meet the needs of the correctional system; each has its own balance of advantages and disadvantages. None is clearly superior. Legislative schemes designed to provide job security and encourage competence are a product of five factors: (1) stated realistic and flexible qualifications for the position; (2) a procedure to provide checks and balances in the appointing process; (3) a stated term of office; (4) specific reasons justifying removal from office; and (5) a procedure to provide for review of the decision to remove from office.

Some statutory requirements do not provide adequate flexibility. Increasing use of minority group staff and ex-offenders in correctional roles is impeded by rigid statutory personnel policies.

References


Related Standards

The following standards may be applicable in implementing Standard 16.5.
10.1 Organization of Probation.
12.1 Organization of Paroling Authorities.
13.1 Professional Correctional Management.
14.1 Recruitment of Correctional Staff.
14.6 Personnel Practices for Retaining Staff.

Standard 16.6
Regional Cooperation

Each State that has not already done so should immediately adopt legislation specifically ratifying the following interstate agreements:
1. Interstate Compact for the Supervision of Parolees and Probationers.
2. Interstate Compact on Corrections.
3. Interstate Compact on Juveniles.
4. Agreement on Detainers.
5. Mentally Disordered Offender Compact.

In addition, statutory authority should be given to the chief executive officer of the correctional agency to enter into agreements with local jurisdictions, other States, and the Federal Government for cooperative correctional activities.

Commentary

Correctional systems developed primarily along State lines for varied historical, social, and legal reasons. This rigid basis of operation creates numerous problems that can be partially solved by legislation.

With the development of rapid and cheap transportation, an offender is likely to become involved simultaneously with the criminal justice systems of more than one State. This has a direct impact on the success of any correctional program in the following ways:

1. Where an offender serves consecutive sentences, first in one State and then in another, his correctional program, if uncoordinated and inconsistent, can have little hope of success.
2. One State may lodge a detainer against an offender serving time in another State. The effect of this detainer is to assure the gradual release of the offender, he is turned over to the second State for trial or incarceration. Detainers adversely affect correctional programming in a number of ways. The detainer generally represents a desire of the other State to prosecute the offender for another crime when the offender is released by the first State. The offender always faces the possibility of further confinement upon release from his first sentence. In many cases, detainers are not prosecuted. In some cases, the offender may not be guilty of the crime on which the detainer is based. The need for having detainers adjudicated at the earliest opportunity is clear, but this requires cooperative procedures between States.

The detainer may keep the offender from participating in community-based programs. The theory of these programs is the gradual diminishment of control and the increase of freedom and responsibility. This is impossible when the offender faces renewed confinement by another State. Correctional authorities maintain closer custody over offenders against...
whom detainers are lodged than would they be in the absence of such detainers. The detainer acts as an artificial restraint to implementation of the policy that the least drastic measures, consistent with public safety, should be applied.

Two different States may become involved with one offender in other ways. An offender may be convicted in and sentenced in a State other than his home State. This has a number of ramifications for correctional programming. The offender is likely to be a great distance from friends and family, which precludes the morale-boosting impact of visits and makes family ties more difficult to maintain. If the offender becomes eligible for parole in the home community with the stabilizing influence of family ties, he is likely to not return upon final release. Skills training provided either on work release or within the institution may be directed toward the economy of the region where the crime was committed rather than the economy to which the offender is likely to return.

Parole and aftercare programs are less likely to succeed when the offender is not returned to his home community with the stabilizing influence of family ties and friends can provide.

In areas with low population densities, regional programs may be the most economical and effective means of providing resources not available on an individual State basis. This is particularly true for certain groups of offenders, such as women, narcotic addicts, alcoholics, and mental defectives, whose small numbers or particular needs require special arrangements. Interstate cooperation may be essential to the successful treatment of addicts, alcoholics, and mental defectives, whose needs require special treatment, mental health services, or specialized training programs.

In 1934, Congress enacted the Model Penal Code which grants the consent of all States to agreements between two or more States. In 1936, Congress enacted the Crime Control Consent Act which grants the consent of Congress to any agreement between two or more States for the prevention of crime. Since then, the Council of State Governments has developed numerous interstate compacts and agreements directed at the problems delineated above. These compacts and agreements, to become effective, must be specifically ratified by each participating State.

The following compacts and agreements are available.

1. Interstate Compact for the Supervision of Parolees and Probationers. Since every eligible jurisdiction except the District of Columbia and Guam has ratified this interstate compact, almost all parolees and probationers are under supervision in their home State.

2. Interstate Compact on Corrections. This compact authorizes the cooperative use of programs and facilities by ratifying States and allows offenders to be transferred between jurisdictions. Four States have ratified this compact. Some regional compacts along the same lines, but applicable only to States in a particular region, are available.

3. Interstate Compact on Juveniles. This compact authorizes the interstate supervision of juvenile delinquents and the cooperative institutionalization of special types of delinquent juveniles such as psychotics and defective delinquents. Forty-nine of 54 eligible jurisdictions have ratified this compact.

4. Agreement on Detainers. The agreement allows an offender, on his own initiative, to test at an early date the substantiality of a detainer lodged against him by another jurisdiction. Twenty-nine of the 54 eligible jurisdictions have ratified the agreement on detainers.

5. Mentally Disordered Offender Compact. This compact authorizes cooperative use of facilities and programs for mentally disordered offenders and joint development of research and training of personnel. Eight jurisdictions have ratified this compact.

References


Related Standards

The following standards may be applicable in implementing Standard 16.6.

1. Interstate Compact on Corrections. This compact authorizes the cooperative use of programs and facilities by ratifying States and allows offenders to be transferred between jurisdictions. Four States have ratified this compact. Some regional compacts along the same lines, but applicable only to States in a particular region, are available.

2. Interstate Compact on Juveniles. This compact authorizes the interstate supervision of juvenile delinquents and the cooperative institutionalization of special types of delinquent juveniles such as psychotics and defective delinquents. Forty-nine of 54 eligible jurisdictions have ratified this compact.

3. Agreement on Detainers. The agreement allows an offender, on his own initiative, to test at an early date the substantiality of a detainer lodged against him by another jurisdiction. Twenty-nine of the 54 eligible jurisdictions have ratified the agreement on detainers.

4. Mentally Disordered Offender Compact. This compact authorizes cooperative use of facilities and programs for mentally disordered offenders and joint development of research and training of personnel. Eight jurisdictions have ratified this compact.


Standard 16.7

Sentencing Legislation

Each State, in enacting sentencing legislation (as proposed in Chapter 5) should classify all crimes into not more than 10 categories based on the gravity of the offense. The legislature should state for each category, a maximum term for State control over the offender that should not exceed 5 years—except for the crime of murder and except that, where necessary for the protection of the public, extended terms of up to 25 years may be imposed on the following categories of offenders:

1. Persistent felony offenders.
2. Dangerous offenders.
3. Professional criminals.

The legislation should contain detailed criteria, patterned after Section 7.03 of the Model Penal Code as adopted in Standard 5.3, defining the above categories of offenders.

Commentary

Irrationality is the most noticeable characteristic of legislatively authorized maximum terms in American criminal codes. There is generally little consistency within a given jurisdiction on the maximum terms established for various offenses. Comparable activity with only minor differences may result in grossly disparate sentences. It is not surprising that between American jurisdictions there is also little consistency. The same offense that in one State may subject the offender to a minor penalty may result in a substantial prison term in another jurisdiction.

The lack of consistency in legislatively authorized sentences is inevitably reflected in the sentences actually imposed by sentencing courts. Thus, offenders of comparable guilt may have widely disparate sentences, unrelated to individual needs. This results in destruction of offenders' morale that makes the task of correctional programs more difficult.

Most penal code revisions completed within the last decade have recognized the need to classify criminal offenses into a small number of categories based on the gravity of the conduct. In a few States, this has been successfully implemented. See, for example, New York Penal Code, Title E.

In addition, it has generally been recognized that American prison terms are too long. With the exception of a relatively few dangerous offenders, there is no evidence that long prison terms offer more protection to the public than short terms. On the other hand, the resentment engendered in the offender from an excessively long sentence, the economic costs of unnecessarily protracted confinement, and the long period of isolation from the community require that prison terms in the United States be drastically reduced.
Most proposed penal codes in the last decade have established a 5-year maximum as an appropriate statutory established term for most felons. These codes recognize that there are a few limited types of offenders for whom public protection dictates an extended term.

The Commission decided not to speak on the question of using the death penalty to deter or punish murderers, because of the unresolved constitutional and legal questions raised by recent court decisions. Resolution of this question, it believes, should be left to referenda, State legislatures, or the courts.

References
3. For a general review of studies tending to indicate that extended periods of confinement are counterproductive, see Zimring, Franklin E., Perspectives on Deterrence. Rockville, Md.: National Institute of Mental Health, Center for Studies of Crime and Delinquency, 1971.

Related Standards
The following standards may be applicable in implementing Standard 16.7.
5.2 Sentencing the Nondangerous Offender.
5.3 Sentencing to Extended Terms.
5.11 Sentencing Equality.

Standard 16.8
Sentencing Alternatives

By 1975 each State should enact the sentencing legislation proposed in Chapter 5, Sentencing, reflecting the following major provisions:
1. All sentences should be determined by the court rather than by a jury.
2. The court should be authorized to utilize a variety of sentencing alternatives including:
   a. Unconditional release.
   b. Conditional release.
   c. A fine payable in installments with a civil remedy for nonpayment.
   d. Release under supervision in the community.
   e. Sentence to a halfway house or other residential facility located in the community.
   f. Sentence to partial confinement with liberty to work or participate in training or education during all but leisure time.
   g. Imposition of a maximum sentence of total confinement less than that established by the legislature for the offense.
3. Where the court imposes an extended term under Standard 5.3 and feels that the community requires reassurance as to the continued confinement of the offender, the court should be authorized to:
   a. Recommend to the board of parole that the offender not be paroled until a given period of time has been served.
   b. Impose a minimum sentence to be served prior to eligibility for parole, not to exceed one-third of the maximum sentence imposed or be more than three years.
   c. Allow the parole of an offender sentenced to a minimum term prior to service of the minimum upon the request of the board of parole.
4. The legislature should delineate specific criteria patterned after the Model Penal Code for imposition of the alternatives available.
5. The sentencing court should be required to make specific findings and state specific reasons for the imposition of a particular sentence.
6. The court should be required to grant the offender credit for all time served in jail awaiting trial or appeal arising out of the conduct for which he is sentenced.

Sentencing legislation should not contain:
1. Mandatory sentences of any kind for any offense.
2. Ineligibility for alternative dispositions for any offense except murder.

Commentary
Distrust of judges appointed by the Crown of England influenced the development of sentencing...
nates against the indigent. The United States Supreme Court, Tate v. Short, 401 U.S. 395 (1971), has held that confinement of an indigent because of his inability to pay fines is unconstitutional.

Studies have found that a large percentage of persons in urban jails were committed for failure to pay fines. On average, as long as one person employed, the fine is far less drastic, far less costly for the public, and perhaps more effective than imprisonment or community supervision imposed in amounts required that the fine be levied in an amount that can be paid and statutory authorization for payment in instalments with civil enforcement mechanisms should be provided as one sentencing alternative.

4. Release under supervision in the community. Probation is the most common form of release of offenders to the community under supervision. Statutory requirements for probation are outlined in Standard 16.11.

5. Sentence to a halfway house or other residential facility located in the community. Courts should not have to decide total confinement and freedom. The trend toward use of community-based programs for offenders after a period of incarceration suggests that community-oriented programs with statutory control and certain criteria are a valuable tool that should not be precluded in all cases on the basis of a period of total confinement. In addition, there may be available programs for which there is no community which could provide a group living situation and supervision without the hardware and institutional control characteristics of most jails and other correctional facilities. Thus, courts should have "halfway-in" houses available to them for sentencing dispositions comparable to those available to institutional decisionmakers.

6. Sentence to partial confinement with liberty to work or to participate in training or educational programs. The court should be given power to authorize the employment of minor misdemeanants sentenced to a jail term. In some cases, offenders may be given the opportunity to earn credit toward the completion of sentences. However, the credit, as it is given in some places, may not be acceptable to some employers. In some instances, the court may have to exercise the power to award credit for community service, such as work in schools, hospitals, or other charitable programs. Such provisions should provide the opportunity for offenders to make some compensation to society for their offense. Use of these sanctions should be greatly expanded.

7. Fine. In some cases, a fine rather than probation or imprisonment is the appropriate penalty. It is in the interest of the major tool of law enforcement for minor misdemeanors or traffic offenses. However, the fine, as it has been employed in this country, too often creates hardships and results in the criminalization of the noncriminal individual who should not tolerate a fine, followed by imprisonment for nonpayment, discrimination by juries. In this country, some 13 States retain jury sentencing for some offenses. Most experts who have recently examined the practice condemn it. Jury sentencing increases disparity of sentences. A jury is more likely to be the result of factors other than the individual needs of the offender, arrived at by individuals with no ability to make professional judgments. The power to sentence also may affect the jury's determination of guilt, allowing doubt of the guilt of an accused to be resolved by a light sentence.

Confinement has traditionally been the standard against which all other sentencing alternatives were developed. Other alternatives, developed separately, were seen as ameliorating the harshness of total confinement. Modern sentencing practices require that confinement be treated as the sentence to be imposed only if no other alternative will serve. There must be some priority in which the various alternatives should be considered and the criteria that should guide the court in imposing sentence. The court should also be required to state the reasons for the selection of one alternative over another as a check on the exercise of its discretion and to facilitate appellate review.

The following alternatives should be authorized:

1. Unconditional release. Consistent with the principle of utilizing the least drastic means necessary, outright release of offenders should be considered in many cases. This disposition would be appropriate in cases in which the nature of the offense is minor or the circumstances that no useful purpose would be served by imposition of a more drastic sanction. For offenders, criminal processing and trial may have a detrimental effect on their rehabilitation and in and of themselves, particularly for first offenders.

2. Conditional release. Judges in some jurisdictions have used sentencing with shaping sanctions to fit the offense and to avoid the use of incarceration. In some cases, a sentence to confinement is suspended on condition that the offender perform certain specified acts. Persons convicted of minor crimes may be sentenced to perform some kind of community service, such as working in schools, hospitals, or other charitable programs. Such provisions should provide the opportunity for offenders to make some compensation to society for their offense. Use of these sanctions should be greatly expanded.

3. Fine. In some cases, a fine rather than probation or imprisonment is the appropriate penalty. It is in the interest of the major tool of law enforcement for minor misdemeanors or traffic offenses. However, the fine, as it has been employed in this country, too often creates hardships and results in the criminalization of the noncriminal individual who should not tolerate a fine, followed by imprisonment for nonpayment, discrimination
Standard 16.9

Detention and Disposition of Juveniles

Each State should enact legislation by 1975 limiting the delinquency jurisdiction of the courts to those juveniles who commit acts that if committed by an adult would be crimes.

The legislation should also include provisions governing the detention of juveniles accused of delinquent conduct, as follows:

1. A prohibition against detention of juveniles in jails, lockups, or other facilities used for housing adults accused or convicted of crime.

2. Criteria for detention prior to adjudication which should include the following:
   a. Detention should be considered as a last resort where no other reasonable alternative is available.
   b. Detention should be used only where the juvenile has no parent, guardian, custodian, or other person able to provide supervision and care for him and able to assure his presence at subsequent judicial hearings.

3. Prior to first judicial hearing, juveniles should not be detained longer than overnight.

4. Law enforcement officers should be prohibited from making the decision as to whether a juvenile should be detained. Detention decisions should be made by intake personnel and the court.

The legislation should authorize a wide variety of diversion programs as an alternative to formal adjudication. Such legislation should protect the interests of the juvenile by assuring that:

1. Diversion programs are limited to reasonable time periods.

2. The juvenile or his representative has the right to demand formal adjudication at any time as an alternative to participation in the diversion program.

3. Incriminating statements made during participation in diversion programs are not used against the juvenile if a formal adjudication follows.

Legislation, consistent with Standard 16.8 but with the following modifications, should be enacted for the disposition of juveniles:

1. The court should be able to permit the child to remain with his parents, guardian, or other custodian, subject to such conditions and limitations as the court may prescribe.

2. Detention, if imposed, should not be in a facility used for housing adults accused or convicted of crime.

3. Detention, if imposed, should be in a facility used only for housing juveniles who have committed acts that would be criminal if committed by an adult.

4. The maximum terms, which should not include extended terms, established for criminal offenses should be applicable to juveniles or youth offenders who engage in activity prohibited by the
criminal code even though the juvenile or youth offender is processed through separate procedures not resulting in a criminal conviction.

Commentary

The development of a specialized juvenile court to handle juvenile delinquents was thought to signal a new intensity of specialized attention for juvenile lawbreakers. By diverting juveniles out of the criminal courts, it was hoped that they would avoid the stigma of criminalization and could be placed into programs more appropriately designed for them. The diverisonary nature of the juvenile court was emphasized by a wholesale change in language. Preliminary hearings became initial hearings; conviction became adjudication; sentence became disposition; prison became training school. While the names changed, the practices remained similar. In fact since juvenile proceedings purportedly were not "criminal," procedural safeguards applicable to protect an adult's interest were lacking. The child was not guaranteed the right to counsel, a jury trial, to cross-examination, or to proof beyond a reasonable doubt.

Juvenile courts obtained jurisdiction over a wide variety of behavior, much of which was totally unrelated to criminal conduct. Neglected and dependent children as well as children committing offenses applicable only to children, such as truancy, became the responsibility of the court.

In addition, the juvenile court dispositions generally extended during the minority of the child. An offender adjudicated delinquent at age 14 was subject to the supervision of the court until he reached 21 years of age. Thus, an offense carrying a maximum sentence of 30 days if committed by an adult subjected a juvenile to years of supervision or detention.

The United States Supreme Court has recognized the need for procedural safeguards in juvenile court proceedings. It is also becoming increasingly apparent that in many instances juveniles, contrary to the intent of the reformers, have suffered more under the jurisdiction of juvenile courts than they would have if prosecuted as adults. (See Kent v. United States, 383 U.S. 541 (1966) and In re Gault, 387 U.S. 1 (1967).)

The Commission supports dealing with juvenile delinquency in different courts from adult criminal proceedings. However, from a correctional perspective, dramatic changes in delinquency proceedings are required. These are recommended here in outline form and more fully in Chapter 8, Juvenile Intake and Detention, and in the Commission's report on Courts. Many of the changes recommended will require changes in legislation. Thus, while reform is required throughout legislative enactments pertaining to juvenile delinquency proceedings, this standard focuses primarily on aspects of court procedure which may result in detention of juveniles.

The standard proposes that the delinquency jurisdiction of the courts be limited to those children who commit acts that would be criminal if committed by adults. While many States authorize different dispositions for other children such as neglected, dependent, and persons in need of special supervision, it remains possible and oftentimes true that all categories of juveniles are detained together in one facility. The result is that the stigma of an adjudication of delinquency—as detrimental today as that associated with a criminal conviction—is attached to children for the failures of their parents. Social agencies and other appropriate sections of the courts should assume responsibility for children in need of services who do not fall within the delinquency jurisdiction of the courts.

Although many recommendations of this standard apply to adult offenders as well as juveniles, they deserve special emphasis because of their significance to the young offender. It is important to separate adult and juvenile offenders when they are confined. This reform is widely recognized as valid and widely ignored in practice. If detention is necessary in a particular case, special facilities should be made available.

On the other hand, detention of juveniles awaiting adjudication (trial) should be utilized only as the last resort, as is recommended for adults. The recognition that confinement has little beneficial effect and only serves to make adjustment to society more difficult is particularly true as applied to juveniles.

The decision to detain a child should not be made by the arresting police officer. Elsewhere in this report the Commission recommends development of intake services designed to provide services for arrested juveniles. The legislature should require law enforcement officers to leave the initial detention decision to such services. Where these services do not exist, the court itself should make such decisions. In all cases, detention decisions should be reviewed by the courts.

As with adults, legislation should authorize a wide variety of diversion programs to keep as many juveniles as possible from entering the juvenile justice system. Various pre-adjudication programs designed to provide services to juveniles and make formal adjudication unnecessary have been successfully developed. However, the rights of the juvenile should be protected. He should be authorized to insist on a formal hearing, thus assuring that some determination of his guilt or innocence will be made if the facts are in doubt.

The courts should likewise have a wide variety of disposition alternatives available when a juvenile is formally found to have committed a delinquent act. Those recommended for adults are applicable to juveniles. The alternative least restrictive of liberty consistent with the public safety should be imposed. The court should develop criteria, make findings of fact, and disclose the purpose of whatever disposition is imposed.

Juveniles are equally entitled to a range of sanctions proportionate to the behavior in question. Legislative determinations of maximum sentences as applied to adults should be applicable to juveniles.

References


Related Standards

The following standards may be applicable in implementing Standard 16.9.

3.1 Use of Diversion.
5.2 Sentencing the Nondangerous Offender.
5.4 Probation.
5.11 Sentencing Equality.
8.2 Juvenile Intake Services.
16.7 Sentencing Legislation.
16.8 Sentencing Alternatives.
16.11 Probation Legislation.
Standard 16.10

Presentence Reports

Each State should enact by 1975 legislation authorizing a presentence investigation in all cases and requiring it:

1. In all felonies.

2. In all cases where the offender is a minor.

3. As a prerequisite to a sentence of confinement in any case.

The legislation should require disclosure of the presentence report to the defendant, his counsel, and the prosecutor.

Commentary

Judicial sentencing with discretionary power to select from a number of alternatives contemplates that the court's judgment be founded on relevant information. Although the trial itself may provide some information, other information relating directly to sentencing decisions may be precluded from the trial. Likewise, the vast majority of cases result in guilty pleas with no presentation of evidence.

The presentence investigation, in many States conducted by a probation officer or other officer of the court, is designed to provide the basis for the sentencing decision. State statutes vary regarding the extent to which these investigations are required prior to sentencing. In some States, such as California, a report is required in all felony cases. In most States, the presentence report is discretionary with the trial court.

The presentence report has traditionally been viewed as a device providing justification for probation or other sentences not involving confinement. In a few States, reports are mandatory prior to the selection of probation as the sentencing alternative. It is more appropriate, in light of other standards requiring affirmative justification for incarceration, to regard the report as necessary for a sentence of incarceration. The proposed standard suggests that no sentence of confinement be imposed without a presentence report.

The major restraint to the utilization of presentence reports in all cases is lack of resources. Courts today may be reluctant to allocate resources to presentence investigations that otherwise would be spent in supervising pretrial releases or probationers.

The entire scheme of judicial discretion in sentencing is subverted if adequate investigation is not provided. Discretion is based on individualizing correctional programming, which cannot be done without individualized information. In many jurisdictions, presentence reports are only made in felony cases. The Commission feels that presentence reports are also essential where the individual is a minor or where incarceration is a possibility.

The issue of whether the presentence report should be disclosed to the defendant or his counsel has caused extended controversy. Opponents of disclosure argue that sources of information will become unavailable because of the lack of confidentiality, disclosure will unduly prolong the sentencing proceedings, and that disclosure may, in some cases, inhibit the offender's participation in correctional programs.

Factual information is important as a basis for sentencing decisions. The contents of the report may determine whether the offender is placed on probation or suffers extended confinement. To the offender, it is the decision next in importance to the determination of guilt. Unless he is given the opportunity to contest information in the presentence report, the entire sentencing decision becomes suspect and indefensible.

A number of States presently authorize or require the disclosure of the presentence report. See, for example, California Penal Code Sec. 1203 (1966 Supp.) and Minnesota Statutes Annotated Sec. 609.115. The Model Penal Code requires disclosure of the "factual contents and the conclusions" of the report but protects the confidentiality of the sources of the information. MPC Sec. 7.07(5). The American Bar Association standards authorize in exceptional cases withholding parts of the report not "relevant to a proper sentence," diagnostic opinion which might seriously disrupt rehabilitation, and sources of information obtained in confidence. An occasional appellate court has also ruled that defendants are entitled to see the presentence report. In State v. Kunz, 55 N.J. 128, 259 A.2d 895 (1969), the New Jersey Supreme Court ordered all New Jersey courts to grant disclosure as a matter of "rudimentary fairness." In areas where reports are disclosed, the fears of those opposed to the practice have generally been unfounded.

References


Related Standards

The following standards may be applicable in implementing Standard 16.10.


5.15 Preparation of Presentence Report Prior to Adjudication.

5.16 Disclosure of Presentence Report.
Standard 16.11
Probation Legislation

Each State should enact by 1975 probation legislation (1) providing probation as an alternative for all offenders; and (2) establishing criteria for (a) the granting of probation, (b) probation conditions, (c) the revocation of probation, and (d) the length of probation.

Criteria for the granting of probation should be patterned after Sec. 7.01 of the Model Penal Code and should:
1. Require probation over confinement unless specified conditions exist.
2. State factors that should be considered in favor of granting probation.
3. Direct the decision on granting probation toward factors relating to the individual offender rather than to the offense.

Criteria for probation conditions should be patterned after Sec. 301.1 of the Model Penal Code and should:
1. Authorize but not require the imposition of any one of the five conditions.
2. Require that any condition imposed in an individual case be reasonably related to the correctional program of the defendant and not unduly restrictive of his liberty or incompatible with his constitutional rights.
3. Direct that conditions be fashioned on the basis of alternatives relating to the individual offender rather than to the offense committed.

Criteria and procedures for revocation of probation should provide that probation should not be revoked unless:
1. There is substantial evidence of a violation of one of the conditions of probation;
2. The probationer is granted notice of the alleged violation, access to official records regarding his case, the right to be represented by counsel including the right to appointed counsel if he is indigent, the right to subpoena witnesses in his own behalf, and the right to confront and cross-examine witnesses against him; and
3. The court provides the probationer a written statement of the findings of fact, the reasons for the revocation, and the evidence relied upon.

In defining the term for which probation may be granted, the legislation should require a specific term not to exceed the maximum sentence authorized by law except that probation for misdemeanants should not exceed one year. The court should be authorized to discharge a person from probation at any time.

The legislation should authorize an appellate court on the initiation of the defendant to review decisions that deny probation, impose conditions, or revoke probation. Such review should include determination of the following:
1. Whether the decision is consistent with statutory criteria.
2. Whether the decision is unjustifiably disparate in comparison with cases of a similar nature.
3. Whether the decision is excessive or inappropriate.
4. Whether the manner in which the decision was arrived at is consistent with statutory and constitutional requirements.

Commentary

Originally, probation was developed to ameliorate the harshness of total confinement. It was viewed as an act of leniency. It soon developed, however, that community-based supervision in lieu of prior confinement had valuable advantages for both the offender and society. The offender was enabled, through probation, to retain his ties to the community, often his employment, and to obtain assistance in solving whatever problems led to his criminal conduct. The selective use of probation produced little increase in public danger and saved substantial economic resources.

Probation should now be viewed as a more appropriate sentencing alternative than confinement for the majority of criminal offenders. Decisions involved in granting, conditioning, and revoking probation have a critical effect on the offender's liberty. These decisions should be subject to public policy declarations by the legislature. The interests of the public, as well as the offender, require that the discretionary decisions involved in probation be placed under some public control and subject to some review to protect against arbitrariness.

Most State probation statutes grant nearly unlimited discretion to the trial courts in making probation decisions. The power to grant probation is generally structured only to require that the public safety not be endangered. Statutory provisions continue to reflect the concept that probation is a form of leniency rather than an affirmative tool of corrections.

Legislative standards for probation conditions are even more general. Most statutes authorize the court to impose any condition "it deems best." In numerous documented instances, sentencing judges have gone far beyond what the probation system requires in imposing conditions. An extreme but illustrative example is People v. Blankenship, 16 Cal. App. 2d 606, 61 P.2d 352 (Dist. Ct. App. 1936), where the appellate court upheld a trial judge's sentence imposing sterilization as a condition of probation. The defendant refused probation and served a term of 5 years in jail.

The procedure for probation revocation, while generally not detailed in legislation, recently has been directed to constitutional standards. It was held in Kempa v. Kyne, 389 U.S. 128 (1967), that an individual was entitled to a hearing and right to counsel at a probation revocation hearing.

The decision to grant probation should not be left open to uncontrolled discretion. The legislature can and should enact criteria to direct the courts toward an appropriate goal established by public policy. At the same time, the individual defendant is protected from decisions having no relationship to the goal announced.

The conditions imposed on probationers likewise should be restricted by the legislature to those that support the function of probation. The Model Penal Code Sec. 301.1 provides 11 conditions that can be applied in a specific case and a general clause authorizing other conditions "reasonably related to the rehabilitation of the defendant." If probation is to serve its proper role, conditions must be tailored to meet the needs of the individual defendant in the least drastic manner possible consistent with public safety.

On the other hand, the legislature should not require the imposition of any specific condition. Conditions appropriate in the vast majority of cases may be inhibitive and undesirable in an individual situation.

The procedures and standards for probation revocation likewise should be developed in legislation. Although the courts have provided an outline of procedural requirements, many interstitial issues remain which should be clarified. Protection of the defendant's interests by assuring a fair hearing on the factual basis for revocation will avoid prolonged, expensive, and counterproductive litigation.

Establishment of criteria for these probation decisions will assist the courts in the exercise of their functions. All of the difficulties of sentencing disparity, however, apply to probation decisions as well as to the decision on the extent of confinement. These decisions should be subject to appellate review as well. Review of trial judge's decisions will assure that the legislatively imposed criteria are complied with, that unjustified disparity within a single jurisdiction is avoided, and that the defendant and the public are protected from arbitrary and unwise decisions.

References


Related Standards
The following standards may be applicable in implementing Standard 16.11.
5.4 Probation.
5.11 Sentencing Equality.
12.4 Revocation Hearings (Parole).
16.7 Sentencing Legislation.
16.8 Sentencing Alternatives.
16.10 Presentence Reports.

Standard 16.12
Commitment Legislation

Each State should enact, in conjunction with the implementation of Standard 16.1, legislation governing the commitment, classification, and transfer of offenders sentenced to confinement. Such legislation should include:
1. Provision requiring that offenders sentenced to confinement be sentenced to the custody of the chief executive officer of the correctional agency rather than to any specific institution.
2. Requirement that sufficient information be developed about an individual offender and that assignment to facility, program, and other decisions affecting the offender be based on such information.
3. Authorization for the assignment or transfer of offenders to facilities or programs administered by the agency, local subdivisions of government, the Federal Government, other States, or private individuals or organizations.
4. Prohibition against assigning or transferring juveniles to adult institutions or assigning nondelinquent juveniles to delinquent institutions.
5. Authorization for the transfer of offenders in need of specialized treatment to institutions that can provide it. This should include offenders suffering from physical defects or disease, mental problems, narcotic addiction, or alcoholism.
6. Provision requiring that the decision to assign an offender to a particular facility or program shall not in and of itself affect the offender's eligibility for parole or length of sentence.
7. A requirement that the correctional agency develop through rules and regulations (a) criteria for the assignment of an offender to a particular facility and (b) a procedure allowing the offender to participate in and seek administrative review of decisions affecting his assignment or transfer to a particular facility or program.

Commentary
One of the major incentives for establishing a correctional system administered by a single agency is to insure development of coordinated facilities and programs. Establishment of the agency will assure coordination; legislation is needed to authorize the agency to utilize these resources effectively.
In many States, the courts are authorized by statute to designate the institution to which a particular offender is sentenced. In others, the offender is sentenced directly to the agency and the agency then places the offender into a particular facility or program. In some States that use the latter approach, there are provisions for granting broad transfer authority to the agency. The development of institu-
tion-based community programs makes sentencing to a particular institution unrealistic. In many States, the resources available within the correctional agency are limited. Facilities or programs for special types of offenders, where available, are either privately operated or administered by another governmental agency. These resources should be available to correctional administrators as well. Statutory authorization of transfer offenders to specialized facilities is needed.

By granting broad discretionary power to the correctional agency, the possibility of abuse is increased. The initial selection of a facility for a particular offender may have a direct impact on his ability to readjust to society upon release. His ability to participate in educational, vocational, and industrial programs may influence his employability, his suitability for community-based programs, his income while confined, and prospects for release. The offender has a substantial interest in procedures designed to prevent abuse, mistake, or capricious action.

The standard addresses itself to this need for protection in three ways. Decisions regarding assignment and transfer should be based on an individualized program plan. This cannot be accomplished unless a classification process develops a sufficient factual background on an offender.

In some States, the institution in which an offender is housed has a direct bearing on his eligibility for parole or the length of time he will actually serve. "Good time" provisions vary from institution to institution. Inmates of one institution may have parole eligibility requirements more stringent than others. It is not unusual for State law to prohibit "good time" credits for offenders transferred to hospitals or mental institutions. The standard prohibits consideration of assignment to a particular facility or program in making determinations on length of term or eligibility for parole.

Assignment to a facility or program may have more subtle influences on an offender's future as well. An institution having vocational training programs in marketable skills is more attractive to some offenders. Educational opportunities may vary. The selection for training programs able to accommodate only a few offenders seriously affects those excluded. The criteria for these decisions should be stated in advance. However, development of such criteria should be left to the correctional agency rather than the legislature. Understanding of the usefulness and disadvantages of various program types for various types of offenders is changing rapidly. Experimentation in program-offender relationships and offender-offender relationships is required.

Articulation of the contemporary criteria in advance of making decisions allows the offender to anticipate the nature of the decisionmaking process and provides a standard for the review of that decision. This would tend to protect offenders against capricious assignments based on inappropriate factors. As long as these decisions will not affect the sentence length or parole eligibility, judicial review of the decision to transfer is not required short of an allegation of constitutional violation. However, an appropriate procedure for internal administrative review would provide a useful check and balance on individual decisionmaking and should be available at the initiation of the offender.

References

Related Standards
The following standards may be applicable in implementing Standard 16.12.
2.9 Rehabilitation.
2.13 Procedures for Nondisciplinary Changes of Status.
6.1 Comprehensive Classification Systems.
6.2 Classification for Inmate Management.
16.1 Comprehensive Correctional Legislation.
16.4 Unifying Correctional Programs.

Standard 16.13
Prison Industries

By 1975, each State with industrial programs operated by or for correctional agencies should amend its statutory authorization for these programs so that, as applicable, they do not prohibit:
1. Specific types of industrial activity from being carried on by a correctional institution.
2. The sale of products of prison industries on the open market.
3. The transport or sale of products produced by prisoners.
4. The employment of offenders by private enterprise at full market wages and comparable working conditions.
5. The payment of full market wages to offenders working in State-operated prison industries.

Commentary
Until the early part of the 20th century, prison labor was exploited by private enterprise through various systems that allowed private employers to obtain the prison labor at little or no cost. Some prison industries, which paid little or no wages, likewise were selling goods on the open market in competition with private enterprises that had higher labor costs. The abuses of prisoners in many instances were unconscionable. The free labor movement and enlightened attitudes about the care of offenders combined to prohibit prison industries from competing with private enterprise and inmate labor from being sold to the highest bidder.

Federal legislation (1) prohibited the hiring or contracting out of the labor of any Federal prisoners; (2) prohibited the shipping of prison-made goods in interstate commerce where the State to which they were shipped prohibited the sale of such goods; and (3) severely restricted the utilization of Federal or State prisoners on government contracts. Most States passed legislation prohibiting the use, sale, or possession of prison-made goods except to the State or governmental subdivisions.

So engrained are these approaches to prison labor that prohibitions against the use of prison labor are routinely inserted in legislation authorizing public projects. In 1928, Public Law 85-767, authorizing Federal aid to highway construction, prohibited the use of offender labor except offenders on probation or parole and in 1970, Public Law 91-258, authorizing Federal assistance in airport development, prohibited offender labor completely. Executive Order 1255-A, 1905, requires all government contracts to prohibit prison labor.

Thus, specific abuses were curbed by wholesale prohibitions that today seriously hamper efforts to provide offenders with employment opportunities. The specter of abuse as well as sincerely felt threats...
of prisoner competition may make reform of these laws difficult. Labor unions in some instances may be reluctant to accept the competition of prison labor, and private enterprise may be suspicious of the competition from prison industries. Yet, these laws should be abolished and replaced with legislation directed at specific abuses such as exploitation. The repeal of these longstanding enactments is required for several reasons.

1. The inhibitory effect the laws have on the development and expansion of prison industries has caused the idleness characteristic of American corrections, particularly on the local level. Private employers may be the only potential resource for providing work for misdemeanants serving sentences in small short-term institutions.

2. Development of community-based programs has blurred the distinction between confinement and community supervision. Many of these laws were enacted when the only possible alternatives were total confinement or parole. The legality of many community-based programs presently operating in several States and on the Federal level, thus is unclear.

3. The effort toward reducing recidivism by assisting the reintegration of offenders into the free society requires liberalization of these laws. Industrial programs should provide experience in skills related to employment opportunities in the free community, not the purchasing needs of the State government. And, when a private enterprise, with its managerial techniques, may provide resources to prison industrial programs unavailable elsewhere. There may be sound reasons for experimental if not wholesale adoption of programs whereby private enterprise establishments factories manned entirely by committed offenders. These alternatives should not be precluded.

4. Authorizing use of private enterprise and entry into the open market to prison industries will facilitate payment of full market wages to committed offenders. Such wage scales would reduce the fear of exploitation, provide the offender with a realistic employment situation with commensurate responsibilities, and create a sound financial base for his release. Most work-release laws require full market wages for offenders under partial confinement employment programs.

There is little evidence to suggest that prison industries as presently operated offer affirmative benefits to participating offenders. There are inherent difficulties with institutional industries which handicap effective management. (See Chapter 11, Major Institutions.) The work-force has a rapid turnover; little incentive exists for quality performance. As prisons increasingly house the more dangerous, less socialized offender, these difficulties may intensify. However, idleness in prisons must be reduced or eliminated and industrial programs offer the hope of an economical means of doing so. Private enterprise and correctional authorities may find innovative techniques to make prison industries meaningful programs as well.

It is unrealistic to hope that such industrial programs can be implemented immediately. They will have to be planned carefully and the support of the community, business, and labor obtained. Thus, although the legislation proposed by this standard should be enacted at an early date, substantial implementation may require a later date, hopefully by 1983.

References


Related Standards

The following standard may be applicable in Standard 16.13.
11.10 Prison Labor and Industries.

Standard 16.14

Community-Based Programs

Legislation should be enacted immediately authorizing the chief executive officer of the correctional agency to extend the limits of confinement of a committed offender so the offender can participate in a wide variety of community-based programs. Such legislation should include these provisions:

1. Authorization for the following programs:
   a. Foster homes and group homes, primarily for juvenile and youthful offenders.
   b. Prerelease guidance centers and halfway houses.
   c. Work-release programs providing that rates of pay and other conditions of employment are similar to those of free employees.
   d. Community-based vocational training programs, either public or private.
   e. Participation in academic programs in the community.

2. Authorization for the development of community-based residential centers either directly or through contract with governmental agencies or private parties, and authorization to assign offenders to such centers while they are participating in community programs.

3. Authorization to cooperate with and contract for a wide range of community resources.

4. Specific exemption for participants in community-based work programs from State income and other laws restricting employment of offenders or sale of "convict-made" goods.

5. Requirement that the correctional agency promulgate rules and regulations specifying conduct that will result in revocation of community-based privileges and procedures for such revocation. Such procedures should be governed by the same standards as disciplinary proceedings involving a substantial change in status of the offender.

Commentary

The most dramatic development in corrections in the United States over the last several years is the extension of correctional programing into the community. Probation and parole have always involved supervision in the community, new programs located in the community provide a gradual diminishment of control leading toward parole and outright release.
Work-release programs that allowed the committed offender to work in the community by day and return to the institution during nonworking hours began in Wisconsin for misdemeanants in 1913 and have spread through many States on the felony level. Approximately 31 States have some work-release authority. Federal prisoners were provided work-release opportunities by the Prisoner Rehabilitation Act of 1965.

Offenders participating in employment programs should continue to be protected against economic exploitation. Most work-release laws require that prisoners receive equal wages and work under employment conditions equal to those of free employees.

The flexibility of community-based programs is limited only by the availability of community resources and the imagination of correctional administrators. Employment opportunities are only one example. Legislation should authorize correctional agencies to utilize any community resource with reasonable relation to efforts to reintegrate the offender into the community on release.

Full utilization of community resources may require more from the legislature than authorization. Present laws which prohibit the sale of "prison-made goods" are, in some States, sufficiently ambiguous as applied to community-based programs as to require clarification. Some occupations regulated by government may prohibit employment of felons unless pardoned, which would curtail utilization of offenders prior to their outright release. Although it may be useful to list specific programs in authorizing legislation for clarification, an open-ended provision allowing experimentation should be provided.

Temporary furloughs likewise should be authorized for a wide variety of reasons. Most States have furlough laws allowing incarcerated individuals to attend a funeral of a relative or to visit a sick or dying family member. These programs should be expanded to include family visits, seeking employment and educational placements, and other reasons consistent with the public interest. Since furloughs for family visitation are controversial in some locations, the legislature should specifically authorize such a program.

Contemporary correctional thinking is that offenders will be given gradual responsibility and more freedom until parole or outright release. Thus, each new decrease in control is a test for eventual release. A violation of trust at any one stage of the process inevitably will affect the date when the offender will be paroled. Decisions that revoke community-based privileges thus have a substantial impact on an offender's liberty. Procedural safeguards should be required in revocation of community-based privileges.

References

Related Standards
The following standards may be applicable in implementing Standard 16.14.

6.3 Community Classification Teams.
7.4 Inmate Involvement in Community Programs.
16.2 Administrative Justice.
16.4 Unifying Correctional Programs.

Standard 16.15
Parole Legislation
Each State should enact by 1978 legislation
1. Authorizing parole for all committed offenders and 2. Establishing criteria and procedures for (a) parole eligibility, (b) granting of parole, (c) parole conditions, (d) parole revocation, and (e) length of parole.

In authorizing parole for all committed offenders the legislation should:
1. Not exclude offenders from parole eligibility on account of the particular offense committed.
2. Not exclude offenders from parole eligibility because of number of convictions or past history of parole violations.
3. Authorize parole or aftercare release for adults and juveniles from all correctional institutions.
4. Authorize the parole of an offender at any time unless a minimum sentence is imposed by the court in connection with an extended term (Standard 5.3), in which event parole may be authorized prior to service of the minimum sentence with the permission of the sentencing court.

In establishing criteria for granting parole the legislation should be patterned after Sec. 305.9 of the Model Penal Code and should:
1. Require parole over extended confinement unless specified conditions exist.
2. Stipulate factors that should be considered by the parole board in arriving at its decision.
3. Direct the parole decision toward factors relating to the individual offender and his chance for success outside parole. 

4. Not require a favorable recommendation by the institutional staff, the court, the police, or the prosecutor. 

In establishing criteria for parole conditions, the legislation should be patterned after Sec. 305.13 of the Model Penal Code and should:

- not require the imposition of specified conditions.
- require that any condition imposed in an individual's condition must be related to the correctional program of the defendant and not unduly restrictive of his liberty or incompatible with his constitutional rights.
- direct that conditions be fashioned on the basis of factors relating to the individual offender rather than to the offense committed.

In establishing criteria and procedures for parole revocation, the legislation should provide:

1. A parolee charged with a violation shall not be detained unless there is a hearing at which probable cause to believe that the parolee did violate a condition of his parole is shown.

   a. Such a hearing should be held promptly near the locality to which the parolee is paroled.

   b. The hearing should be conducted by an impartial person other than the parole officer.

   c. The parolee should be granted notice of the charges against him, the right to present evidence, the right to confront and cross-examine witnesses against him, and the right to be represented by counsel or to have counsel appointed if he is indigent.

2. Parole should not be revoked unless:

   a. There is substantial evidence of a violation of one of the conditions of parole.

   b. The probability of public safety in the presence of a hearing on revocation, is informed of the nature of the violation charged against him and is given the opportunity to examine the State's evidence against him.

   c. The parolee is provided with a hearing on the charge of revocation. Hearing examiners should be empowered to hear and decide parole revocation cases under policies established by the parole board. At the hearing the parolee should be given the opportunity to present evidence on his behalf, to confront and cross-examine witnesses against him, and to be represented by counsel or to have counsel appointed for him if he is indigent.

   d. The board or hearing examiner provides a written statement of findings, the reasons for the decision, and reliance upon the evidence.

3. Time spent under parole supervision until the date of the violation for which parole is revoked should be credited against the sentence imposed by the court of conviction.

4. Judicial review of parole revocation decisions should be available to offenders.

   In defining the conditions under which parole should be granted, the legislation should prohibit the term from extending beyond the maximum prison term imposed on the offender by the sentencing court and should authorize the parole board to discharge the parolee from parole at any time.

Commentary

Historically, parole was the only procedure, short of pardon, to diminish an original sentence to confinement. Parole was one method of controlling excessive sentences. It developed, as did probation, with the rhetoric of leniency rather than as an affirmative tool of corrections.

The widespread adoption of indeterminate sentencing gave boards of parole new functions to serve. The theory was, and still remains, that the judicially imposed sentence was the best estimate of the term of imprisonment considering the needs of the particular offender or the punitive needs of society.

In recognition of the fact that changes in attitude and development might drastically alter the needs of the offender, wide discretion was granted to the parole board to select the most appropriate date for release.

The function of the parole authority now is under government control. With a blurring of the distinctions between institutional confinement and community supervision, many offenders have participated in various community-based programs prior to their parole. As the trend toward community-oriented programs continues, the decision to parole, at least under traditional notions of parole, becomes less critical in the treatment of the offender.

As community-based programs range from halfway houses to nonsupervised work- and education-release programs expand, the role of the parole board will become increasingly one of guiding the offender and helping certain offenders access to community-based programs. Under present circumstances, the parole board bears some direct influence over all confined offenders.

Legislation in many States grants broad discretion to parole authorities with few statutory criteria to guide them. Violators convicted of certain offenses from consideration. Likewise, some States, directly or indirectly, prohibit more than one opportunity for parole; i.e., one violation precludes further consideration. Mandatory statutory criteria is preferable.

In most States, parole eligibility begins when the minimum sentence is given. Hence, it is also to report precedes the elimination of all legislatively imposed minimum sentences and the infrequent use of judicial minimums. With the exception of these rare instances where the retributive feelings of the community require a minimum term—the standard proposed for judicial imposition—there is no apparent reason why offenders should not be eligible for parole at any time.

The tradition in most States, either in practice or legislation, is that either the offender applies for parole or he is recommended for parole by the institutional staff. Neither procedure is consistent with the role parole and the paroling agency should play in the correctional process. The prisoner should be viewed as the last alternative at the time of sentencing and continued incarceration undesirable unless there is no other choice. Thus, confined over the offender's objection, should be assured that at regular reasonable intervals the parole authority will consider them for parole.

Studies indicate that the first three months after the release of an institutionalized offender are the most critical in his avoidance of further criminal conduct. When it is clearly understood that toward the end of an offender's term between outside right release without supervision and release on parole, a requirement that every offender spend some time on parole becomes manifest. Several States and the Federal Government now have mandatory conditional release provisions.

Imposition of parole conditions raises the same issues as the imposition of conditions of probation. (See Standard 16.11.) The approach of the Model Penal Code is similar in both instances and should be followed.

Parole revocation has a dramatic effect on the offender; it is similar to his original arrest and detention. His ties to family, friends, and employment are severed. He is again subjected to the emotional strains of accusation and potential sanction. The Supreme Court has recently recognized the impact of parole revocation and has ruled that due process requires certain procedural safeguards. The decision resolved a dispute among many courts as to whether a revocation of parole required any procedural rights. This standard is consistent with the parole board's decision.

The Court in Morrissey v. Brewer, 408 U.S. 471 (1972), neither determined that a parolee is entitled to bring his own counsel to the hearing or that the State is obligated to provide counsel for indigent offenders. Other Supreme Court decisions strongly suggest that, when given the opportunity, the Court will rule that the Constitution requires counsel at these hearings. The standard recommends that counsel, provided not only to meet constitutional standards but to insuresound correctional decisions by protecting the offender from arbitrary or misinformed decisions.

In many States, the time an offender serves on parole is not considered service of sentence. Thus, if an offender is sentenced to a maximum of 5 years and serves 1 year in confinement and 3 on parole before it is revoked, he is still required to serve 4 years more under the terms of the sentence. In other States, parole time is deemed to be part of the sentence. The latter is the preferable course. With development of community-based parole programs operated by the institution—participation in which is credited toward the offender's sentence—offenders under very similar circumstances may be treated in disparate ways. Offenders in the former States are credited upon parole revocation can have a dramatic effect on lengthening the time that the State exercises control over the offender. Parole, if considered another option in corrections, should be considered as service of sentence.

An offender should not be subjected to a longer period of State control because of parole revocation. The Model Penal Code provides parole a "parole term" that is above and beyond the maximum term imposed by the court. The major argument for this extension is the ability to parole extensions in lieu of parole. An offender in need of extended parole supervision are generally those who are not paroled until late in their sentence, whereas the least dangerous and most tractable offender is released early and can serve longer on parole. The "parole term" thus extends the period of State control over those offenders who need it the most.

The answer to this argument is twofold: First, the "parole term" effectively lengthens sentences when most authorities agree American sentences are al-
ready too long. Parole revocation within the parole term would result in continued confinement. Thus, an offender actually could be confined for a longer period than his maximum term by agreeing to parole. Second, it has been argued that the Model Penal Code “parole term” will encourage parole authorities to defer release since the length of the term is based on the length of confinement and thus, by holding an offender longer in confinement, the amount of time the parole authority can retain control is lengthened.

Without clear evidence that longer periods of confinement, followed by longer periods of parole supervision, are beneficial, extension of State control beyond the initial maximum term is unwarranted.

References


Related Standards

The following standards may be applicable in implementing Standard 16.15.

2.1 Access to Courts.
2.11 Rules of Conduct.
5.2 Sentencing the Nondangerous Offender.
5.3 Sentencing to Extended Terms.
12.3 The Parole Grant Hearing.
12.4 Revocation Hearings.
16.11 Probation Legislation.

Standard 16.16

Pardon Legislation

Each State by 1975 should enact legislation detailing the procedures (1) governing the application by an offender for the exercise of the pardon powers, and (2) for exercise of the pardon powers.

Commentary

The powers of executive pardon operate as a last check on the discretion of correctional administrators and agencies. In the past it has generally been exercised where mistakes have been made or where inflexible legislation has restricted the system to the point where equity and justice were impossible. Thus, mandatory sentences, where improper, are commuted. Offenders are released where the parole authority refuses to act. And in many States, deprivations of civil rights and other disabilities required by statute for persons convicted of crimes are removed.

Most of the cases that now comprise the caseload of the pardon authority could be handled by other correctional agencies given the proper tools. The need for the pardon power, in most instances, reflects the need for alterations in the system preceding it. For example, a large number of pardons are granted in order to restore an ex-offender's civil rights or remove other legally imposed disabilities arising out of the conviction. Most such disabilities are unnecessary and should be eliminated. The remaining cases can be more appropriately resolved through judicial procedures if such are authorized.

References


Related Standards

The following standards may be applicable in implementing Standard 16.16.

2.10 Retention and Restoration of Rights.
16.2 Administrative Justice.
16.17 Collateral Consequences of a Criminal Conviction.
for a former offender to obtain a license. In some instances, where the applicant for the license must show "good moral character," the offender is generally denied the license solely on the ground of his conviction.

A convicted felon suffers numerous other disabilities, some specifically required by legislation. His opportunity to marry or to be divorced may be altered by the conviction. His parental rights may be diminished. Many jurisdictions disqualify persons convicted of a felony from various pension funds.

Loss of citizenship rights—the right to vote, hold public office, and serve on juries—inhibits reformatory efforts. If corrections is to reintegrate an offender into free society, the offender must retain all attributes of citizenship. In addition, his respect for law and the legal system may well depend, in some measure, on his ability to participate in that system. Mandatory denial in such cases serves no legitimate public interest.

The restraints on entry into various occupations and eligibility for licenses is far more serious. The ability of the offender to earn a livelihood may well determine his success in rejecting a life of crime. By precluding his participation in the growing number of government-regulated occupations, his readjustment is made much more difficult. If changes are not made in regulating statutes, the problem will grow more serious.

In individual cases, there may be some public interest that supports the denial of a particular license to a particular offender. An individual with a long history of armed robberies may legitimately be denied a license to carry a firearm for a specified period of time. But there is little to indicate that an offender convicted of joyriding—a felony in some States—should forever be precluded from owning a gun. A lawyer convicted of embezzling clients' funds may or may not be fit to continue to practice law upon release. With few exceptions, the offender, not the offense, should determine the particular disability imposed.

A few States have taken two partial steps toward the resolution of the problem of legal disabilities following conviction or confinement. In some, the final discharge from parole or release from institutions "restores all civil rights." In a few States, procedures have been developed to expunge criminal convictions, thus not only removing the disabilities on voting, holding public office, and serving on juries, but avoiding the mandatory restrictions on obtaining governmental licenses. The development of "youth offender" procedures through which young offenders were sentenced without ever actually being "convicted" was in part an effort to avoid the legal disabilities flowing from conviction and the social stigma and ostracism accompanying a criminal record.

The removal of most of the present disabilities will make "youth offender" and "expungement" statutes less essential. Where authority remains in licensing boards to deny licenses on grounds of "good moral character" or for convictions where there is a direct relationship between the conviction and the denial of a license, a procedure should be established that would allow a judicial review in individual cases. And in those States that retain some civil disabilities, there should be automatic restoration of rights upon completion of the sentence.

Most States and local public agencies also are prohibited from hiring ex-offenders because of restrictions in civil service legislation and other forms of governmental personnel regulations. These should also be altered and procedures established to make the prohibition apply only where it is reasonably related to the offender and the particular job involved.

References

Related Standards
The following standards may be applicable in implementing Standard 16.17:

2.10 Retention and Restoration of Rights.
16.16 Pardon Legislation.
Part IV
Directions for Change

Chapter 17
Priorities and Implementation Strategies

This report presents a strategy to change the face of corrections. It recommends a dramatic realignment of policies, resources, and practices to make corrections more effective in reducing crime and more responsive to the needs of a rapidly changing society. While crime cannot be reduced to desired levels without basic changes in American society in relation to poverty, unemployment, illness, ignorance, and discrimination, there is no doubt that corrections can and must make a greater impact on crime than it does now.

Corrections is full of plans, procedures, policies, and laws which have failed to achieve their purposes but have survived nevertheless. Corrections has consistently pursued inappropriate concerns and ineffective solutions. It has emphasized the banishment of offenders to huge, isolated institutions where inmates are dehumanized into mere numbers. It has overemphasized custody and imposed restrictions on the great majority of offenders, when these measures were needed by only a relative few. It has sought to cure the offender of the disease of criminality although few offenders are afflicted with problems not common to nonoffenders as well. Corrections has accepted many types of social problem cases that lie outside its proper scope and competence, cases that could be handled far more effectively by other human service agencies.

This report is based on the premise that corrections can no longer serve as society's dumping ground. Corrections is indeed only a part of the larger community that is responsible for reduction of crime. The report addresses the spectrum of the criminal justice process as it affects corrections, from the first involvement of alleged offenders to reintegration into the community. Considerable attention is devoted to the interrelationships of corrections with the other parts of the criminal justice system and various segments of the community. This emphasis reflects the belief that corrections must begin to take an active role in guiding and shaping policies that vitally affect it.

The purpose of this report is to provide a program for action. It specifies policy changes that should be made, control mechanisms needed to improve the quality of correctional services, and legislative changes required wherever correctional reform is impeded by existing or absent statutes.

PRIORITIES FOR ACTION

Because the standards set forth in this report are so closely interrelated, it is impossible to rank them in order of priority. All of them relate to basic goals.
which the Commission believes to be the proper objectives of corrections as a part of the criminal justice system. From these basic goals, the Commission has selected six as being most pressing and having the greatest potential for significantly improving corrections in this country. Top priority should be given to a concerted program of action to achieve these ends:

- Equity and justice in corrections.
- Exclusion of sociomedical problem cases from corrections systems.
- Shifting of correctional emphasis from institutions to community programs.
- Unification of corrections and total system planning.
- Manpower development.
- Increased involvement of the public.

**Equity and Justice in Corrections**

Corrections has been characterized by inhumane conditions, arbitrary decisions, discrimination, lawlessness, and brutality. That a civilized society cannot tolerate such conditions is being increasingly recognized. Recent judicial interpretations of offenders' rights continue to place a heavy burden on those who administer correctional systems. Implementation of offenders' rights is consistent with good correctional practice. The fact that almost 90 percent of those who are incarcerated to confinement will one day return to free society requires that offenders be prepared for reintegration. The illegal detention of inmates, the tribulations that prisoners have to obey the law in a system unresponsive to law should have been recognized long ago. Forcing an offender to live in a situation in which all decisions are made for him is no training for life in a free society.

In addition, correctional administrators are responsible for the welfare of offenders committed to their charge. Judicial decisions which improve the conditions under which an offender labors should be welcomed, rather than resisted, by correctional personnel.

The corrections profession has a critical role to play in implementing the rights of offenders. It must enlist the support of legislatures, the public, and the rest of the criminal justice system in articulating the rights of offenders and ensuring that their exercise is maximized.

Convicted offenders should retain all rights that citizens in general have, except those that are limited in order to carry out the criminal sanction or to administer a correctional facility or agency. Applying these sanctions must not deprivegoals of the exercise of state power over individuals. Actions necessary for maintaining social order do not require general suspension of basic rights. Since criminal sanction is by nature a basic right—limiting it is imperative that other restrictions be used sparingly, fairly, and only for cause. The strategy for controlling corrections is to be built on a nondiscriminatory, just, and humane foundation that honors the legal and social rights of its clients.

**Exclusion of Sociomedical Problem Cases**

The historic tendency to saddle corrections with sociomedical and sociopsychological cases overburdens the system and drastically handicaps any effectiveness it may have. It is beyond the competence and proper scope of corrections to deal effectively with the mentally ill, alcoholics, and drug addicts. In fact, correctional "treatment" often exacerbates the problems of these persons and contributes to the revolving-door population characterizing our jails and other penal institutions.

The propensity for outlawing private behavior that is fairly common in our society simply because it is (or has been) objectionable to part of the society, has resulted in overcriminalization. Too many laws proscribe too many kinds of behavior. The effect has been to sidetrack the criminal justice system from its mission of protecting society against crime to the uneasy role of policing private morality. As a result of such laws, correctional institutions—particularly jails—are crowded with persons who are not equipped to handle. Types of behavior commonly categorized as "victimless crimes," which are defined as such when witnesses are absent or a complaint other than the authorities, are considered in the Commission's summary report.

**Attempting to control such behaviors by criminal law is not only ineffective but also expensive in economic and social terms.** It is a major obstacle to correctional reform—indeed, to reform of the whole system. Attempts to criminalize more corrections is making informal efforts to rid itself of problems which are unrelated to public safety. Success in these efforts would strengthen the system by permitting more effective use of resources and personnel to fight more serious crime. It would also allow society to find more effective ways to deal with troublesome behavior.

The criminal justice system must embrace a philosophy of diversion that effectively excludes persons who are threatened by the exercise of social norms but are of doubtful criminality. Current innovative efforts in this area should be supported, and further development of a legitimate, formalized system of diversion should be encouraged.

**Shift of Correctional Emphasis from Institutions to Community Programs**

The prison, the reformatory, and the jail have achieved only a shocking record of failure. There is overwhelming evidence that many institutions create crime rather than prevent it. Their very nature inures failures. Mass living and bureaucratic manage­ment of large numbers of human beings are counter­productive to the goals of positive behavior change and reintegration. These isolated and closed societies are incompatible with the world outside. Normally desirable characteristics—confidence, initiative, sociability, and leadership are counteracted by the experience of incarceration. Individuality is lost and the spirit of man broken through the performance of deadening routines and endless hours of idleness.

The belief that such an insidious system cannot be placed on the shoulders of corrections alone. Correctional personnel have decreed, at great length and in vain, public apathy and decades of financial neglect. The state of corrections today reflects in no small part society's past expectations as well as its evasion of its responsibilities.

In the absence of the bankruptcy of penal institutions, it would be a grave mistake to continue to provide new settings for the traditional approach in corrections. The perpetuity idea must succumb to a new concept: community corrections. Therefore, the Commission recommends a 10-year moratorium on constructions in the United States, to be followed by a moratorium that is set forth under Standard 11.1. The moratorium period should be used for planning to utilize non­institutional means. This planning must place maxi­mum emphasis on expansion of community correctional programs and development of alterna­tives to incarceration.

At the same time, every effort must be made to phase out existing large-institutions at the earliest possible time. To do so will require a large and immediate increase in use of alternatives to incarce­ration, to the greatest extent that is consistent with public safety.

It is especially important to impose a moratorium on construction of institutions for youthful offenders. Current efforts in Massachusetts and Minnesota to halt imprisonment of juveniles are blazing a trail that hopefully will set the pattern for the rest of the Na­tion.

It is of utmost importance to recognize that the concept of community-based corrections does not imply new institutions and facilities. This position is especially important in light of the flurry of construc­tion plans and projects that have accompanied rec­ent developments in community corrections. While it is recognized that existing facilities must be in­adequate for the purposes outlined in this report, replacements should be made only after the plan­ning stipulated in the following section is com­pleted. In its true sense, community corrections is the widest possible use of noninstitutional correctional programs designed to reeducate and redirect the attitudes and behavior of offenders in order to fully integrate or reintegrate them into the community as law-abiding members of society.

Programs must be given preference over facilities.

The prison is the right place for corrections. Correctional alternatives, new programs, more professional con­duct of these programs, and more public involvement in the processes of corrections.

In the absence of a moratorium on traditional con­struction, corrections in the 1970's could repeat a two-century-old error and fail to benefit from the experience of the past. For it was the correctional work of the 18th century in which our fledgling country, seeking to establish institutions predicated on the concept of
the dignity of man, embarked on a prison construc-
tion program without precedent. The physical and
ideological legacy of this movement stands recog-
nized today as one of the major obstacles to corre-
cational reform and a prime example of man’s inhibi-
tion to man. So we must guard against embarking on
a financially ruinous construction program that
merely exacerbates our current problems of reformatories, jails,
and detention homes with facilities bearing more
palatable names and wearing more attractive facades
but fundamentally unchanged.

The community-based corrections is one of the most promising developments in correc-
tions today. It is based on the recognition that delin-
quency and crime are symptoms of failure of the
community, as well as of the offender, and that a
successful reduction of crime requires changes in
both. The compelling reasons for embracing the con-
ccept of community corrections and for embarking on
a national strategy to move from our current insti-
tutional-orientated correctional system to one that is
community-based are emphasized throughout this report.

One of the most important factors in the transition from traditional to community-based corrections is
sentencing, which may determine whether a defen-
sant is returned to the community under a range of nonresidential and residential com-
munity-based programs. Sentencing may also set
upper or lower limits for duration of correctional re-
sponsibility.

Sentencing practices in this country reflect an ap-
alling state of affairs. In too many jurisdictions, the
decision to incarcerate a man to years behind bars is
made by judges who know nothing but a man’s name
and the crime with which he is charged. Sentencing
is inconsistent, and in many jurisdictions there is a
prison system as opposed to less severe sanctions. The
entire problem is compounded by unreasonably long
sentences, often with mandatory minimums, which are rarely matched by other
long-range planning activities be coordinated
from corrections, and to provide a framework for developing more relevant
and effective selection of the person best qualified
strategy should be developed to recruit and
utilize more fully. Maximum emphasis should be
given to the following standards and goals
regarding this key issue:

1. Implementation of coordinated State recruit-
ment and staff development programs. Recruitment
should be guided by policies and practices that allow
fair, effective selection of the person best qualified
for each position. Staff development programs
should provide for the full range of career develop-
ment of qualified ex-offenders. Successful
marvelous variety of human resources. Efforts to recrui-
t minority group members for every level of
correctional staff and to provide training programs to
secure opportunities for career advancement should
be intensified. For too long, minority groups have
been overrepresented as offenders and underrepre-
sentated as staff. Affirmative action is required to alter
the situation created by years of discrimination and
underutilization.

Recruitment of women for all types of positions in
corrections should be given high priority. Since
women have been discriminated against in hiring and
promotion in both the public and private sectors, they
have been effectively
drastic steps. Programs to
system planning is opposed to sub-
ject planning. It anticipates delinquency and
crime control needs rather than simply responding to
crises and problems after they have occurred. System
planning implies maximum utilization of local per-
sion and resources to guarantee development of
comprehensive service programs responsive to
diverse local needs and conditions.

Manpower Development

People are the most important and most effective
resource in the fight against crime. They also are the
most underused resource in corrections today.

In an effort to bring about change in an area too
long characterized by neglect and absence of system-
planning, the Commission recommends that corrections
develop a comprehensive nationwide
strategy to improve correctional manpower and that
1. Implementation of coordinated State recruit-
ment and staff development programs. Recruitment
should be guided by policies and practices that allow
fair, effective selection of the person best qualified
for each position. Staff development programs
should provide for the full range of career develop-
ment of qualified ex-offenders. Successful
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ment of qualified ex-offenders. Successful

Increased Public Involvement

Implementation of community corrections requires citizen involvement on an unprecedented scale. In fact, the degree of citizen acceptance, involvement, and participation in community-based corrections will decide not only the swiftness of its implementation but also its ultimate success or failure.

The correctional system is one of the few public services left today that is characterized by an almost total isolation from the public it serves. Although public sympathy is the dominant cause of this unfortunate situation, corrections has done little to rectify it. In fact, the use of walls, fencing, and hardware has been justified not only in terms of keeping inmates but also in terms of keeping the public out.

The result has been disastrous for the goals of corrections. While institutional administrators develop policy in the absence of public involvement and almost unchecked by public power, the public was utterly ignorant about the state of corrections and developed little, if any, sense of responsibility for the correctional process.

In the face of these facts, the Commission recommends that top priority be given to the involvement of citizens in corrections. Citizen participation must occur at all levels of the correctional system, from determination of policies for the entire criminal justice system to the shaping of specific community-based programs. Further, this involvement must not only occur in the planning stages but also in implementation and operation of actual programs.

The contributions of dedicated volunteer workers already have left an indelible mark on the face of institutional and community corrections in terms of direct service to citizens. To what extent this potential of volunteer activity has yet to be fulfilled. Lay citizens on task forces, advisory boards and study groups can spearhead public information campaigns, pave the way for reforms, implement specific correctional programs, mold public opinion, set policy, create jobs, raise funds for correctional services.

At the same time, it is obvious that the measures needed to implement the foregoing priorities and the standards set forth in this report will require a major national commitment. Like the standards themselves, the measures are interrelated; the effectiveness of each depends upon the accomplishment of the others.

It also seems obvious that the role of the Federal Government is preeminent in realizing the standards. In recent decades the Federal Government has done much to stimulate improvement of the treatment of the mentally ill and retarded, the rehabilitation of the handicapped, the education of children and young people, the availability of health services, and the support of the aged.

The shocking deficiencies of corrections are comparable in national significance to other problems to which massive Federal aid has been given. Legislation and appropriations authorizing corrections to share in the funding programs of the Federal Government is long overdue. The Department of Justice and the Department of Health, Education and Welfare have been allocated Federal funds each year but have yet to implement their grant programs.

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The Federal Government must be given authority to contribute funds to meet the needs of offenders and the correctional process.

IMPLEMENTATION STRATEGIES

In spite of the seemingly insurmountable obstacles to correctional reform, there is reason to believe not only that the standards and goals enumerated in this report can be substantially attained but also that

become accomplished without money. Corrections is in desperate straits in large measure because public funds have been far too limited to support existing programs. There has never been anything for investment in change.

Anyone familiar with State and local corrections is probably aware of the President's Task Force on Prisoner Rehabilitation. The President's Task Force on Prisoner Rehabilitation has allocated some Federal funds to assist 28 States to develop correctional improvement programs. It is to be hoped that some of these will be accomplished.

The result has been disastrous for the goals of corrections. Citizen participation must not only that the standards and enforcement of the correctional process.

Fellow professionals from human service agencies and the fields of education, medicine, mental health, and the like, need to be involved in advising boards and study groups. Such an involvement would give rise to the possibility of correctional improvement programs being developed near absolute discretion and almost unchecked by public power. The public was utterly ignorant about the state of corrections and developed little, if any, sense of responsibility for the correctional process.

Also, demonstration projects generally are funded for one year only. While some projects may be renewed annually by application, few qualified employees are willing to enter into such high-risk situations. Longer funding commitments should be considered, and eventually permanent support should be given corrections efforts, following the pattern of Federal support for vocational rehabilitation.

Implementation of the standards set forth in this report could be greatly facilitated if priority for Federal funding could be given to projects intended to bring correctional programs up to the levels recommended. The Part B amendment contains full statutory authority for the adoption of this policy.

An excellent start has been made by the Federal Government to provide needed financial assistance to the States in the improvement of corrections. But the extent of this assistance must be greatly increased if any nationally significant results are to be obtained.

The President's Task Force on Prisoner Rehabilitation in its 1970 report stated flatly that corrections needs a massive infusion of Federal funds and needs it soon.

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Legislation

The importance of legislation to correctional reform is repeated throughout the standards of this report. While legislation alone cannot bring about the desired changes and needed accomplishments, it is the necessary vehicle for the largest and most significant changes will be made, a sound statutory base is essential to any significant implementation of these standards. State and Federal correctional and penal codes are a hodgepodge enacted over the generations and follow no consistent pattern or philosophy. They bear a full share of the responsibility for the confused, disorganized and ineffective state of corrections today.

The reform of correctional and penal codes cannot be accomplished overnight, and the standards suggest that it should be accomplished within the next 5-year period. Nor can the task be accomplished in a vacuum. The standards suggest that the reform of correctional and penal codes of a State should be reformed and legislatively considered as a package. As an alternative approach, they suggest that the reform of elements of the law be accomplished first and that the philosophy and legislative policy, in recognition of the fact that the specific statutory provisions to be made are closely interrelated.

The task should be approached with realistic recognition that the reform of correctional and penal codes, like any legislative reform, is a political process. Each jurisdiction has its own history and traditions regarding the legislative process. Success will depend on careful planning from the initial stage of the effort.

Money

In America today, little social improvement can be accomplished without money. Corrections is in desperate straits in large measure because public funds have been far too limited to support existing programs. There has never been anything for investment in change.

Anyone familiar with State and local corrections is probably aware of the President's Task Force on Prisoner Rehabilitation. The President's Task Force on Prisoner Rehabilitation has allocated some Federal funds to assist 28 States to develop correctional improvement programs. It is to be hoped that some of these will be accomplished.
Since many different groups and officials will be affected, failure to involve them may lead to bad feeling from the beginning. In the initial stages a small group should be selected to serve as a drafting committee on the basis of their professional expertise and their commitment to the reform effort. Other interested officials and groups should be notified of the undertaking and consulted. They should include trial judges, attorneys general, prosecutors, police and correctional personnel, interested State senators and house committee members, and a wide range of public and private organizations.

Once the first draft is completed, it should be circulated among the committees members, and after revision, among key State officials whose support is essential to passage. Personal explanations of the philosophy and thrust of the legislation should supplement the circulation of the draft to the extent necessary by the legislation. When this has occurred, the other groups having an interest in the matter should be consulted. After consultation, a final draft should be published and given the widest possible distribution.

This procedure was followed by the State of Nebraska and resulted in the successful passage of the Nebraska Corrections Accountability Act (Neb. Rev. Stat. Sec. 83-170 et seq.) in 1969.

Manpower

Implementation of the standards will depend heavily on the availability of enough educated and trained personnel. The grave deficiencies of correctional personnel discussed earlier in this report are so prevalent that they cannot be remedied on a short-term basis. Recommended solutions are reflected in the standards of Chapter 14.

It will be easier to educate and train qualified personnel than to attract them to corrections in the first place. Law Enforcement Assistance Administration funds available for educating and training correctional personnel are more nearly adequate than the financial assistance available for operating correctional facilities. The shortage of personnel will be per se put to the field only by improving the salaries to be paid them and brightening the image of corrections itself.

The funding role of the Federal Government will have an indirect effect on salary levels, but significant improvement will depend upon the commitment of the States and localities to corrections. The task of improving corrections' image can be accomplished only by the corrections field itself. None of these announcements will be easy, but a beginning must be made.

As corrections begin to involve the public in increasingly its work, it should become more politically feasible to raise salaries above the present offensively low level. When our society stops using corrections as its dumping ground, it should be possible to pay correctional personnel salaries consistent with the importance of their work.

Young persons today appear to be more interested than their predecessors in entering careers that will enable them to make a contribution toward the improvement of society. No area of public service needs this contribution more than corrections. As more young people are exposed to the importance and necessity of their contributions, the image of corrections should become more widely attractive. The image of this field that the young form will have significant impact on the future.

The Federal Model

In a policy memorandum to the Attorney General on November 13, 1969, President Nixon called for a national corrections reform effort and directed that certain steps be taken to develop the Federal system into a model that the States could follow.

The principles is a sound one. However, the Federal system does not function as a model of the State systems as related in this report. It is fragmented, its programs cannot be demonstrated to be any more effective than State programs, and there is heavy emphasis on institutionalization in both sentencing and correctional programs.

The development of the Federal system into a model would be a powerful influence in setting the implementation of the standards set forth in this report. But significant changes in Federal legislation, policy, and practice would be required.

This report urges corrections in the interests of improving and maintaining standards and bringing about more successful results in the reintegration of offenders. In the Federal system, parole field services, and Institutions are operated independently of each other.

The report strongly supports the diversion of juveniles and of nonviolent medical problem cases that do not belong in the criminal justice system. It also calls for a shift in correctional emphasis from institutions to community-based programs. At present the Federal courts are not equipped with diversion programs, as defined in Chapter 3 of this report, and more convicted offenders are committed to jail or prison (including the so-called split sentence) than are placed on probation.

This report urges the discontinuance of major institutions for juveniles and youths, in favor of local programs and facilities. In the Federal system hundreds of juveniles and thousands of youths are transported each year to institutions hundreds and even thousands of miles from their homes, friends, and communities. Legislation has been introduced in Congress that would remedy this situation as it affects juvenile offenders.

There is evidence that Federal correction programs, although operated in well-managed institutions, produce any better results than State programs. The Federal system does not collect statistics on recidivism that can be considered valid. Comparisons therefore are impossible to make. However, Federal Bureau of Investigation statistics from Federal jurisdictions suggest a heavy reinvolvement with the law.

The FBI reported in 1970 that 63 percent of the Federal prisoners released to the community in 1965 had been rearrested by the end of the fourth year after release. Of those released on probation, 56 percent were rearrested; of those released on parole, 61 percent; of those completing prison terms, 75 percent. Of persons under the age of 20 who were released in 1965, 74 percent had been rearrested by the end of 1969.

While these statistics report rearrests rather than recidivism, they do suggest failure more than success. They also suggest that this failure of the Federal system is more pronounced with juvenile and youthful offenders than with adults.

A diversion policy and programs to support it should be developed for the Federal courts. A bill to accomplish this purpose was considered favorably in 1972 by the Senate Judiciary Committee's subcommittee on national penitentiaries, but the full committee took no action. A bill with similar provisions should be enacted speedily. The Federal judiciary should reexamine its probation practices, and the Federal probation system should be strengthened by more professional, better trained, and better supported community services and resources. Chief Justice Burger in August 1972 voiced the need for an expansion of Federal probation.

The Federal model also has application in the area of jails. This report urges, at the least, State inspection of local jails and eventual State operation of local jails. It also suggests that there be an inspection service, and contracts with some 800 local jails for the detention of Federal prisoners awaiting trial or transportation to Federal institutions. However, contrary to popular belief, the Federal system has no written standards for inspection, and many jails with which it has contracts are fully as disruptive as jails generally in the United States.

Although the Federal System is forced to use substandard jails, the existence of a contract with a local jail is too often interpreted as meaning that the jail is federally "approved." This interpretation by local officials and the public has the general effect of retarding any effort to bring about jail improvements.

The lack of written standards for Federal jail inspection is to be used as the basis for contracts for jail "approval" is a policy intended to discourage litigation. Few of the jails now being used by the Federal Government would meet any set of minimum standards that might be established. Development and publication of Federal standards would undoubtedly be taken as an opportunity by Federal detainees to file suit on the ground that the facilities in which they are being held are not in compliance.

But, if the Federal model is to have applicability in assisting in the effort to upgrade the disgraceful conditions common to American jails, a different policy and practice must be developed. Standards should be written and published, and a rational policy based on the basis of these standards devised. Contracts should be made on the basis of ratings that reflect actual jail conditions. Also, the Federal system ought to be provided with funds to pay local jails more adequately for the costs of confining Federal prisoners, to help offset the costs of improving jail conditions, to provide programs and to recognize the rights of offenders. It is hardly appropriate for the Federal Government on the one hand to promote the cause of national correctional reform and on the other to continue policies that effectively discourage it.

This Commission wholeheartedly endorses the idea that the Federal model must be developed for the States. The Federal system has the same problems and deficiencies as the States, and if the national reform effort is to have any consistency, the Federal system must be consistent with the standards suggested for the States. However, it must proceed expeditiously if it is to serve effectively as a model, and the Commission urges all possible action toward that end.

National Institute of Corrections

A national academy of corrections has been proposed for Federal correctional facilities. At the first national conference on corrections, the Attorney General directed the Law Enforcement Assistance Administration and the U.S. Bureau of Prisons to work with the States in the establishment of the academy. An interim steering committee was appointed, and pilot seminars have been conducted. The project has now been entitled the National Institute of Corrections.

The precise functions to be fulfilled by the institute have not yet been formally determined. Those proposed include...
1. Service as a clearinghouse for information on crime and corrections.
2. Provision of consultant services to Federal, State, and local agencies on all aspects of corrections.
3. Development of corrections programs.
4. Development and presentation of seminars, workshops, and training programs for all types of criminal justice personnel associated with corrections.
5. Technical training teams to assist the States in development of seminars, workshops, and training programs.
6. Funding of training programs.
7. Coordination and funding of correctional research.
8. Formulation and dissemination of policy, goals, and standards recommended for corrections.
9. A national institute with the authority and funds for this wide range of activities could serve as a powerful force in the coordination and implementation of a national corrections reform effort, and the Commission urges immediate action to make it a reality.

At the present time, the expertise and information available to corrections is both limited and thinly dispersed. The institute could provide a center and a pooling of all relevant resources with all States and correctional systems could draw. At present none of the proposed functions of the institute are being fulfilled effectively elsewhere on a national basis. Technical expertise in corrections is simply not available in any organized form. The wide scope of the proposed functions would remedy this severe deficiency and give the institute the stature, and presumably the prestige, to gain acceptance and a highly influential role in correctional reform.

The Commission believes that the institute be established under such a Commission as virtually synonymous, and it must be a built-in continuing process, not a reaction to periodic public outcries. The time has come for corrections to respond to the critical needs of society in a unified, systematic, and totally committed way.

The Commission is fully aware that the recommendations and standards of this report will not be the last word in corrections. But they represent the best distillation of views that can be produced at the present. A substantial number of correctional practitioners have been involved in their development. The recommendations and standards are intended to represent a starting point and a direction. The Commission is convinced that the general direction proposed is the only course open to corrections.

But the state of correctional knowledge will undergo change. Technology and information can be expected to continue in its rate of change at the pace of the 1970's, and it should prove possible to set even higher standards and goals for corrections than this report reflects. It remains for someone else at another time to address the technology and information into another, and hopefully more advanced, set of standards.

As pointed out, corrections cannot accomplish the needed reform alone and in its traditional isolation. It must assume leadership in enlisting the support of legislatures, local officials, law enforcement agencies, community agencies, and various other public and private groups. All elements of our society share the responsibility for the generation of crime and delinquency, and all elements share its consequences. Responsibility for the reduction of crime and delinquency, and the reform of corrections to assist in accomplishing this objective, must be shared.

After 200 years of painful history, American corrections must step out boldly and purposefully. It must be true equity and justice with the earnestness that our Constitution intends. It must bring all possible pressures to bear to divest itself of the social problems that have been so wrongly dumped upon it. It must shift its emphasis from inside the prison community services. It must change these intelligently and systematically. Finally, it must compete and, if necessary, fight as every other agency does for the resources and support required to carry out the changes that have too long been postponed.

Without this commitment, corrections is destined to remain in its present morass of ineffectiveness, and society must search for another solution to the control and reduction of crime.

Commitment of Corrections

The responsibility of the public for the reform of corrections has been discussed throughout this report and particularly in Chapter 7, Corrections and the Community. However, it will be difficult for some segments of society to accept the concept that offenders can be treated with respect for their rights and their condition as fellow human beings.

The concept of retribution and morally just punishment is deeply embedded in social thought. It has been codified in lex talionis, the principle of Mosaic law that exacts eye for eye, tooth for tooth. While this is a primitive view of justice, it is important to note that feelings of moral injustice are evident in our prisons, almost daily revelations of brutality and degradation in our jails, increasing litigation against corrections, and indictable public reactions.

Maurice H. Stirling, the immediate past president to the meeting of the American Correctional Association on August 10, 1972, said:

"To put it bluntly, the field of corrections is experiencing a crisis in public confidence, and the crisis shows no sign of abating. Unlike times past, we cannot expect to handle the problem by letting it wear itself out.

There is no need to belabor further in this report the shortcomings of corrections. Many of today's problems can be traced to the lack of commitment to anticipate the impact of accelerating social change, but the field cannot shoulder the entire blame. Culpability must be shared by virtually every element of our society. The point here is that reform can and must be a built-in continuing process, not a reaction to periodic public outcries. The time has come for corrections to respond to the critical needs of society in a unified, systematic, and totally committed way.

The Commission is aware that the recommendations and standards of this report will not be the last word in corrections. But they represent the best distillation of views that can be produced at the present. A substantial number of correctional practitioners have been involved in their development. The recommendations and standards are intended to represent a starting point and a direction. The Commission is convinced that the general direction proposed is the only course open to corrections.

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has reduced them to the point where they are no longer a threat. There are plenty of prisons for this type of offender, and corrections has proved itself eminently capable of confining them securely. The Commission has not found it necessary to consider them at length in this report, except to recommend extended prison terms.

But there are relatively few offenders of this type. Unfortunately, preoccupation with them has been a major factor in impeding the development of corrections into an effective instrument for expediting the reintegration of the vast majority of offenders, who are neither dangerous nor practiced criminals. It is with this majority that corrections and society must concern itself in the years to come.

The new correctional philosophy is based on at least two major considerations: First, society, in addition to the offender, needs changing; and second, more emphasis should be placed on the offender’s social and cultural setting if we are to obtain any substantial relief from recidivism.

While individual differences and individual responsibility will remain important factors in corrections’ response to criminal behavior, they will need to be considered within the setting of the community and the culture. To salvage offenders in any great numbers, therefore, will require changes in the offender himself and changes in the community that will help to bring about his reintegration. Communities must assume part of the responsibility for bringing about these changes, for the problems to be addressed were generated in the community. Once this is recognized, corrections can be removed from its isolation and made a part of the larger social system.

Even though the public is beginning to recognize that the ultimate success of corrections depends on reintegrating the offender into the community and motivating him to refrain from breaking the law, public ambivalence about reform and traditional lack of concern for the criminal offender seriously impede efforts to make corrections more effective. This situation is aggravated whenever change is resisted from within the criminal justice system. In such instances, deliberate appeals may be made to public fears in the interest of preserving traditional practices with all their injustices and futility.

If the philosophy of reintegration is to gain public favor, there must be full recognition on the part of the public that present correctional practices do not serve the long-run interest of societal protection. Legal and economic barriers and social ostracism must yield to commitment, involvement, and sharing of responsibility. Only then will the goals of crime prevention and crime reduction be realized.
Appendix

DATA ON CORRECTIONAL ORGANIZATION

The reports of the National Institute of Law Enforcement and Criminal Justice cited in Chapter 13 carry this caveat:

Readers should be cautioned in interpretations of these counts, keeping in mind that this survey did not include agencies of those municipal governments with a 1960 population of less than 1000. The figures in this report reflect the October 1971 update of the directory, particularly in the counts sector and the juvenile correctional sector, and consequently may differ from figures presented in the Summary Report (Statistics Division Report SD-13). Moreover in deciding whether an agency belonged in the directory or not, the general rule was to be inclusive rather than exclusive.

While numbers will help describe the scope and diversity of the system, the size and range of activity of criminal justice agencies within a State may not always be reflected by simple counts of agencies. Organizational complexity varies considerably from one governmental unit to another, even within a single State. Of the categories enumerated in the directory, the counts of local adult correctional facilities are the most flexible due to the refinement of this sector through the National Jail Census conducted in the Spring of 1970.

Correctional Institutions

General Definition—An individual facility, such as a prison, jail, farm, or annex, which is either separately administered or administratively dependent upon a parent institution and located in a separate geographical area. Hospitals for the criminally insane and halfway homes for narcotic addicts and alcoholics were not counted in this sector but in the "all other criminal justice agencies" sector.

Juvenile Correctional Facilities—Included are those facilities which detain juveniles only, for 48 hours or more. This includes detention centers, reception and diagnostic centers, some halfway homes and other probation or work-release type facilities; that is, institutions detaining juveniles for court disposition as well as those holding juveniles for rehabilitation after court disposition. At the local level of government an agency was considered to be a juvenile agency if the administrator considered it as such. At the State level, facilities were assigned juvenile status if they were administered by the State juvenile corrections agencies.

Adult Correctional Facilities—Included are those institutions which detain adults only or a combination of prisoner populations. Drugs, tanks, lockups and other facilities which detain persons for less than 48 hours are excluded.

Probation and Parole Agencies

Included are probation and parole departments, commissions, boards or agencies operated by the State or local government, including those administratively dependent on the latter. The assignment of a probation officer to a particular level of government was an involved process related to both the type of area served and administrative responsibility. As a rule, a probation department serving more than one borough was assigned to the State level of government. Probation services provided on a contractual basis were not included.

The following display of the organization of responsibility for administering corrections services in the several States is from a report of the Advisory Committee on Intergovernmental Relations. (See source note at end of table.)
<table>
<thead>
<tr>
<th>State</th>
<th>Juvenile Detention</th>
<th>Juvenile Probation</th>
<th>Juvenile Institutions</th>
<th>Juvenile Aftercare</th>
<th>Misdeemeanor Probation</th>
<th>Adult Probation</th>
<th>Local Adult Institutions and Jails</th>
<th>Adult Institutions</th>
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**PARENT AGENCY RESPONSIBILITY FOR ADMINISTERING CORRECTIONAL SERVICES, BY STATE.**

*January 1971*

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PHOTOS

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Visitors leaving a correctional facility.
Photo courtesy of South Carolina Department of Corrections.

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Photo by Danny Lyon, Magnum Photos, Inc.

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Man testing an auto on job found for him by a volunteer organization.
Photo courtesy of Job Therapy, Inc.