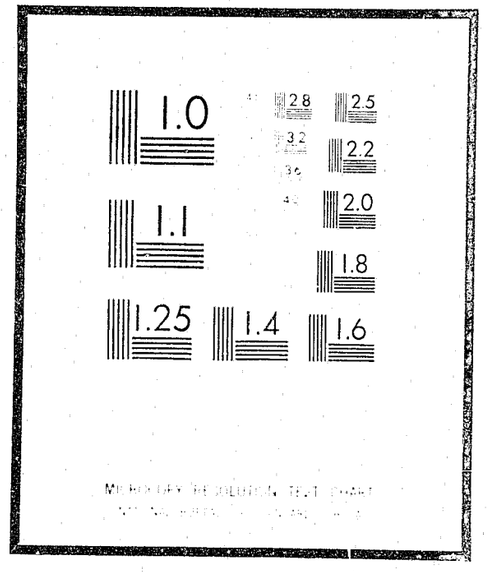
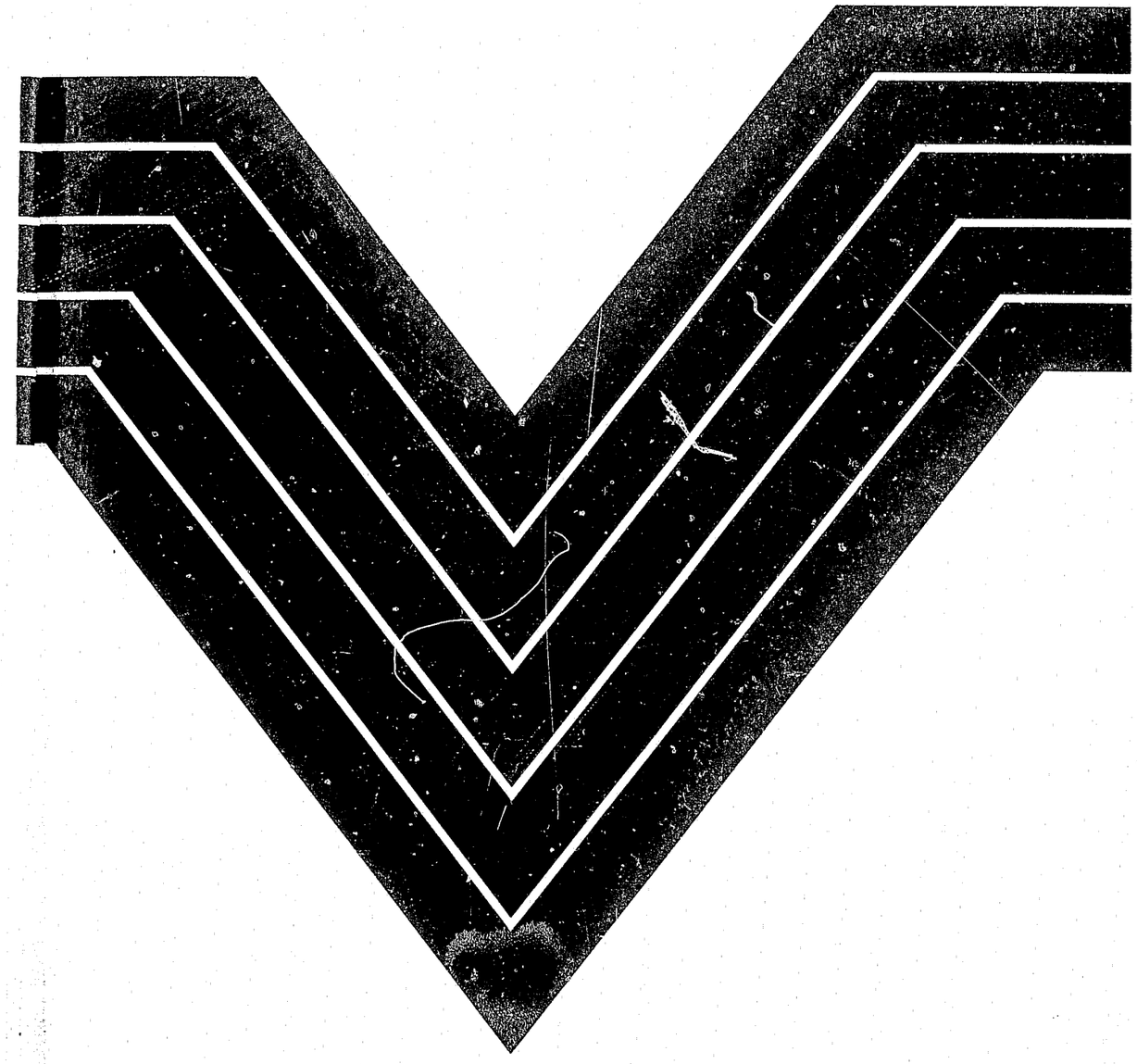
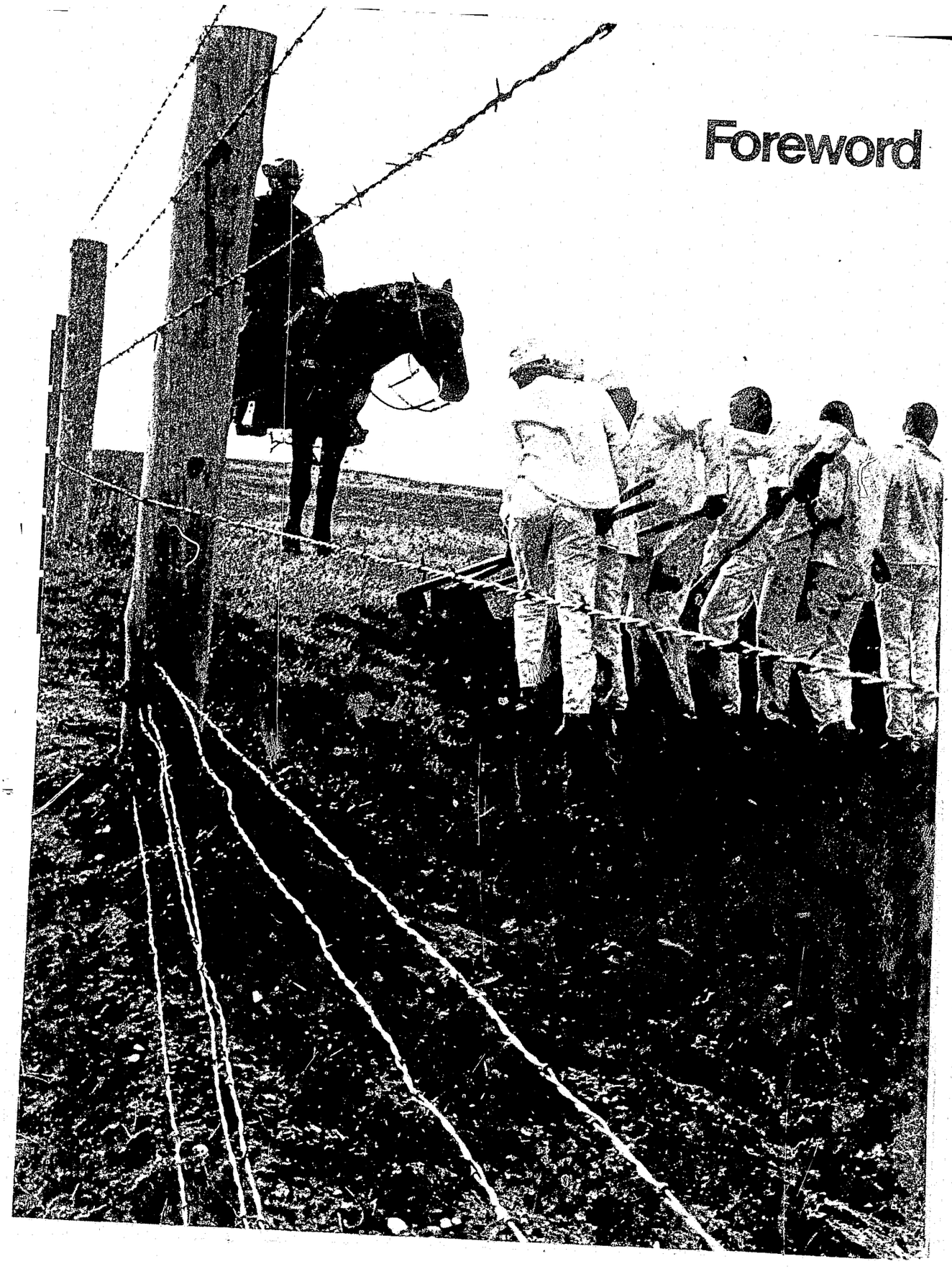


Corrections



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 in 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, corrections leaders, and prosecutors were represented.

Other recent Commissions have studied the causes 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 may have equaled 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 programs 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 those 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; and 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.

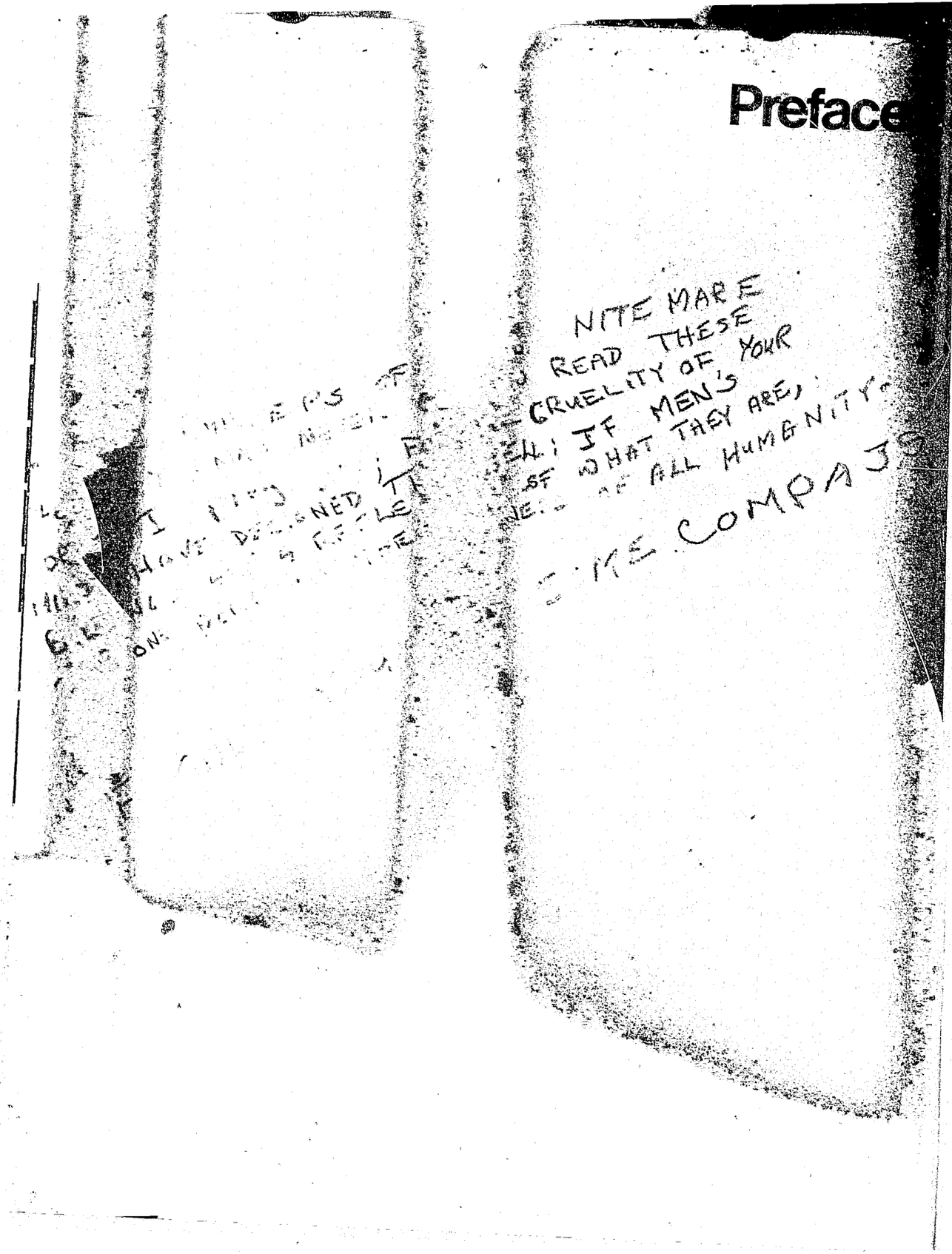
On behalf of the Commission, I extend special and warmest thanks and admiration to Thomas J. Madden, Executive Director, for guiding this project through to completion.

Russell W. Peterson

RUSSELL W. PETERSON
Chairman

Washington, D.C.
January 23, 1973

Preface



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 Commmission 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.

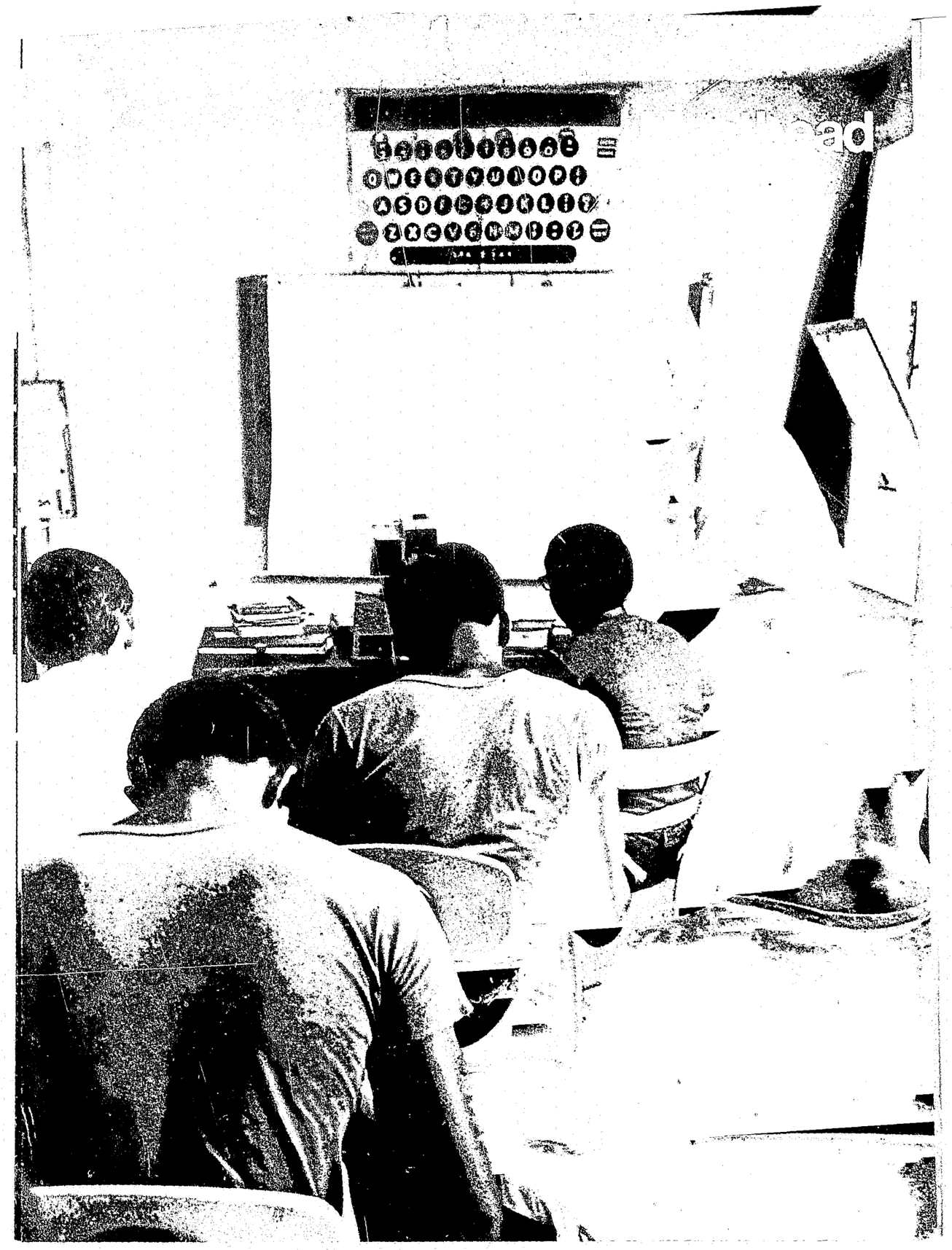
The task force which made the study and developed recommendations for submission to the Commission had among its members not only some of the leading correctional administrators of the country, but also representatives of the judiciary, the bar, law enforcement, and academic departments concerned with 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

JOE FRAZIER BROWN
Chairman
Task Force on Corrections

Washington, D.C.
January 23, 1973



NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS

Chairman

Russell W. Peterson

Vice Chairman

Peter J. Pitchess

Richard R. Andersen
Forrest H. Anderson
Sylvia Bacon
Arthur J. Bilek
Frank Dyson
Caroline E. Hughes
Howard A. Jones
Robert J. Kutak
Richard G. Lugar
Ellis C. MacDougall
Henry F. McQuade
Gary K. Nelson
Charles L. Owen
Ray Pope
Elmer J. C. Prenzlow, Jr.
Milton G. Rector
Arlen Specter
Leon H. Sullivan
Donald F. Taylor
Richard W. Velde

Task Force on Corrections

Chairman

Joe Frazier Brown

Fred Allenbrand
Norman A. Carlson
Hubert M. Clements
Roberta Dorn
Edith Flynn
Eddie Harrison
Bruce Johnson
Lance Jones
Oliver J. Keller, Jr.
George G. Killinger
William G. Nagel
Rita O'Grady
Sanger B. Powers
Peter Preiser
Rosemary C. Sarri
Saleem A. Shah
John A. Wallace
Martha E. Wheeler

Commission Staff

Executive Director

Thomas J. Madden

Deputy Director

Lawrence J. Leigh

Associate Director

Robert H. Macy

Assistant Directors

Hayden Gregory
Marilyn Kay Harris*
Thomas M. O'Neil, Jr.

Special Assistant to the Chairman

Joseph M. Dell'Olio

Administrative Assistant to the Executive Director

Mary M. Curtin

Members

Kirby L. Baker
Don Clasen
Joyce M. Cromer
Frederick W. Giggey
Kenneth D. Hines
Ellen Jasper
Michael D. Jones
Lillian Kharasch*
Diane Liptack
Roma K. McNickle*
Sandra M. Miller
Malcolm H. Oettinger, Jr.
Karen Peck*
George W. Shirley

*Staff members devoting primary attention to the *Report on Corrections.*

Task Force Staff

Executive Director

Lawrence A. Carpenter

Assistant Director

Marilyn Kay Harris

Staff Director

Ernest A. Guinn, Jr.

Technical Writer

Fran Dodds

Administrative Assistant

Faye Hanks

Staff Associates

Harvey Perlman
Billy L. Wayson

Contributors

William T. Adams

Melvin T. Axilbund
Lewis P. Brusca
John P. Conrad
Edith Flynn
Frederic D. Moyer
William G. Nagel
Vincent O'Leary
Clarence Schrag
Richard G. Singer
Robert L. Smith
John A. Wallace

Advisers

Bill Anderson
William E. Baughman
Allen F. Breed
Milton Burdman
Joan Carrerra
John P. Friedman
Kenneth K. Henning
Hazel Kerper
Barbara Knudson

Task Force Staff (continued)

Robert J. Kutak
Joseph S. Lobenthal, Jr.
Richard E. Longfellow
Milton Luger
Ellis C. MacDougall
W. Donald Pointer
Francis J. Prevost
Sue Shirley
Daniel L. Skoler

Publications Unit

Executive Editor

Joseph Foote

Associate Editor and Production Manager

Marilyn Marbrook

Associate Editors

Nina M. Graybill
DuPre A. Jones
David Mink
Newton T. Stark

Staff Writers

Patricia B. Fox
J. Andrew Hamilton
Richard C. Letaw

Copy Editors

Patricia Helsing
Joyce E. Latham
Jean A. McRae
John N. Rogers
F. R. Ruskin
Marilyn M. Sharkey

Staff Assistants

Elizabeth E. Bates
Therese L. Gibbons
Lucile M. Graham

Design

Nolan and White
Visual Communications

Design Coordinator

E. James White

Art Director

Robert B. Orban

Designer

Celia L. Strain

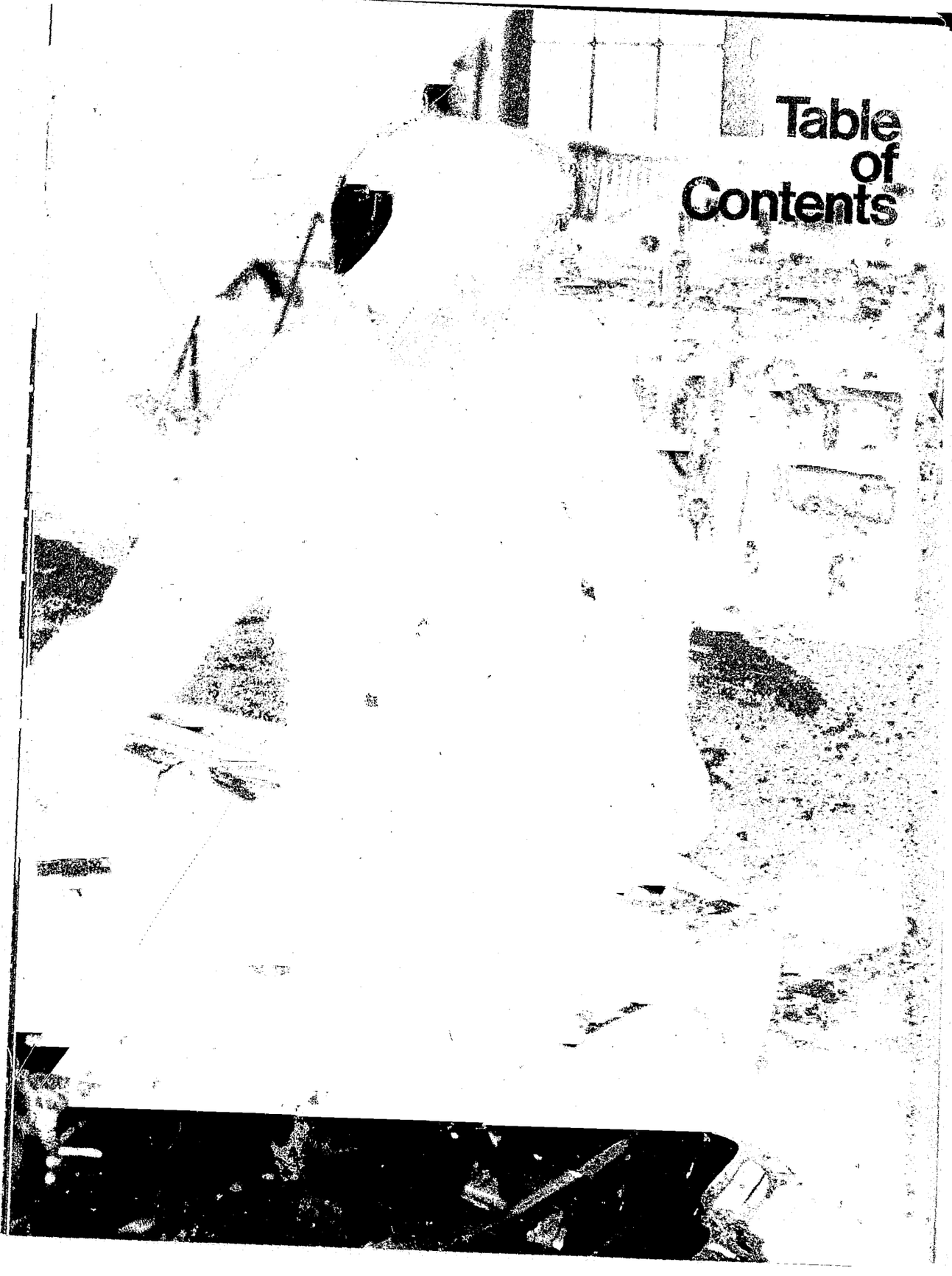


Table of Contents

This project was supported by Grant Numbers 72–DF–99–0003 and NI 72–0201, awarded by the Law Enforcement Assistance Administration, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the National Advisory Commission on Criminal Justice Standards and Goals, and do not necessarily represent the official position of the U.S. Department of Justice.

Interrelated Standards

Corrections Courts

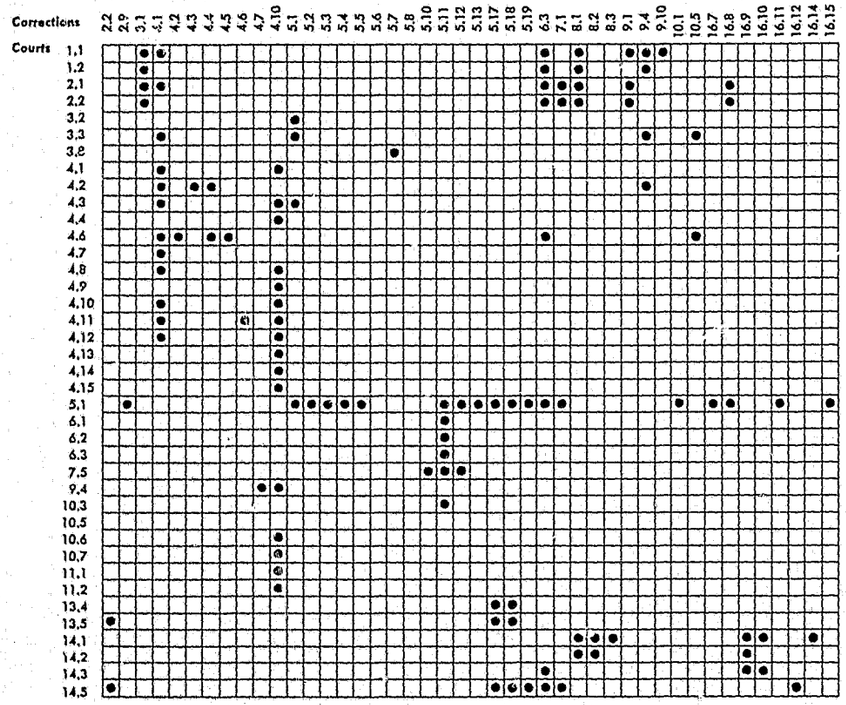
A number of important subjects are dealt with by the Commission in more than one volume of its report. Readers are urged to examine all of the standards in the volumes of the Commission's report to gain a full understanding of the overall contents of the Commission's proposals. This matrix shows the interrelationship of standards in the *Report on Corrections* and the *Report on Courts*. An interrelationship exists when standards in the two volumes deal with the same subject matter. This matrix is not exhaustive and does not contain every standard that may bear in some way on the subject matter of a standard from another volume of the Commission report.

Corrections Standards

- 2.2 Access to Legal Services
- 2.9 Rehabilitation
- 3.1 Use of Diversion
- 4.1 Comprehensive Pretrial Process Planning
- 4.2 Construction Policy for Pretrial Detention Facilities
- 4.3 Alternatives to Arrest
- 4.4 Alternatives to Pretrial Detention
- 4.5 Procedures Relating to Pretrial Release and Detention Decisions
- 4.6 Organization of Pretrial Services
- 4.7 Persons Incompetent to Stand Trial
- 4.10 Expediting Criminal Trials
- 5.1 The Sentencing Agency
- 5.2 Sentencing the Nondangerous Offender
- 5.3 Sentencing to Extended Terms
- 5.4 Probation
- 5.5 Fines
- 5.6 Multiple Sentences
- 5.7 Effect of Guilty Plea in Sentencing
- 5.8 Credit for Time Served
- 5.10 Judicial Visits to Institutions
- 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
- 6.3 Community Classification Teams
- 7.1 Development Plan for Community-Based Alternatives to Confinement
- 8.1 Role of Police in Intake and Detention
- 8.2 Juvenile Intake Services
- 8.3 Juvenile Detention Center Planning
- 9.1 Total System Planning
- 9.4 Adult Intake Services
- 9.10 Local Facility Evaluation and Planning
- 10.1 Organization of Probation
- 10.5 Probation in Release on Recognizance Programs
- 16.7 Sentencing Legislation
- 16.8 Sentencing Alternatives
- 16.9 Detention and Disposition of Juveniles
- 16.10 Presentence Reports
- 16.11 Probation Legislation
- 16.12 Commitment Legislation
- 16.14 Community-Based Programs
- 16.15 Parole Legislation

Courts Standards

- 1.1 Criteria for Screening
- 1.2 Procedure for Screening
- 2.1 General Criteria for Diversion
- 2.2 Procedure for Diversion Programs
- 3.2 Record of Plea and Agreement
- 3.3 Uniform Plea Negotiation Policies and Practices
- 3.8 Effect of the Method of Disposition on Sentencing
- 4.1 Time Frame for Prompt Processing of Criminal Cases
- 4.2 Citation and Summons in Lieu of Arrest
- 4.3 Procedure in Misdemeanor Prosecutions
- 4.4 Limitation of Grand Jury Functions
- 4.6 Pretrial Release
- 4.7 Nonappearance After Pretrial Release
- 4.8 Preliminary Hearing and Arraignment
- 4.9 Pretrial Discovery
- 4.10 Pretrial Motions and Conference
- 4.11 Priority Case Scheduling
- 4.12 Continuances
- 4.13 Jury Selection
- 4.14 Jury Size and Composition
- 4.15 Trial of Criminal Cases
- 5.1 The Court's Role in Sentencing
- 6.1 Unified Review Proceeding
- 6.2 Professional Staff
- 6.3 Flexible Review Procedures
- 7.5 Judicial Education
- 9.4 Caseflow Management
- 10.3 Court Public Information and Education Programs
- 10.5 Participation in Criminal Justice Planning
- 10.6 Production of Witnesses
- 10.7 Compensation of Witnesses
- 11.1 Court Administration
- 11.2 Automated Legal Research
- 13.4 Public Representation of Convicted Offenders
- 13.5 Method of Delivering Defense Services
- 14.1 Court Jurisdiction Over Juveniles
- 14.2 Intake, Detention, and Shelter Care in Delinquency Cases
- 14.3 Processing Certain Delinquency Cases as Adult Criminal Prosecutions
- 14.5 Dispositional Hearings in Delinquency Cases



Interrelated Standards

Corrections Police

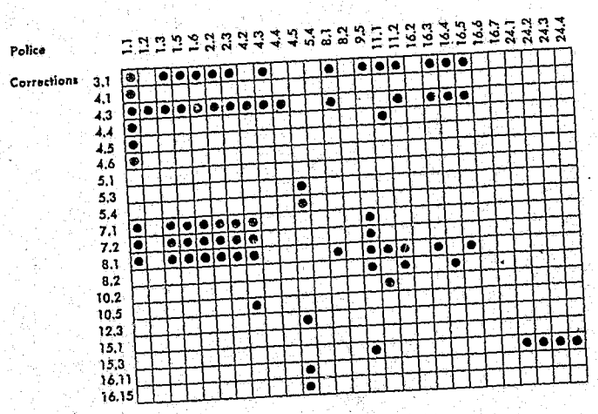
A number of important subjects are dealt with by the Commission in more than one volume of its report. Readers are urged to examine all of the standards in the volumes of the Commission's report to gain a full understanding of the overall contents of the Commission's proposals. This matrix shows the interrelationship of standards in the *Report on Corrections* and the *Report on Police*. An interrelationship exists when standards in the two volumes deal with the same subject matter. This matrix is not exhaustive and does not contain every standard that may bear in some way on the subject matter of a standard from another volume of the Commission report.

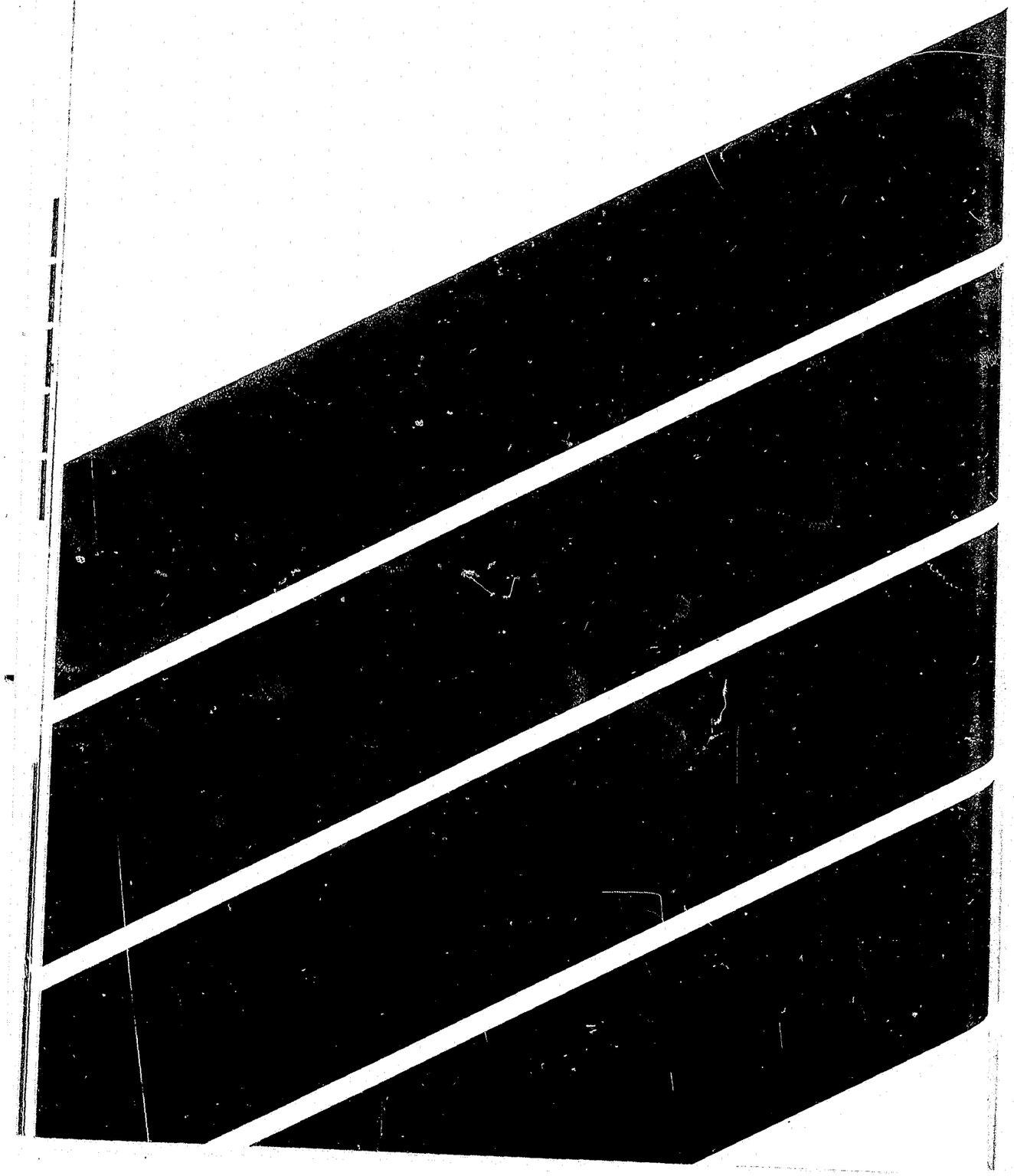
Corrections Standards

- 3.1 Use of Diversion
- 4.1 Comprehensive Pretrial Process Planning
- 4.3 Alternatives to Arrest
- 4.4 Alternatives to Pretrial Detention
- 4.5 Procedures Relating to Pretrial Release and Detention Decisions
- 4.6 Organization of Pretrial Services
- 5.1 The Sentencing Agency
- 5.3 Sentencing to Extended Terms
- 5.4 Probation
- 7.1 Development Plan for Community-Based Alternatives to Confinement
- 7.2 Marshaling and Coordinating Community Resources
- 8.1 Role of Police in Intake and Detention
- 8.2 Juvenile Intake Services
- 10.2 Services to Probationers
- 10.5 Probation in Release on Recognizance Programs
- 12.3 The Parole Grant Hearing
- 15.1 State Correctional Information Systems
- 15.3 Design Characteristics of a Correctional Information System
- 16.11 Probation Legislation
- 16.15 Parole Legislation

Police Standards

- 1.1 The Police Function
- 1.2 Limits of Authority
- 1.3 Police Discretion
- 1.5 Police Understanding of Their Role
- 1.6 Public Understanding of the Police Role
- 2.2 Establishment of Policy
- 2.3 Inspections
- 4.2 Police Operational Effectiveness Within the Criminal Justice System
- 4.3 Diversion
- 4.4 Citation and Release on Own Recognizance
- 4.5 Criminal Case Followup
- 5.4 Agency and Jurisdictional Planning
- 8.1 Establishing the Role of the Patrol Officer
- 8.2 Enhancing the Role of the Patrol Officer
- 9.5 Juvenile Operations
- 11.1 Use of Professional Expertise
- 11.2 Legal Assistance
- 16.2 Program Development
- 16.3 Preparatory Training
- 16.4 Interpersonal Communications Training
- 16.5 In-service Training
- 16.6 Instruction Quality Control
- 16.7 Police Training Academies and Criminal Justice Training Centers
- 24.1 Police Reporting
- 24.2 Basic Police Records
- 24.3 Data Retrieval
- 24.4 Police Telecommunications





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 riots 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 abate 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 relied on, 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 program areas 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 saddled with the physical remains of last century's prisons and with an ideological legacy that has implicitly accepted the objectives 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.

Behind these clear imperatives lies the achievable principle of a much greater selectivity and sophistication in the use of crime control and correctional methods. These great powers should be reserved for controlling persons who seriously threaten others. They should not be applied to the 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 gain force are definition of corrections' 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 the convicted offender, 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 parens patriae 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 worded 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 "lapsing into moral danger." The distinction is less clear for the groupings of "delinquent," "beyond parental control," or "habitually unruly." The point here, however, is that if we are concerned with helping the child rather than with the child's noncriminal act, then such help 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 the manner 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 jailing of convicted misdemeanants but would not cover pretrial detention. Again, the wording is intentional. This report does discuss the elimination of jails in their present form and the development of community correctional centers. These centers would serve some functions traditionally performed by jails and some new ones, with most functions being "correctional." Jails have not traditionally been part of the correctional system but rather have been run by law enforcement agencies. Still, as long as convicted offenders require services, provision of those services should be the responsibility of the correctional system, regardless of the type of conviction or sentencing disposition.

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 extreme circumstances and then only under careful judicial control. The function of detention prior to trial is not correctional. However, as long as pretrial detention is used at all, it should be carried out in the recommended community correctional centers because of the resources that will be available there. Thus, by implication, corrections is assuming responsibility for the pretrial detainee, even though this is not properly its function as defined here.

Varying Purposes of Corrections

The definition of corrections as the community's official reactions to convicted adult and juvenile offenders neither states nor implies what corrections should try to achieve. This is essential if realism is to replace rhetoric in the field. In particular, corrections is not defined here as being directed exclusively toward the rehabilitation (or habilitation, which is more often the case) of the convicted offender.

If correctional processes were, or could be, truly rehabilitative, it is hard to see why they should be restricted to the convicted. Corrections is limited to the convicted because there are other justifications for coercively intervening in their lives in addition to helping them. Clearly, the penal sanctions imposed on convicted offenders serve a multiplicity of purposes, of which rehabilitation is only one.

Even when correctional purposes are both benevolent and rehabilitative, there is no reason to assume they are so viewed and experienced by the convicted offender. He may believe our intent is to punish, to deter others from crime, or merely to shut him up while he grows older and the fires of violence or criminality die down. Furthermore, insofar as the word "rehabilitation" suggests compulsory cure or coercive retraining, there is an impressive and growing body of opinion that such a purpose is a mistaken sidetrack that corrections has too long pretended to follow.

In the new view, crime and delinquency are symptoms of failure and disorganization in the community as well as in the offender himself. He has had too little contact with the positive forces that develop law-abiding conduct—among them good schools, gainful employment, adequate housing, and rewarding leisure-time activities. So a fundamental objective of corrections 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 serving punitive and deterrent rather than rehabilitative purposes. Precisely the contrary is true with respect to the deprived, ill-educated, vocationally incompetent youth who is adjudged delinquent; with him, rehabilitative and reintegrative purposes predominate.

There is no doubt that corrections can contribute more than it does to the reduction and control of crime, and this is clearly one of its purposes. What is done in corrections may reduce recidivism. To the extent that recidivist crime is a substantial proportion of all crime, corrections should be able to reduce 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. Through these mechanisms corrections can contribute to the overall objective of crime reduction. This is an entirely worthy objective if it can be achieved without sacrificing other 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 Prisoner Rehabilitation (April 1970) was surely correct when it stressed that:

> . . . some of the toughest roots of crime lie buried in the social conditions, especially poverty and racial discrimination, that prevail in the nation's inner cities. These conditions not 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 accessible to all Americans. How successfully America reduces and controls 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 particular competence. This is not to say that improvements in the correctional system are beside the point . . . . Our point is that improvements in the correctional system are necessarily tactical maneuvers that can lead to no more than small and short-term victories unless they are executed as part of a grand strategy of improving all the nation's systems and institutions.[1]

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 limitation on corrections' potential to reduce and control crime. Corrections is only a small part of a social control system applied to define, inhibit, reduce, and treat 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. Correctional planning and programs must be closely related to the planning and 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-fulfilling? 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 dismally scarce. Precise definition of goals, and of standards marking steps toward their achievement, is no waste of energy. Operating without them invites, if it does not guarantee, failure.

Standards vs. Principles

A comprehensive and soundly based body of guiding principles to direct correctional reform has existed ever since the American Prison Association's "Declaration of Principles" in 1870. The principles, revised in 1930 and reformulated in more modern language in 1960 and 1970, still remain a contemporary document. We have yet to achieve the aspirations of 1870. And there have been many subsequent attempts in this country to guide those who would improve corrections.

Both the Wickersham Commission's report in 1931 and the report in 1967 of the President's Commission on Law Enforcement and Administration of Justice (often referred to as the Crime Commission) contain a wealth of recommendations. Many of them continue to attract substantial support but have yet to be implemented. With such a treasury of past recommendations, why should there be further effort to articulate standards and goals for corrections? Quite apart from the need to be clearer in purpose and direction in a time of rapid change, there is a compelling practical reason for the present definition of standards and goals.

The reason is this: Principles and recommendations are neither self-fulfilling nor self-interpreting. Standards and goals may be much more precise, while retaining sufficient flexibility to allow agencies some freedom. When clearly formulated and precisely stated in measurable terms, they can serve as the basis for objective evaluation of programs as well as development of statutes and regulations relating to correctional services.

Standards and goals set forth in this report may lack automatic enforcing machinery, but it has been the Commission's intention to minimize vagueness in definition. Correctional administrators can readily discern whether or not standards have been achieved. All concerned with running or observing an institution, agency, or program will know whether the standard has been applied or the goal achieved. That was not true of the 1870 Declaration of Principles or of the several series of Commission recommendations that followed. The range 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 recommendation. 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 concluding that what we have is right 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 readily available to the prisoners 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 to them mechanisms for their enforcement.

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 bursting energy but also 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.

In recent years the Federal Government and many of the States have begun to demonstrate in budgets their seriousness of purpose in correctional reform. For whatever reason, more money is now 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 achievement of such a system 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 support as it is now attracting 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 from admirable rhetoric toward a working blueprint for correctional reform with built-in quantitative and qualitative yardsticks of progress.

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, inequity, 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 consistent 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 some localities, it cannot be said that a criminal justice "system" really exists.

Even under the model, each element of the system

[1] President's Task Force on Prisoner Rehabilitation, *The Criminal Offender—What Should Be Done?* (Washington: Government Printing Office, 1970), p. 7.

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 interrelationships 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. Sanctions 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 periods 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 tension within prisons and make constructive programs there more difficult. Thus, whatever weight may be given to the deterrent effect of a long prison sentence, the benefits are outweighed by the suffering and alienation of committed offenders beyond any hope of rehabilitation or reintegration.

Offenders, perhaps long before the reformers, viewed the criminal justice apparatus as a system. The "they-versus-us" attitude is symptomatic of their feeling that police, courts, and corrections all represent society. Thus it is critically important that all elements of the system follow procedures which insure that offenders are, and believe themselves to be, treated fairly, if corrections is to release individuals who will not return to crime.

Corrections and the Police

The police and corrections are the two elements of the criminal justice system that are farthest apart, both in the sequence of their 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 because of their law enforcement and order maintenance role often take the view that shutting up an offender is an excellent, if temporary, answer to a "police problem." The police view the community at large 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 a specific criminal offense. 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 seeks to assure that an offender will not commit crimes in the future.

Corrections with its long-range perspective is required, if not always willing, to take short-run risks. 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 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 violator, the individual who fails to return from a furlough—adding a burden to already overtaxed police resources, misunderstanding 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 misdemeanant institutions are brought within the correctional system and removed from police jurisdiction, corrections will bear the responsibility for a substantially larger number of problems that would otherwise 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 these offenders 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 correctional risk-taking on the police, nonetheless is important and often critical to the correctional system's ability to perform its functions properly. The policeman is 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 system serves. To the extent that the offender's attitude toward society and its institutions will affect his willingness to respect 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 clientele than do the legislative decisions 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 misallocation and improper distribution of scarce correctional resources. 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 racial minorities, youth, or other 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 with police departments 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 a more easily identifiable risk than the average citizen. Where police make a practice of checking ex-offenders first whenever 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 a felon returning to a community is required 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 ex-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. To conduct contacts with the least possible notoriety and embarrassment is good police practice and a help to corrections as well.

It should also be noted that the police can make affirmative contributions to the success of community-based programs. The police officer knows his community; he knows where resources useful for the offender are available; he knows the pitfalls that may tempt the offender. The police officer is himself a valuable community resource that should be available for correctional programs. This of course requires the police to take a view of their function as one of preventing future crime as well as enforcing the law and maintaining public order.

Bringing about a better working relationship between the police and corrections will not be an easy task. Progress can be made only if both recognize that they are performing mutually supportive, rather than conflicting, functions. Corrections has been lax in explaining the purposes of its programs to the police. Today corrections is beginning to realize that much of its isolation in the criminal justice system has been self-imposed. Closer working relationships are developed through mutual understanding, and both police and corrections should immediately increase their efforts in this regard. Recruit and inservice training programs for each group should contain discussions of the other's pro-

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 criminal justice relations, 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 difficulties 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 criminal law. Correctional officers and sentencing judges recognize each other's 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 in offenders. 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 devices. 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 ingredient in the integration of courts and corrections into a compatible system of criminal 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 uneasiness, 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 sentence should result in increased interaction between courts and corrections.

Correctional personnel must recognize that they are to some extent officers of the court. They are carrying out a court order and, like other court officers, are subject to the court's continuing supervision. Corrections has little to lose by this development and may gain a powerful new force for correctional reform.

Legal Rights, the Courts, and Corrections

The United States has a strong and abiding attachment to the rule of law, with a rich inheritance of a government of law rather than men. This high regard for the rule of law has been applied extensively in the criminal justice system up to the point of conviction. But beyond conviction, until recently, largely unsupervised and arbitrary discretion held sway. This was true of sentencing, for which criteria were absent and from which appeals were both rare and difficult. It was true of the discretion exercised by the institutional administrator concerning prison conditions and disciplinary sanctions. It applied to the exercise by the parole board of discretion to release and revoke.

Within the last decade, however, the movement to bring the law, judges, and lawyers into relationships with the correctional system has grown apace. The Commission welcomes this development, and many of the standards and goals prescribed in this report rely heavily on increasing substantive and procedural due process in the authoritative exercise of correctional discretion. Since this is a contentious issue, introductory comments may be appropriate.

The American Law Institute took legal initiative in the criminal justice field in drafting the Model Penal Code, which has stimulated widespread recodifications of substantive criminal law at the Federal and State levels. An important subsequent step 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, historically and repeatedly wracked by riot and rebellion, the most dramatic impact has been made by the courts' abandonment of their hands-off doctrine in relation to the exercise of discretion by correctional administrators and parole boards.

It was inevitable 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 ask 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 infliction of needless suffering and achieve standards of decency and efficiency of which the community need not be ashamed and by which it will be better protected. Stimulated by the initiative of Chief Justice Burger, the American Bar Association has embarked on an ambitious series of programs to involve lawyers in correctional processes, both in institutions and in the community.

Federal and State legislatures have concerned themselves increasingly with correctional codes and other correctional legislation. The National Council on Crime and Delinquency in 1972 drafted its Model Act for the Protection of Rights of Prisoners. But more important than all these, lawyers and prisoners are bringing—and courts are hearing and determining—constitutional and civil rights actions alleging unequal protection of the law, imposition of cruel and unusual punishments, and abuse of administrative discretion.

A series of cases has begun to hold correctional administrators accountable for their decisionmaking, especially where such decisions affect first amendment rights (religion, speech, communication), the means of enforcing other rights (access to counsel or legal advice, access to legal materials), cruel and unusual punishments, denial of civil rights, and equal protection of the law. The emerging view, steadily gaining support since it was enunciated in 1944 in *Coffin* v. *Reichard*,[2] is that the convicted offender retains all rights that citizens in general have, except those that must be limited or forfeited in order to make it possible to administer a correctional institution or agency—and no generous sweep will be given to pleas of administrative inconvenience. The pace and range of such litigation recently has increased sharply. The hands-off doctrine that used to insulate the correctional administrator from juridical accountability is fast disappearing.

Correctional administrators have been slow to accept this role of the courts and many of the specific decisions. It is understandably difficult to give up years of unquestioned authority. Yet the courts, in intervening, required correctional administrators to reevaluate past policies and practices that had proved unsuccessful. Without the courts' intervention and the resulting public awareness of prison conditions, it is unlikely that the present public concern for the treatment of criminal offenders would have developed. Thus, the courts' intervention 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 judicial

[2] 143 F. 2d 443 (6th Cir. 1944). Cert. denied 325 U.S. 887 (1945).

training programs, and judicial administration finally is acknowledged as an important organizational problem. 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 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. Thus the two sets of alternatives before the judiciary 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 have 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. A period of uneven and abrupt change and uncertainty will inevitably result. Some court rulings will indeed make administration of correctional programs more difficult. To hold hearings before making decisions that seriously affect an offender is a time-consuming task. Allowing free correspondence and access to the press by offenders creates the risk of unjustified criticism and negative publicity. Eliminating inmate guards (trusties) requires the expenditure of additional funds for staff. Correctional administrators could ease the transition by adopting on their own initiative new comprehensive procedures and practices that reflect constitutional requirements and progressive correctional policy.

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 at cross-purposes. 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 both of the need for cooperation and of the existing interrelationships. The extent to which this misunderstanding can be minimized will determine in 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 response to crime. 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 benefits of its knowledge and experience to the other components of the system. Such issues as diversion, pretrial release and detention, jails, juvenile intake, and sentencing, traditionally have not been considered within the scope of correctional concern. But corrections can no longer afford to remain silent on issues that so vitally affect it. Thus this report on corrections addresses these and other issues that have previously been considered problems of other components of the criminal justice system. It could be said that they are addressed from a correctional perspective, but in a broader sense they are presented from a criminal justice system point of view.

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, impedes development of expeditious court processes, and divides responsibility for convicted offenders among a multiplicity of overlapping but barely intercommunicating agencies. The organizational structure of the criminal justice system was well-suited to the frontier society in which it was implanted. It has survived in a complex, mobile, urban society for which it is grossly unsuited. Accordingly, this report seriously addresses large-scale organizational and administrative restructuring of corrections.

One set of solutions is to accept the present balkanization of corrections, recognizing its strong political support in systems of local patronage, and to prescribe defined standards, buttressed by statewide inspection systems to attain those standards. Local jails provide a good example. At the very least, if they are to be retained for the unconvicted, they must be subject to State-controlled inspection processes, to insure the attainment of minimum standards of decency and efficiency. A further control and support that might be added is State subsidy to facilitate attainment of defined standards and goals by the local jails, the carrot of subsidy being added to the stick of threatened condemnation and closure. However, these measures are but compromises.

The contrasting mode of organizational restructuring of corrections is an integrated State correctional system. There is much 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; career lines for promising staff are expanded, to say nothing of interdepartmental inservice training possibilities. Above all, such a structure matches the developing realities of correctional processes.

An increasing interdependence between institutional and community-based programs arises as their processes increasingly overlap; as furlough and work-release programs are expanded; as institutional release procedures grow more sophisticated and graduated; and as more intensive supervisory arrangements are added to probation and parole supervision. Institutional placement, probation, and parole or aftercare grow closer together and structurally intertwine. This is true for both adult and juvenile offenders.

Development of further alternatives to the traditional institution, and diversion of offenders from it, will increase this pressure toward an integrated statewide correctional system, regionalized to match the demography and distribution of offenders in the State. Administrative regionalization of such structurally integrated statewide correctional systems may be necessary in the more populous or larger States to link each regional system with the needs, opportunities, and social milieu of the particular offender group. Regionalization greatly facilitates maintaining closer ties between the offender and his family (as by visits, furloughs, and work release) than is possible otherwise.

In sum, the task of achieving an effective functional balance between State and local correctional authorities is complex and uncertain, yet it offers opportunity. It will require political statesmanship that transcends partisan, parochial, and patronage interests. But whatever the interagency relationships may be, the enunciation of precisely defined standards and goals for those agencies will aid in attainment of effective and humane correctional processes.

Overuse of Corrections

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. Criminal law overreaches itself in a host of "victimless" crimes; that is, crimes without an effective complainant other than the authorities. This application of the law is a major obstacle to development of a rational and effective correctional system.

When criminal law invades the sphere of private morality and social welfare, it often proves ineffective and criminogenic. What is worse, the law then diverts corrections from its clear, socially protective function. The result is unwise legislation that extends the law's reach beyond its competence. Manifestations are seen in relation to gambling, the use of drugs, public drunkenness, vagrancy, disorderly conduct, and the noncriminal aspects of troublesome juvenile behavior. This overreach of criminal law has made hypocrites of us all and has confused the mission of corrections. It has overloaded the entire criminal justice system with inappropriate cases and saddled corrections with tasks it is unsuited to perform.

The unmaking of law is more difficult than the making; to express moral outrage at objectionable conduct and to urge legislative proscription is politically popular. On the other hand, to urge the repeal of sanctions against any 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 convicted 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 diverse community-based supervisory programs called probation and parole is needed. Most States still lack probation and parole programs that are more than gestures toward effective supervision and assistance for convicted offenders. Standards and goals for correctional reform depend largely on the swift, substantial improvement of probation and parole practices.

Overemphasis on Custody

The pervasive overemphasis on custody that remains in corrections creates more problems than it solves. Our institutions are so large that their operational needs take precedence over the needs of the people they hold. The very scale of these institutions dehumanizes, denies privacy, encourages violence, and defies decent control. A moratorium should be placed on the construction of any large correctional institution. We already have too many prisons. If there is any need at all for more institutions, it is for small, community-related facilities in or near the communities they serve.

There is also urgent need for reducing the population of jails and juvenile detention facilities. By using group homes, foster care arrangements, day residence facilities, and similar community-based resources, it should be possible to eliminate entirely the need for institutions to hold young persons prior to court disposition of their cases. Likewise, by other methods discussed in this report, it will be practicable to greatly reduce the use of jails for the adult accused. By placing limitations on detention time and by freely allowing community resources, agencies, and individuals to percolate the walls of the jail, it will be possible to minimize the social isolation of those who must be jailed.

Nevertheless, it must be recognized that at our present level of knowledge (certainly of adult offenders) we lack the ability to empty prisons and jails entirely. There are confirmed and dangerous offenders who require protracted confinement because we lack alternative and more effective methods of controlling or modifying their behavior. At least for the period of incarceration, they are capable of no injury to the community.

Even so, far too many offenders are classified as dangerous. We have not developed a means of dealing with them except in the closed institution. Too often we have perceived them as the stereotype of "prisoner" and applied to all offenders the institutional conditions essential only for relatively few. Hence, this report stresses the need for development of a broader range of alternatives to the institution, and for the input of greater resources of manpower, money, and materials to that end.

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—such as furloughs and work release—to community-based programs.

Large institutions for adult and juvenile offenders have become places of endemic violence. 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 ferocious in the racially skewed prisons and jails.

Increasing political activism complicates inmate-staff relations. Knives and other weapons proliferate and are used. Diversion of the less violent and more stable from institutions will leave in the prisons and jails a larger proportion of hardened, dangerous, and explosive prisoners. 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 programs must not be neglected. Such attention is essential if the institution is to serve as the beginning place for reintegration and not as the end of the line for the offender.

The principle of community-based corrections also extends to prisons and jails. We must make those institutions smaller, for only then can they cease to hold the anonymous. We must make them more open and responsive to community influences, for only thus can we make it possible for prisoners 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 lack the resources to bring them to trial and corrections lacks the resources to deal with them efficiently and fairly. Happily, the Federal Government, followed by many States, already is providing important leadership here.

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 control 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 community-based corrections 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 halfway houses for those offenders who are not a serious criminal threat but still require some residential control. But repeated experience has shown that a proposal to establish such a facility in the neighborhood is likely to rouse profound opposition. The criminal offender, adult or juvenile, is accorded a low level of community tolerance when he no longer is an abstract idea but a real person. Planning must be done, and goals and standards drafted, in recognition of this fact.

Responsible community relations must be built into all correctional plans. The antidote to intolerance of convicted offenders is the active involvement of wide segments of the community in support of correctional processes. 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 influences 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 (for 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 general public—by high walls and locked doors. 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 energies must be called upon. 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 the employment of ex-offenders will be lowered. Probation and parole caseloads could be reduced if paraprofessionals and volunteers, including ex-offenders, assist. And the "nine-to-five on 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 lefthanders 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 decisionmaking 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 ofte . 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 compass 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 fellows 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 enactment of legal standards that are sound and fair.[1]

In 1967, the President's Commission on Law Enforcement and Administration of Justice emphasized the importance of administrative action.

> Correctional administrators should develop guidelines defining prisoners' rights with respect to such issues as access to legal materials, correspondence, visitors, religious practice, medical care, and disciplinary sanctions. Many correctional systems have taken important steps in this direction, but there is a long way to go.
>
> Such actions on the part of correctional administrators will enable the courts to act in a reviewing rather than a directly supervisory capacity. Where administrative procedures are adequate, courts are not likely to intervene in the merits of correctional decisions. And where well thought-out policies regarding prisoners' procedural and substantive rights 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 for the judiciary to implement as a matter of constitutional law what the corrections profession had long accepted in theory as appropriate correctional practice.

EVOLVING JUDICIAL REGARD FOR OFFENDERS' RIGHTS

Until recently, an offender as a matter of law was deemed to have forfeited virtually all rights upon conviction and to have retained only 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 offender in the name of "correction," or in some instances "punishment," short of extreme physical abuse. He was protected only by the restraint and responsibility of correctional administrators 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 appropriate evaluations. And, to the extent that courts believed the offenders' complaints involved privileges rather than rights, there was no special necessity to confront correctional practices, even when they infringed on basic notions of human rights and dignity protected for other groups by constitutional doctrine.

This legal view of corrections was possible only because society at large did not care about corrections. Few wanted to associate with offenders or even to know about them. The new public consciousness (and the accompanying legal scrutiny) 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 welfare, mental institutions, juvenile court systems, and military justice. It was reinforced 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 reexamination of the legal rights of offenders.

Applying criminal sanctions is the most dramatic exercise of the power of the state over individual liberties. Although necessary for maintaining social order, administering sanctions does not require general suspension of the freedom to exercise basic rights. Since criminal sanctions impinge on the most basic right—liberty—it is imperative that other restrictions be used sparingly, fairly, and only for some socially useful purpose.

Eventually the questionable effectiveness of correctional systems as rehabilitative instruments, combined with harsh and cruel conditions in institutions, could no longer be ignored by courts. They began to redefine the legal framework of corrections and place restrictions on previously unfettered discretion of correctional administrators. Strangely, correctional administrators, charged with rehabilitating and caring for offenders, persistently fought the recognition of offenders' rights throughout the judicial process. This stance, combined with the general inability of correctional administrators to demonstrate that correctional programs correct, shook 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 program. More dramatic is the increased willingness of the courts to respond. Reflective of the new judicial attitude toward sentenced offenders is the fact that in the 1971–72 term, the U.S. Supreme Court decided eight cases directly affecting convicted offenders and at least two others which have implications for correctional practices. In all eight cases directly involving corrections, the offender's contention prevailed, five of them by unanimous vote of the Court.

The Court unanimously ruled that formal procedures were required in order to revoke a person's parole,[3] that the United States Parole Board must follow its own rules in revoking parole,[4] that institutionalized offenders are entitled to access to legal materials,[5] and that offenders committed under special provisions relating to defective delinquents [6] or sexually related offenses [7] are entitled to formal procedures if their sentences are to be extended. With one dissent, the Court also ruled that prison officials are required to provide reasonable opportunities to all prisoners for religious worship,[8] and that prisoners need not exhaust all possible State remedies before pursuing Federal causes of action challenging the conditions of their confinement.[9] The Court also held that a sentencing judge could not use unconstitutionally obtained convictions as the basis for sentencing an offender.[10]

Two additional cases have potential ramifications for the rights of offenders. In *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972), the Court held that the State must provide counsel in criminal trials for indigent defendants regardless of the seriousness of the offense charged where a person's liberty is at stake. Throughout the correctional process various officials may make decisions which increase the time spent in confinement. This effect on the offender's liberty may require appointment of counsel and other procedural formalities.

In *Jackson* v. *Indiana*, 406 U.S. 715 (1972), the Court held that indefinite commitment of a person who is not mentally competent to stand trial for a criminal offense violates due process of law. The Court noted that the State had the right to confine such an individual for a reasonable time to determine if he could be restored to competency by treatment but, if he could not, he must be released. In the course of his opinion, agreed to by the six other justices hearing the case, Justice Blackmun commented: "At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." The effect of such a rule if applied to correctional confinement is yet to be determined.

These cases demonstrate the distance the law has come from the older view that courts ought not intervene in correctional activities. However, the real ferment for judicial intervention has come in the lower courts, particularly in the Federal district courts. Broadening interpretations of the Federal civil rights acts, the writ of habeas corpus, and other doctrines providing for Federal court jurisdiction have facilitated the application of constitutional principles to corrections. And it is in these courts that the "hands off" doctrine has been either modified or abandoned altogether.

Contemporaneously with the increased willingness of the courts to consider offenders' complaints came a new attitude toward offenders' rights. As first enunciated in *Coffin* v. *Reichard,* 143 F.2d 443 (6th Cir. 1944), courts are more readily accepting the premise that "[a] prisoner retains all the rights of an ordinary citizen except those expressly or by necessary implication taken from him by law." To implement such a rule, courts have found that where necessity is claimed as justification for limiting some right, the burden of proof (of the necessity) should be borne by the correctional authority. Administrative convenience is no longer to be accepted as sufficient justification for deprivation of rights. Additionally, correctional administrators are subjected to due process standards which require that agencies and programs be administered with clearly enunciated policies and established, fair procedures for the resolution of grievances.

A concomitant doctrine now emerging is that of the "least restrictive alternative" or "least drastic means." This tenet simply holds that, once the corrections administrator has demonstrated that some restriction on an offender's rights is necessary, he must select the least restrictive alternative to satisfy the state's interests.

This change of perspective has worked major changes in the law governing correctional control over sentenced offenders. By agreeing to hear offenders' complaints, the courts were forced to evaluate correctional practices against three fundamental constitutional commands: (1) State action may not deprive citizens of life, liberty, or property without due process of law; (2) State action may not deprive citizens of their right to equal protection of the law; and (3) the State may not inflict cruel and unusual punishment. Courts have found traditional correctional practices in violation of all three commands. The standards in this chapter examine the various issues which have been—or in the future no doubt will be—the subject of litigation.

---

[1] American Correctional Association, *Manual of Correctional Standards* (Washington: ACC, 1966), pp. 266, 279.
[2] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections* (Washington: Government Printing Office, 1967), p. 85.
[3] *Morrissey* v. *Brewer*, 408 U.S. 471 (1972).
[4] *Arciniega* v. *Freeman*, 404 U.S. 4 (1971).
[5] *Younger* v. *Gilmore*, 404 U.S. 15 (1971) affirming *Gilmore* v. *Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970).
[6] *McNeil* v. *Director, Patuxent Institution*, 407 U.S. 245 (1971).
[7] *Wilwording* v. *Swenson*, 404 U.S. 249 (1971).
[8] *Cruz* v. *Beto*, 405 U.S. 319 (1972).
[9] *Humphrey* v. *Cady*, 405 U.S. 504 (1972).
[10] *U.S.* v. *Tucker*, 404 U.S. 443 (1972).

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 at work. 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 continue 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 turn filthy and degrading institutions into clean but unproductive institutions. Courts, however, have 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 an offender is given a particular sentence and should exercise control to insure that the treatment of the offender is consistent with that purpose. A sentence for purposes of rehabilitation is hardly advanced by practices which degrade and humiliate 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 sanctions available to courts in enforcing their decrees are limited. While some courts have been forced to appoint masters to oversee the operation of a prison, full implementation of constitutional and correctional practices which aid rather than degrade offenders requires the commitment of funds and public support. Courts alone cannot implement offenders' rights.

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 personal rights prior to release. Thus the judicial philosophy which provides that offenders retain all rights of free citizens unless there are compelling reasons for restrictions is compatible with and supportive of the correctional philosophy of the reintegration of offenders into the community. And therefore correctional administrators have a professional interest in completing the implementation of the rights of the offender that is begun by the judiciary.

Additionally, 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 officers. Maurice Sigler noted in his address as retiring president of the American Correctional Association in 1972:

> In committing offenders to us, the courts have assigned us the responsibility for their care and welfare. All of us have acknowledged that responsibility. It is inconsistent and ill-advised for us to fight every case that comes along involving the rights of our clients. After all, who is supposed to be most concerned about their welfare?

The corrections profession has a critical role to play in implementing the rights of offenders. No statutory mandate or judicial declaration of rights can be effectively realized and broadly obtained without the understanding, cooperation, and commitment of correctional personnel. Corrections will have to adopt new procedures and approaches in such areas as discipline, inmate grievances, censorship, and access to legal assistance. Traditions, schedules, and administrative techniques will have to be reevaluated and in many instances modified or abandoned. Line personnel will have to be trained to understand the substance of offenders' rights and the reasons for enforcing them.

Corrections, at the same time, is provided with an opportunity for meaningful progress. Most prisons are degrading, not because corrections wants them to be but because resources for improvement have not been available. Judicial decrees requiring change should make available additional resources. In the last analysis, the Constitution may require either an acceptable correctional system or none at all.

Legislatures

Full implementation of offenders' rights will require participation by the legislature. The inefficiencies and uncertainties of case-by-case litigation in the courts over definition of offenders' rights can be minimized if legislatures enact a comprehensive code which recognizes the new philosophy regarding offenders. Legislatures have generally been slow in modernizing correctional legislation, but pressure from the courts should stimulate badly needed reform.

Legislatures may well discover that in the short run a constitutionally permissible system of corrections is more costly than the traditional model. Legislatures can insure that only the minimal dictates of judicial decrees are met, or they can utilize the opportunity provided to commit the resources necessary to provide an effective correctional system.

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, robbers, and muggers. To them the philosophy of "eye for eye" seems correctionally sound. This attitude may account for public tolerance of deplorable conditions in correctional facilities and the rigid disabilities imposed upon released offenders. But even a philosophy of retribution does not require blanket suspension of constitutional rights.

On the other hand, many people believe minor criminal incidents should be dealt with compassionately, especially where youthful offenders are involved. They realize that most offenders are involved in crimes against property rather than against persons and thus present a smaller risk to community safety than those perceived as being violent.

To the extent that the community continues to discriminate on the basis of prior criminality, efforts toward reintegration will be frustrated. There must be recognition that society does not benefit in the long run from attempts to banish, ignore, or degrade offenders. In part such a response is a self-fulfilling prophecy: if an offender is considered a social outcast, he will act like one. Removing legal obstacles is of little benefit if individual employers will not hire ex-offenders. Statutory provisions for community-based programs are for naught if no one wants a halfway house in his neighborhood. Efforts to improve the offender's ability to relate to others mean little if family and friends do not wish to associate with him.

Affirmative and organized efforts must be made by community leaders, corrections officials, legislators, and judges to influence public opinion. Acceptance can be fostered by improving the public's understanding of offenders' problems and of correctional processes. This chapter's standards on visiting and media access aim at improving such understanding as well as removing limitations on 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.

In the final analysis, the offender's social status may be the most important determinant of reintegration. Any person will respond with outrage, hostility, and nonconformity to a community that continually rejects, labels, and otherwise treats him as an outlaw.

STANDARDS FOR OFFENDERS' RIGHTS—AN EXPLANATION

The standards in this chapter are expressed in terms of the legal norm needed to protect the substantive rights under discussion. This norm may be implemented by statute, judicial decision, or administrative regulation. Case law and precedent are relied on heavily. Where they are lacking, the intent is to set standards that should withstand judicial review. The emphasis is on a framework to define the rights of offenders subject to correctional control, consistent with concepts of fundamental legal rights, sound correctional practice, and humane treatment of offenders.

The standards presented are meant to cover adults, juveniles, males, females, probation, parole, institutions, pretrial and posttrial detention, and all community programs. Unless specifically qualified, general statements of rights cover all offenders in these categories.

An attempt has been made to achieve maximum breadth and universality in defining standards. Nevertheless, distinctions between adult and juvenile offenders, between pretrial and postconviction prisoners, and between offenders in institutions and those under community supervision have been necessary in several cases. In some instances the differences stem from the nature of correctional contact. For example, it is unnecessary to define rights concerning institutional safety or censorship of offenders living in the community. In other cases distinctions are based on the type of offender, such as special protection to keep juveniles separate from adults or limitations on controls for pre-

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.

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 engaging 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 implementation. The standard is framed to address major problems of implementation other 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 nonexistent, 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 witnesses and preserving evidence. The practice is a considerable burden to the effective provision of civil legal services to prisoners. Similarly, the prevailing situation 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 remedying 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.)
2. American Bar Association. *Standards Relating to Post-Conviction Remedies.* New York: Office of the Criminal Justice Project, 1968.
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.)
4. Cohen, Fred. *The Legal Challenge to Corrections.* Washington: Joint Commission on Correctional Manpower and Training, 1969, pp. 67–69.
5. *Dowd v. U.S. ex rel. Cook,* 340 U.S. 206 (1951) (Prison regulations may not keep inmate from filing timely appeal.)
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.")
7. Goldfarb, Ronald, and Singer, Linda. "Redressing Prisoners' Grievances," *George Washington Law Review,* 39 (1970), 231–234.
8. National Council on Crime and Delinquency. *Model Act for the Protection of Rights of Prisoners.* New York: NCCD, 1972, Sec. 6.
9. Note, *Washington University Law Quarterly,* 417 (1966).
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.)

Related Standards

The following standards may be applicable in implementing Standard 2.1.

2.2 Access to Legal Services.
2.3 Access to Legal Materials.
5.9 Continuing Jurisdiction of Sentencing Court.
16.2 Administrative Justice.
16.3 Code of Offenders' Rights.

Standard 2.2

Access to Legal Services

Each correctional agency should immediately develop and implement policies and procedures to fulfill 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 assist offenders affirmatively 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 3, 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 petitions.

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 foregoing 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 prohibited 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 presence of counsel assures that the complicated 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 opinion 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 stated this expansion would provide a safety valve 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 experience contributing to rehabilitation.

Representation of offenders in postconviction status always has lagged considerably behind that of the criminally accused. 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 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 accepted, 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 correctional staff, "jailhouse lawyers," or other paraprofessionals) even in matters requiring formal attorney representation. In this regard, a recent judicial observation in a California case dealing 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 alone require an undertaking of heroic proportions. But that is only the beginning. For if there is a right to counsel at parole revocation or suspension proceedings, no reason in law or logic can be advanced why a prisoner, appearing before the Adult Authority as an applicant for parole and seeking to have his indeterminate sentence made determinate, should not also have legal representation. The conclusion is inescapable that my dissenting brethren are in effect insisting upon counsel for a potential of 32,000 appearances annually: 28,000 parole applicants and 4,000 parole revokees. This monumental requirement would stagger the imagination.

This standard rejects that view. If the criminal justice system must provide legal counsel in every instance where a man's liberty may be jeopardized, a clear reading of *Argersinger* v. *Hamlin,* 407 U.S. 25 (1972), would indicate that its duty should not end there. The system must and can find ways to meet the cost involved. In other situations where liberty 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 censor 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

1. American Bar Association. *Standards Relating to Probation.* New York: Office of the Criminal Justice Project, 1968, Sec. 5.4.
2. American Bar Association. *Standards Relating to Providing Defense Services.* New York: Office of the Criminal Justice Project, 1968, Sec. 412 on "Collateral Proceedings" and Appendix B on "Standards for Defender Systems."
3. *Argersinger* v. *Hamlin,* 407 U.S. 25 (1972).
4. Boston University Center for Criminal Justice. "Perspectives on Prison Legal Services." Unpublished paper, 1971.
5. Comment, "The Emerging Right to Counsel at Parole Revocation Hearings," *Houston Law Review,* 9 (1971), 290.
6. Jacob, Bruce R., and Sharma, K. M. "Justice after Trial: Prisoner's Need For Legal Services in the Criminal Correctional Process," *University of Kansas Law Review,* 18 (1970), 505.
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.")
8. *Mempa* v. *Rhay,* 389 U.S. 128 (1967) (Right to counsel affirmed in deferred sentencing/probation revocation proceedings conducted by State courts.)
9. Note, *Duke Law Journal* (1968), 343.
10. Note, *Stanford Law Review,* 19 (1967), 887.
11. Note, *Wisconsin Law Review* (1967), 514.

Related Standards

The following standards may be applicable in implementing Standard 2.2.

2.1 Access to Courts.
2.3 Access to Legal Materials.
5.9 Continuing Jurisdiction of Sentencing Court.
6.2 Classification for Inmate Management.
12.3 The Parole Grant Hearing.
12.4 Revocation Hearings.
16.2 Administrative Justice.
16.3 Code of Offenders' Rights.

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 works 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 include all of the prisons now in operation and one-eighth (500) of the county and municipal jails. 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:

1. The California Penal Code.

2. The California Welfare and Institutions Code.
3. The California Health and Safety Code.
4. The California Vehicle Code.
5. The United States and California Constitutions.
6. A recognized law dictionary.
7. Witkin's California Criminal Procedures.
8. Subscription to California Weekly Digest.
9. California Rules of Court.
10. Rules of United States Court of Appeals (Ninth Circuit).
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 official 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 cost factors.

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

1. American Correctional Association. *Guidelines for Legal Reference Service in Correctional Institutions: A Tool for Correctional Administrators.* Washington: ACA, 1972.
2. American Correctional Association. *Manual of Correctional Standards.* 3d ed. Washington: ACA, 1966.
3. Goldberg, Nancy E. *"Younger* v. *Gilmore:* The Constitutional Implications of Prison Libraries," *Clearinghouse Review,* 5 (1972) 645.
4. National Sheriffs' Association. *Manual on Jail Administration.* Washington: NSA, 1970.
5. Special Committee on Law Library Services to Prisoners, American Association of Law Libraries. *Recommended Minimum Collection for Prison Law Libraries.* Chicago: AALL, 1972.
6. *Younger* v. *Gilmore,* 404 U.S., 15 (1971), affirming *Gilmore* v. *Lynch,* 319 F. Supp. 105 (N.D. Cal. 1970).

Related Standards

The following standards may be applicable in implementing Standard 2.3.

2.1 Access to Courts.
2.2 Access to Legal Services.
5.9 Continuing Jurisdiction of Sentencing Court.
16.3 Code of Offenders' Rights.

Standard 2.4

Protection Against Personal Abuse

Each correctional agency should establish immediately 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 cell 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 statutes and regulations of most 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 administrators and, when appropriate, continuing 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 classify solitary confinement as "cruel and unusual punishment," except when conjoined with other inhumane conditions, although several decisions have viewed extended periods of isolation with disapproval and some court orders have fixed maximum periods for such punishment. The standard recognizes, in setting its relatively modest maximum, that most cases 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 those upon whom it is imposed.

Two further prohibitions would assure offenders against deprivation of the basic amenities of humane 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 procedures to detect staff members 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 institutions (converting to single rooms or cells) and changes in staff scheduling (extra night duty staff). A precise 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. In any event, a person convicted of crime 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 is responsible 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 appropriate 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 many cases the tort law 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

1. American Correctional Association. *Manual of Correctional Standards*. 3rd ed. Washington: ACA, 1966. Chapter 24.
2. Annotation, "Liability of Prison Authorities for Injury to Prisoners Directly Caused by Assault by Other Prisoners," 41 ALR 3rd 1021 (1972).
3. Davis, John. "Sexual Assaults in the Philadelphia Prison System and Sheriff's Vans," *Trans-Action*, 6 (1968), p. 8.
4. Comment, "Prisoners' Rights: Personal Security," *University of Colorado Law Review*, 42 (1970), 305.
5. Goldfarb, Ronald, and Singer, Linda. "Redressing Prisoners' Grievances," *George Washington Law Review*, 39 (1970), 186–208.
6. Hirschkop, Philip J., and Milleman, Michael A. "The Unconstitutionality of Prison Life," *Virginia Law Review*, 55 (1969), 795.
7. *Holt* v. *Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), aff'd., 442 F. 2d 304 (8th Cir. 1971) (Totality of poor personal safety, physical, and rehabilitative conditions deemed 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.)
9. *Jackson* v. *Hendrick*, 40 Law Week 2710 (Ct. Common Pleas, Pa. 1972.) (Total living, health, overcrowding, and program deficiencies render Philadelphia's entire 3-facility penal system cruel, inhumane, and unconstitutional.)
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 clean deemed cruel and unusual punishment.)
11. National Council on Crime and Delinquency. *Model Act for the Protection of Rights of Prisoners*. New York: NCCD, 1972. Secs. 2 and 3.
12. *Ratliff* v. *Stanley*, 224 Ky. 819, 7 S. W. 2d 230 (1928).
13. *Riggs* v. *German*, 81 Wash. 128, 142 P. 479 (1914).
14. Singer, Richard G. "Bringing the Constitution to Prison: Substantive Due Process and the Eighth Amendment," *University of Cincinnati Law Review*, 39 (1970), 650.
15. *Tolbert* v. *Bragan*, 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. *Weems* 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. *McMann*, 387 F. 2d 519 (2d Cir. 1967) (1 month confinement in strip cell under conditions similar to Fitzharris case held cruel and unusual if proved.) See also *Wright* v. *McMann*, 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.
14.11 Staff Development.
16.3 Code of Offenders' Rights.

Standard 2.5

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 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. Courts 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

1. American Correctional Association. *Manual of Correctional Standards.* 3d ed. Washington: ACA, 1966. Principle XVI and chs. 26, 32.
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.)
3. Mattick, Hans. "The Contemporary Jails of the United States: An Unknown and Neglected Area of Justice" in Daniel Glaser, ed., *Handbook of Corrections* (Rand McNally, forthcoming), draft page 63.
4. National Council on Crime and Delinquency. *A Model Act for the Protection of Rights of Prisoners.* New York: NCCD, 1972. Sec. 1.
5. National Sheriffs' Association. *Manual on Jail Administration.* Washington: NSA, 1970. Ch. XX.
6. *Sinclair* v. *Henderson,* 331 F. Supp. 1123 (E.D. La. 1971) (Federal Court condemns lack of outdoor exercise for death-row prisoners in extended confinement as "cruel and inhuman" punishment.)
7. United Nations Department of Economic and Social Affairs. *Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations.* New York: United Nations, 1958. "Accommodation."

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. This 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.

Medical problems requiring special diagnosis, services, or equipment should be met by medical furloughs 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 committed to it. 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 unsupervised prisoners 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 more affluent persons. 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 it so restricts.

A clear affirmative responsibility is imposed on the correctional authority. It extends beyond treatment of injuries and disease 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 relatively brief delays in securing medical care can have and often do have fatal consequences.

The specific provisions of the 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 consultations 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 prepayment for all services provided over 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. Infirmaries 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.

Offenders should not be discriminated against in governmental health programs. Legislation providing for government assistance should be applicable to those convicted of crime.

References

1. Alexander, Susan. "The Captive Patient: The Treatment of Health Problems in American Prisons," *Clearinghouse Review,* 6 (1972), 16. (Contains citations to numerous judicial opinions upholding offenders' rights to medical care.)
2. American Correctional Association. *Manual of Correctional Standards.* 3d ed. Washington: ACA, 1966. Ch. 26.
3. *McCollum* v. *Mayfield,* 130 F. Supp. 112 (N.D. Cal. 1955) (Refusal of prison authorities to provide inmate with needed medical care actionable under Federal Civil Rights Act.)
4. National Sheriffs' Association. *Manual on Jail Administration.* Washington: NSA, 1970. Ch. XX.
5. *Newman* v. *State,* 12 Crim. L. Rptr. 2113 (M.D. Ala. 1972).
6. Sneidman, Barney. "Prisoners and Medical Treatment: Their Rights and Remedies," *Colorado Bulletin,* 4 (1968), 450.
7. South Carolina Department of Corrections. *The Emerging Rights of the Confined.* Columbia: 1972. Ch. 16.
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.
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 2.7

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 supervised 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 for approval a plan for making regular administrative searches of facilities and persons confined in correctional institutions.

a. The plan should provide for:

(1) Avoiding undue or unnecessary force, embarrassment, or indignity to the individual.

(2) Using non-intensive sensors and other technological advances instead of body searches wherever feasible.

(3) Conducting searches no more frequently than reasonably necessary to control contraband in the institution or to recover missing or stolen property.

(4) Respecting an inmate's rights in property owned or under his control, as such property is authorized by institutional regulations.

(5) Publication of the plan.

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 officers authorized to order and conduct such a search 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 search).
- When a person is an inmate and the proposed search relates to a particular crime, incident, or item 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 these 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 paroling 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 corrections 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 *Camara* v. *Municipal Court of the City and County of San Francisco,* 387 U.S. 523 (1967), 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 *Camara* 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 Commission's recommendations 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 search 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

1. *Camara* v. *Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967).
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.)
3. National Sheriffs' Association. *Manual on Jail Administration*. Washington: NSA, 1970. Ch. XV.
4. *See* v. *City of Seattle*, 387 U.S. 541 (1967).
5. Singer, Richard G. "Privacy, Autonomy, and Dignity in the Prison: A Preliminary Inquiry Concerning Constitutional Aspects of the Degradation Process in Our Prisons," *Buffalo Law Review*, 21 (1972), 669.
6. *U.S. ex rel. Sperling* v. *Fitzpatrick*, 426 F. 2d 1161 (2nd Cir. 1970).

Related Standards

The following standards may be applicable in implementing Standard 2.7.

2.1 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 assuring 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 result.

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 "politicized" 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

1. Goldfarb, Ronald, and Singer, Linda. "Redressing Prisoners' Grievances," *George Washington Law Review*, 39 (1970), 223–226.
2. Higgenbotham, Leon. "Is Yesterday's Racism Relevant to Today's Corrections?" in *Outside Looking In*. Washington: Law Enforcement Assistance Administration, 1970.
3. *McClelland* v. *Sigler*, 456 F. 2d 1266 (8th Cir. 1972) (Potential hostility of some white inmates not adequate ground for racial segregation of State facility.)
4. National Council on Crime and Delinquency. *A Model Act for the Protection of Prisoners' Rights*. New York: NCCD, 1972, Sec. 2.

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 rehabilitation 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 nor should the failure or refusal to participate be used to penalize an inmate in any way in the institution.

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 rehabilitation rather than a punishment goal ("Declaration of Principles of the American Prison Association," Cincinnati, Ohio—1870) and an expression of rehabilitative intent in most State correctional codes and virtually all juvenile court and corrections statutes. Perhaps the lack of an affirmative, legally enforceable responsibility to provide services accounts for the extreme inadequacy of rehabilitative resources that has plagued American corrections for decades. The resources found wanting include educational, vocational, psychiatric, and casework services.

Explicit judicial validation of a right to treatment has been limited to the criminally insane or mentally defective offender and, on a much narrower basis, to juvenile or youthful offenders. Even here, the concept has been established in only a few cases. It has involved few jurisdictions and has in some cases turned on interpretation of a statutory mandate rather than a constitutional right. Although the chief legal bulwark for an affirmative right to rehabilitative services will remain statutory, a substantial due process argument is increasingly being recognized. As Justice Blackmun noted in the Supreme Court opinion in *Jackson* v. *Indiana,* 406 U.S. 715 (1972): "At the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed."

Initial suggestions of an affirmative right to rehabilitative services for criminal offenders seem to have stemmed from an emerging, judicially confirmed "right to treatment" in civil commitment of the mentally ill. The first crossover probably was a District of Columbia case concerning a statute requiring mandatory hospital treatment of defendants acquitted by reason of insanity. A Federal court, *Rouse* v. *Cameron,* 373 F. 2d 451 (D.C. Cir. 1966), found that the statute created for the defendant an enforceable right to treatment while institutionalized. This ruling was followed by a Massachusetts decision, *Nason* v. *Superintendent of Bridgewater State Hospital,* 353 Mass. 604 (S. Ct. 1968), ordering a more adequate treatment program for an offender incompetent to stand trial who was receiving only custodial care.

Applicability to the juvenile justice system was suggested by two more District of Columbia cases: *Creek* v. *Stone,* 379 F. 2d 106 (1967) and *In re Elmore,* 382 F. 2d 125 (1967). One involved a juvenile in prehearing detention, the other an adjudicated offender in a juvenile institution. A right to treatment, or release if treatment could not be supplied, was enunciated here. Reliance was placed on the standard injunction in juvenile court acts that children removed from home shall receive care, custody, and discipline equivalent to that which should have been supplied by parents. As in the other right-to-treatment cases, the deficiencies at issue related to psychiatric and mental health care rather than general rehabilitative programs. However, a recent District of Columbia case, *Matter of Savoy* (Docket #70–4804 D.C. Juvenile Ct. 1970), enforced a more generalized program of rehabilitative services against a statutory standard, including compulsory education and recreation.

In two recent decisions, the tendency toward carving a right to treatment from enabling legislation was continued. In one case, *McCray* v. *State,* 10 Crim. L. Rptr. 2132 (Montgomery Cty., Md. Cir. Ct. 1971), involving an institution for legally sane but mentally or emotionally deficient offenders, the court stated that the statute "implicitly connoted treatment and rehabilitation." It found that a total rehabilitative effort was missing and treatment should be accelerated notwithstanding budgetary limitations imposed by the State and even for recalcitrant and noncooperative prisoners.

In the other case, *U.S.* v. *Allsbrook,* 10 Crim. L. Rptr. 2185 (D.Ct. D.C. 1971), the danger to public safety and recidivism was stressed. The court found that failure to provide the full rehabilitative services contemplated by the Federal Youth 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 infringed on the court's constitutional sentencing authority and justified orders to the executive branch to provide adequate facilities as contemplated by the Act.

On the other hand, right to treatment claims in adult prisons concerning general rehabilitative programs have not as yet received recognition. 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. *Sarver,* 309 F. Supp. 362 (E.D. Ark. 1970), determining that conditions in the Arkansas prison system amounted to constitutionally prohibited "cruel and unusual punishment," the court refrained from ordering the implementation of rehabilitative plans and opportunities, although it did note that lack of proper rehabilitative programs was *a* factor in finding the prison unconstitutional.

The standard has been formulated in light of the limited but growing legal status of the right to treatment. The standard provides that offenders have the right to programs appropriate to the purpose for which they were sentenced. Where a court sentences a person for rehabilitation, rehabilitation programs should be available. Thus in the first instance the duty is placed on correctional agencies to respond to the sentencing order. If because of lack of resources or other reason the correctional agency cannot provide appropriate programs, it should then be required to report this fact to the sentencing court. Remedies for enforcing offenders' rights, provided in Standard 2.18, should then be utilized.

The standard recognizes that not every program can be available for every offender. The test to be applied should be whether the offender has access to some programs which are "appropriately related" to the purpose for which he was sentenced.

The right to rehabilitative services in the parole or probation context is defined. Because the offender is at liberty in the community, his situation is equated to that of citizens generally seeking access to social service or other community agencies. This, of course, does not ban special treatment programs for probationers or parolees but recognizes that it is equally valid to integrate them into general vocational, educational, and counseling programs in the community.

The standard requires that courts and sentencing judges be regularly advised of the true extent of rehabilitative services and programs available within their adult and juvenile correctional systems. This requirement is needed for sentencing officials to make proper choices among the sentencing alternatives available to them and to avoid mistaken ideas of what can be provided to sentenced offenders. This important corollary to the right to rehabilitative services has long been neglected in interaction between courts and correctional systems.

Endorsement of the right to treatment does not carry with it the right of correctional authorities to require or coerce offenders into participating in rehabilitative programs. Considerations of individual privacy, integrity, dignity, and personality suggest that coerced programs should not be permitted. In addition, a forced program of any nature is unlikely to produce constructive results. This principle, as applied to juveniles, must be qualified under the parens patriae concept, but nonetheless it would appear to have considerable validity here also.

References

1. Comment, "A Statutory Right to Treatment for Prisoners: Society's Right of Self-Defense," *Nebraska Law Review,* 50 (1971), 543.
2. Dawson, Robert. "Legal Norms and the Juvenile Correctional Process" in Cohen, Fred, *The Legal Challenge to Corrections.* Washington: Joint Commission on Correctional Manpower and Training, 1969.
3. Goldfarb, Ronald, and Singer, Linda. "Redressing Prisoners' Grievances," *George Washington Law Review,* 39 (1970), 208.
4. Note, *Southern California Law Review,* 45 (1972), 616.
5. Schwitzegebel, Ralph K. "Limitation on The Coercive Treatment of Offenders," *Criminal Law Bulletin,* 8 (1972), 267.

Related Standards

The following standards may be applicable in implementing Standard 2.9.

2.1 Access to Courts.
2.18 Remedies for Violation of an Offender's Rights.
5.9 Continuing Jurisdiction of Sentencing Court.
10.2 Services to Probationers.
12.6 Community Services for Parolees.
16.1 Comprehensive Correctional Legislation.

Standard 2.10

Retention and Restoration of Rights

Each State should enact legislation immediately to assure that no person is deprived of any license, permit, employment, office, post of trust or confidence, or political or judicial 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 restored 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 accused 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 unadjudicated.

Pretrial 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 education 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 concomitants set out herein—and others like them—events are set in train that seriously interfere 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 polls or enroll him for absentee voting. Also, a license may 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 releasees 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 lasting, more insidious, and more demeaning than that punishment he undergoes while incarcerated. The scar of the "offender" label can be 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 automatically would 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, where restoration is not automatic, 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. Even 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 substandard 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 that which present views make unacceptable.

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 lessening of status on the outside reinforces the debasement so common in the institutional setting and hardens the resentment offenders 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 bears 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

1. Advisory Commission on Intergovernmental Relations. *State-Local Relations in the Criminal Justice System.* Washington: Government Printing Office, 1971. Recommendation 36.
2. American Correctional Association. *Manual of Correctional Standards.* 3rd ed. Washington: ACA, 1966. Principle XXVII.
3. *Carter* v. *Gallagher,* 452 F. 2d 315 (8th Cir. 1971) (Fire Department enjoined from rejecting applicant for arrest information.)
4. *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971).
5. *Gregory* v. *Litton Systems, Inc.,* 316 F. Supp. 401 (C.D. Cal. 1970) (Finds Civil Rights Act, Title VII violation in employer denial of job to black applicant based on arrest record.)
6. Miller, Herbert S. "The Closed Door: The Effect of a Criminal Record on Employment with State and Local Public Agencies." Report prepared in 1972 for Manpower Administration, U.S. Dept. of Labor.
7. National Clearinghouse on Offender Employment Restrictions. *Removing Offender Employment Restrictions.* Washington: American Bar Association, 1972.
8. Note, *Cornell Law Review,* 55 (1970), 306.
9. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections.* Washington: Government Printing Office, 1967, ch. 8.
10. Special Project, *Collateral Consequences of a Criminal Conviction, Vanderbilt Law Review,* 29 (1970), 929.
11. U.S. Children's Bureau. *Standards for Juvenile and Family Courts.* Washington: Department of Health, Education and Welfare, 1966. Ch. VI.

Related Standards

The following standards may be applicable in implementing Standard 2.10.

2.1 Access to Courts.
9.9 Jail Release Program.
14.4 Employment of Ex-Offenders.
16.17 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 sanctions for misbehavior. Failure to be specific will result in legal challenge on grounds of vagueness.

Codes of offender conduct are notorious for their inclusiveness and ambiguity and as a source of dissatisfaction. Rules should not repeat the mistakes of existing criminal codes by attempting to include every sort of behavior that is considered morally reprehensible. "Feigning illness" and "being untidy," for example, are of dubious threat to institutional or public security, personal safety, or operational efficiency. Vague rules allow too much discretion

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 attitudinal 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 administrators should defer to prosecution wherever possible. And where prosecution is unsuccessful, justice requires that further administrative punitive measures be prohibited.

References

1. American Correctional Association. *Manual of Correctional Standards*. 3rd ed. Washington: ACA, 1966. P. 408.
2. *Cluchette* v. *Procunier*, 328 F. Supp. 767 (N.D. Cal. 1971).
3. *Landman* v. *Peyton*, 370 F. 2d 135 (4th Cir. 1966), cert. denied, 388 U.S. 920 (1967).
4. National Council on Crime and Delinquency. *A Model Act for the Protection of Rights of Prisoners*. New York: NCCD, 1972, Sec. 4.

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 commissary, 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 offender 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 head 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:

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 offender 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.

Rules 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 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 decencies, 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 safeguards against arbitrary disciplinary power difficult. The correctional administration has power to authorize or deny every aspect of living from food and clothing to access to 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 *Morrissey* v. *Brewer*, 408 U.S. 471 (1972) have established the hearing procedure as a basic due process requirement in significant administrative deprivations of life, liberty, or property. There has been considerably less clarity, especially in the correctional context, of what minimal requirements must attend such a hearing. Court decisions have varied in interpretation. At one end of the spectrum they have provided only adequate notice of charges, a reasonable investigation into relevant facts, and an opportunity for the prisoner to reply to charges. At the other they have upheld the right to written notice of charges, hearing before an impartial tribunal, reasonable time to prepare defense, right to confront and cross-examine witnesses, a decision based on evidence at the hearing, and assistance by lay counsel (staff or inmate) plus legal counsel where prosecutable crimes are involved.

Correctional systems on their own initiative have implemented detailed disciplinary procedures incorporating substantial portions of the recognized elements of administrative agency due process. The standard largely follows this trend, emanating from both courts and correctional systems, toward more formalized procedures with normal administrative due-process protections in the administration of correctional discipline.

Due process is a concept authorizing varying procedures in differing contexts of governmental action. It does not require in all cases the formal procedures associated with a criminal trial. On the other hand, due process does contain some fundamentals that should regulate all governmental action having a potentially harmful effect on an individual.

Basic to any system that respects fundamental fairness are three requirements: (1) that the individual understand what is expected of him so he may avoid the consequences of inappropriate behavior; (2) if he is charged with a violation, that he be informed of what he is accused; and (3) that he be given an opportunity to present evidence in contradiction or mitigation of the charge.

As the consequences to the individual increase, other procedural devices to assure the accuracy of information on which action will be based come into play. These include the right to confront the individual making the charge of violation with an opportunity to cross-examine him; the right to assistance in presenting one's case, including legal counsel; the right to a formal hearing before an impartial tribunal or officer; the right to have proceedings of the hearing recorded in writing; and the right to written findings of fact.

Prison discipline can range in degree from an oral reprimand to loss of good time or disciplinary segregation. Where the punishment to be imposed extends 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 offender but to the public. Since these procedures are designed only to assure a proper factual basis for governmental action, both the public and the offender have an interest in their implementation.

References

1. Council on the Diagnosis and Evaluation of Criminal Defendants. *Illinois Unified Code of Corrections: Tentative Final Draft*. St. Paul: West, 1971, section 335–9 and section 340–7.
2. Hirschkop, Philip J., and Milleman, Michael A. "The Unconstitutionality of Prison Life," *Virginia Law Review*, 55 (1969), 795.
3. *Landman* v. *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, padlock confinement over 10 days and loss of good time.)
4. McGee, Thomas A. "Minimum Standards for Disciplinary Decision Making." Unpublished paper prepared for the California Department of Corrections, Sacramento, 1972.
5. Milleman, Michael A. "Prison Disciplinary Hearings and Procedural Due Process—The Requirement of a Full Administrative Hearing," *Maryland Law Review*, 31 (1971), 27.
6. *Morris* v. *Travisono*, 310 F. Supp. 857 (D.R.I. 1970) (Due process safeguards for discipline involving segregation.)
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.)
8. South Carolina Department of Corrections. *The Emerging Rights of the Confined*. Columbia: 1972.
9. Turner, William B. "Establishing the Rule of Law in Prisons: A Manual for Prisoners' Rights Litigation," *Stanford Law Review*, 23 (1971), 473, and authorities cited therein.

Related Standards

The following standards may be applicable in implementing Standard 2.12.

2.2 Access to Legal Services.
2.11 Rules of Conduct.
5.9 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 facility.

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 long has been considered a proper subject for the diagnostic, evaluation, and decisional expertise of correctional administrators and specialists. Yet decisions of this kind can have a critical effect on the offender's degree of liberty, access to correctional services, basic conditions of existence within a correctional system, and eligibility for release. This is true especially in jurisdictions with indeterminate sentence structures and simple commitment of offenders to the correctional authority, without statutory or court specification of kinds of institutional or program treatment.

This standard seeks to strike an appropriate balance between the interests of the system and those of the offender, specifying some basic principles of offenders' rights in this area but with a specificity and degree of formality much less pervasive than the "due process" elements proposed for imposition of major disciplinary sanctions.

First, the standard requires written rules and regulations, available to the offender, which clearly establish the basis for classification and other status determinations. This helps the individual understand the personal implications of each alternative choice so he can express an informed preference. In addition, specifying decision criteria communicates to the offender that decisions are not capricious or arbitrary.

The effectiveness of rehabilitation is related directly to the offender's understanding and acceptance of program objectives. An individual is more likely to accept and understand the reasons for a decision in which he participates. Therefore, the standard calls for notice to the offender when his status is under review and a maximum attempt 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 right is specified for reviews involving potential changes of 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

1. American Correctional Association. *Manual of Correctional Standards.* 3d ed. Washington: ACA, 1966. Chs. 7, 26.
2. *Baxstrom* v. *Herold,* 383 U.S. 107 (1966) (Administrative commitment of prisoner to hospital for criminally insane at end of prison term without new judicial determination available to others so committed denies equal protection of laws.)
3. Cohen, Fred. *The Legal Challenge to Corrections.* Washington: Joint Commission on Correctional Manpower and Training, 1969.
4. Goldfarb, Ronald, and Singer, Linda. "Redressing Prisoners' Grievances," *George Washington Law Review,* 39 (1970), 298–301.
5. *Morris* v. *Travisono,* 310 F. Supp. 857 (D.R.I. 1970) (Responding to charge of discriminatory classification procedures in State prison, court order required (i) regular periodic review of classifications, (ii) enumeration of privileges and restrictions of each classification, (iii) written record of classification proceedings and notification to inmate of contemplated changes with reasons.)
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. *Shone* 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.")
8. South Carolina Department of Corrections. *The Emerging Rights of the Confined.* Columbia: 1972.
9. *U.S. ex rel Schuster* 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.

a. 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.

b. The person reporting the grievance should not be subject to any adverse action as a result of filing the report.

3. 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.

4. 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 appeared 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.
- Staff may discount offender views and complaints and fail or refuse to transmit them through channels for investigation.
- Investigators may be too close to conditions to perceive the validity of grievances or the existence of reasonable alternatives.

A formal procedure to insure that offenders' grievances are fairly resolved should alleviate much of the existing tension within institutions. The first amendment requirements protecting the right of persons to petition their government for redress speaks eloquently of the importance attached to a government responsive to the complaints of its citizenry. Peaceful avenues for redress of grievances are a prerequisite if violent means are to be avoided. Thus all correctional agencies have not only a responsibility but an institutional interest in maintaining procedures that are, and appear to offenders to be, designed to resolve their complaints fairly.

The standard is broadly drawn to include all correctional functions. While the noninstitutionalized correctional population has numerous opportunities to relieve tensions, there is no reason to exclude this group from access to grievance machinery. Moreover, persons on whom the system operates are in a unique position to contribute to its improvement.

The standard has three main features. To encourage use of the procedure, it must be open to all, and no reprisals should flow from its use. Second, all grievances with merit should be investigated. A natural outcome is a report of what was found and what is being done, 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

1. American Correctional Association. *Riots and Disturbances in Correctional Institutions*. Washington: ACA, 1970. Chs. 1, 2.
2. Council on the Diagnosis and Evaluation of Criminal Defendants. *Illinois Unified Code of Corrections: Tentative Final Draft*. St. Paul: West, 1971. Sections 340–348.
3. Goldfarb, Ronald, and Singer, Linda. "Redressing Prisoners' Grievances," *George Washington Law Review*, 39, (1970), 175, 304, 316.
4. National Sheriffs' Association. *Manual on Jail Administration*. Washington: NSA, 1970. Pp. 20, 24.
5. National Council on Crime and Delinquency. *A Model Act for the Protection of Rights of Prisoners*. New York: NCCD, 1972. Ch. 5.

Related Standards

The following standards may be applicable in implementing Standard 2.14.

5.9 Continuing Jurisdiction of Sentencing Court.
16.2 Administrative Justice.

Standard 2.15

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 such 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).

4. Visitations. (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 justified.

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 impressive 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 authorized. 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 medallions. Some courts have focused on whether the medallion had religious connotation sufficient to raise a first amendment right. Even if the medallion 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 whether or not they are 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 determination 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. An offender on parole or probation 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 regardless of the circumstances and the standard seeks to correct this situation.

Various arguments have been advanced by correctional authorities to support infringement of of-

fenders' right of expression. It has been claimed that certain ideas are disruptive influences on 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 offenders will become offended by the ideas or speeches of a few "troublemakers" and this will lead to tension within the prison. They also contend that certain expression is not conducive to rehabilitation.

The first of the four arguments can be considered worthy of support for regulations involving interferences 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 represent 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 transmitted 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 practices.

The first amendment does not authorize prohibiting speech because the audience finds what is said offensive. Protection for speech is unnecessary where there is universal acceptance of an idea. The purpose of protecting speech is to protect diversity, not accuracy. Offenders who eventually will find themselves back in the free community where diversity is tolerated should not be protected from views they find offensive while confined. It is not appropriate training 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 speaker, is confined in a limited area. Where tensions are great and a threat of violence clear, correctional authorities can act. Speech not "conducive to rehabilitation" implies that "rehabilitation" contemplates forcing individual offenders into a preset mold. It does not.

Correctional authorities should seek to assure reasonable opportunities for dissemination of various points of view. Thus facilities for oral and written expression should be provided to offenders on a reasonable basis. Typewriters, pencil and paper, musical instruments, and other types of material should be accessible to those offenders who desire them. Leisure activities should allow for the exchange of ideas.

In a number of instances administrative inconvenience and expense have been asserted to justify interferences with the rights of expression and association. Society incurs responsibilities when it confines a person. Feeding offenders involves inconvenience and expense, but no one urges that offenders not 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 correctional authorities should not interfere. In some instances, however, the correctional agency should be obligated to provide facilities or opportunities at governmental expense.

Two concepts should govern determinations as to when expense justifies inaction. If the expense is reasonable in light of existing resources and in relationship to the benefit to be obtained, the expenditure should be made. Likewise, if the government expends funds to facilitate the rights of some offenders, it is obligated to expend proportionally for all offenders. For example, to allow Black Muslims to abide by their dietary restrictions on eating pork may require some nominal expenditure. Reasonable substitutes for pork do exist. However, if some religious faith required champagne and pheasant under glass for every meal, the cost would be disproportionate to the cost of providing meals generally and might be considered unreasonable.

The courts generally have not had the opportunity to decide questions regarding inmates' rights to organize or belong to various organizations and their right to peacefully assemble. In *Roberts* v. *Pepersack*, 256 F. Supp. 415 (D. Md. 1966), cert. denied, 389 U.S. 877 (1967), 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 constitute a danger to prison security.

Implicit in the cases involving religious freedom is the ability to belong to various religious organizations. Organizations such as Alcoholics Anonymous and Junior Chambers of Commerce long have been utilized within institutions. The first amendment should similarly protect an offender's right to belong to political organizations as long as the organization does not present a clear and present danger to a compelling state interest. Reasonable regulations designed to provide correctional administrators with information concerning the aims, procedures, and membership of organizations within institutions may be justified, provided such regulations are applied equally to all organizations and are not used to harass individual offenders or unpopular organizations. Such regulations should relate to the legitimate objectives of the agency in allocating facilities for organization meetings, scheduling events, and maintaining institutional security.

The right to assemble is particularly sensitive within the context of a correctional institution. The tension bred by close confinement may be exacerbated by large gatherings of offenders. Thus the danger of violence may be more easily shown within the prison environment than in the free community. But the test of a clear and present danger should be applicable.

In addition to the expression of particular ideas or beliefs, 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 constitutional provisions which protect an individual in his manner of dress or the 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 authorities have a substantial burden to justify regulations affecting appearance. Courts that have confronted similar claims by committed offenders have been reluctant to overturn prison regulations prohibiting facial hair.

Several studies of prisons have indicated that their most degrading feature is their dehumanizing influence on prisoners. The institution for purposes increasingly difficult to justify, withdraws from confined offenders all semblances of their separate identity. Offenders wear similar clothing. Each has his hair cut the same way. Each is given a number rather than retaining his name. The effect of this approach is becoming increasingly clear. Offenders lose whatever self-respect they have; their adjustment to free society upon release is made more difficult if not impossible. Prohibiting offenders from maintaining their identities defeats the purposes of corrections.

Correctional authorities undoubtedly have a compelling interest in being able to identify committed offenders. In some instances the ability of offenders to effectuate extreme alterations in appearance within a short period may constitute a justification for reasonable regulations. The recommendation thus contemplates that while offenders should be allowed to maintain individuality through clothing, hair styles, and other appearance-related characteristics, the correctional authorities should be authorized to promote reasonable regulations to maintain ease of identification. However, this justification should be subject to the same restraint that the least drastic regulation be adopted.

There is no evidence that the requirements of sanitation—so often asserted by correctional authorities to justify rules prohibiting facial hair or long hair—require an absolute prohibition. Regulations assuring normal cleanliness should be sufficient.

References

1. *Barnett* v. *Rodgers*, 410 F. 2d 995 (D.C. Cir. 1969) ("Treatment that degrades the inmate, invades his privacy, and frustrates the ability to choose pursuits through which he can manifest himself and gain self-respect erodes 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 Corrections*. Washington: Joint Commission on Correctional Manpower and Training, 1969. Ch. III.
4. Goldfarb, Ronald, and Singer, Linda. "Redressing Prisoners' Grievances," *George Washington Law Review*, 39 (1970), 221–223. (Free expression generally.)
5. *Nolan* v. *Fitzpatrick*, 451 F. 2d 545 (1st Cir. 1971) (First amendment protects prisoners in speech with news media and invalidates prison rule against correspondence with press.)
6. *Palmigiano* v. *Travisono*, 317 F. Supp. 776 (D.R.I. 1970) (Affirming freedom of publishers to circulate materials to prisoners except for hard core pornography.)
7. *Porth* v. *Templar*, 453 F. 2d 330 (10th Cir. 1971) (Invalidating parole conditions barring expression of opinion as to constitutionality of Federal income tax law.)

8. *Sobell* v. *Reed*, 327 F. Supp. 1294 (S.D.N.Y. 1971) (Invalidating application of parole conditions to prevent parolee from peacefully participating in 1969 and 1970 Washington peace marches.)

9. *Sostre* v. *McGinnis*, 442 F. 2d 178 (2d Cir. 1971) Cert. denied, 404 U.S. 1049 (1972) (Affirms lower court prohibiting punishment of offender for constitutionally protected speech in written and oral form.)

10. *Sostre* v. *Otis*, 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.)

11. Turner, William B. "Establishing the Rule of Law in Prisons: A Manual for Prisoners' Rights Litigation," *Stanford Law Review*, 23 (1971), 473.

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 spirtual 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 foundations to the official making the determination.

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 provided to offenders requesting information about the activities of any religion with which they may not be actively affiliated.

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 determinations of offender release or status, whether or not such beliefs are religiously motivated.

2. Impose, as a condition of confinement, parole, probation, or release, adherence to the active practice of any religion or religious belief.

Commentary

Religious freedom has always been given preferred and fundamental status in our concepts of individual liberty and expression. The first amendment both protects the free exercise of religion and prohibits the government from giving special consideration to a particular religion.

The criminal law reflects a number of moral judgments that have deep roots in religious doctrines. Corrections has a long history of gauging religious beliefs to determine whether an offender is ready to return to society. Religious instruction has been utilized extensively as a correctional tool. However, when offenders representing more diverse religious backgrounds increased and became more adamant in their demands for religious freedom within institutions, correctional authorities retreated. The Black Muslims, particularly seen as a threat to institutional order, were subjected to restraints on their religious practices.

The area of religious freedom was one of the first in which courts abandoned the hands-off attitude and examined the rules and restrictions of prison life and correctional control. Much of the litigation centered on the question of what restrictions on religious practices were reasonable in the prison setting. As in the general cases on freedom of religion, courts made a distinction between the prisoner's religious belief and his more qualified right to engage in specific religious practices. Beliefs are for the most part free from governmental intervention. But where those beliefs are reflected in actions, more difficult questions arise.

The first amendment as applied to the public at large authorizes some governmental interference with religious practices. One of the earlier cases, *Reynolds* v. *U.S.*, 98 U.S. 145 (1878), held that the Mormon practice of polygamy, though religiously based, was subservient to the state's interest in the monogamous family relationship. On the other hand, two recent cases have indicated that the state's interest must be substantial before religious practices may be condemned. In *Welsh* v. *U.S.*, 398 U.S. 333 (1970), the Supreme Court gave a broad interpretation to the statute authorizing conscientious objection based on religious training as an exemption from the Selective Service Act. The broad definition of religious training was developed to avoid the constitutional problems of discrimination between traditional religious beliefs and those with a more unorthodox foundation. Likewise, in *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), the Court found that the State's interest in compulsory school laws was not sufficient to compel Amish children to attend school beyond the eighth grade, a practice contrary to their religious beliefs.

The standard responds to these issues by: (1) encouraging the system to make the maximum possible accommodation to religious beliefs and practices, even in difficult areas such as dietary laws; (2) permitting reasonable limitations to meet the legitimate demands of correctional security and order but only when the burden of demonstration is met by the correctional authority; (3) requiring that new sects and smaller denominations receive equal treatment; (4) prohibiting consideration of religious belief or practice in reaching decisions concerning prisoner status or release; and (5) invalidating the coerced maintenance of religious practice as a condition of parole or probation status. These positions stem from a recognition that, while the nature of confinement restricts movement and free access to religious practice, such effects are unintended collateral consequences not related to the purposes of confinement. Therefore, the correctional authority assumes a special responsibility to permit freedom of religious practice for those it so restricts.

The most difficult issue arising in protecting religious freedom is the definition of what a religion is. Courts have struggled with the definition without satisfactory resolution. In the context of these standards, the determination of whether a given offender's request is religiously based may be important. While the standards provide for wide latitude in allowing offenders to express their own individuality, where actions or needs are of religious orientation, correctional agencies have a broader responsibility to provide adequate resources. Thus the correctional agency may be required to expend money to facilitate religious worship but not to support an individual's self-expression that is not founded on religious principle.

Practices asserted merely to harass correctional staff or to obtain privileges not otherwise available to offenders should not be protected. However, practices founded in religious belief, even though unorthodox, should be allowed. The standard attempts to list some factors which would tend to indicate a religious base and others that should not be considered relevant. The standard also recommends that, where difficult questions arise, correctional agencies should authorize the offender involved to present evidence regarding the religious motivation of the practice asserted.

In the last analysis, the issue of whether a particular practice is religiously motivated will be left to the courts. However, Standard 2.15 recognizes that offenders have a right to express themselves and to retain their identity as individuals. Thus correctional authorities should grant broad leeway toward practices involving merely the expression of individuality, whether or not based on religious belief.

The standard also recommends that correctional decisions involving the release or status of the offender not be made on the basis of whether he has adhered to a particular faith or is "religious." While release and status decisions will inevitably and properly be based on an offender's attitudes toward law, society, and his fellow man, the fact that they are or are not religiously based should be of no consequence.

References

1. American Correctional Association. *Manual of Correctional Standards*. 3d ed. Washington: ACA, 1966. Ch. 29.
2. *Barnett* v. *Rogers*, 410 F. 2d 995, 1001 (D.C. Cir. 1969) (Jail officials must make some effort to accommodate Muslim dietary restrictions.)
3. Brown, Dulcey A. "Black Muslims in Prisons and Religious Discrimination: The Developing Criteria for Judicial Review," *George Washington Law Review*, 32 (1964), 1124.
4. Frankino, Steven P. "Manacles and the Messenger: A Short Study in Religious Freedom in the Prison," *Catholic University Law Review*, 30 (1965).
5. Goldfarb, Ronald, and Singer, Linda. "Redressing Prisoner Grievances," *George Washington Law Review*, 39 (1970) 216–221.
6. *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.)
7. *Long* v. *Parker*, 390 2d 816 (3rd Cir. 1968) (If the other religions receive religious literature, Muslims may not be denied unless corrections authority shows "clear and present danger" to prison discipline.)
8. Note, *Rutgers Law Review*, 20 (1966), 528.
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. *Gittlemaker* 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 appplicable in implementing Standard 2.16.

2.15 Free Expression and Association.
11.7 Religious Programs.
16.2 Administrative Justice.
16.3 Code of Offenders' Rights.

Standard 2.17

Access to the Public

Each correctional agency should develop and implement immediately policies and procedures to fulfill the right of offenders to communicate with the public. Correctional regulations limiting such communication should be consistent with Standard 2.15. Questions of right of access to the public arise primarily in the context of regulations affecting mail, personal visitation, and the communications media.

MAIL. **Offenders should have the right to communicate or correspond with persons or organizations and to send and receive letters, packages, books, periodicals, and any other material that can be lawfully mailed. The following additional guidelines should apply:**

1. Correctional authorities should not limit the volume of mail to or from a person under supervision.

2. Correctional authorities should have the right to inspect incoming and outgoing mail, but neither incoming nor outgoing mail should be read or censored. Cash, checks, or money orders should be removed from incoming mail and credited to offenders' accounts. If contraband is discovered in either incoming or outgoing mail, it may be removed. Only illegal items and items which threaten the security of the institution should be considered contraband.

3. Offenders should receive a reasonable postage allowance to maintain community ties.

VISITATION. **Offenders should have the right to communicate in person with individuals of their own choosing. The following additional guidelines should apply:**

1. Correctional authorities should not limit the number of visitors an offender may receive or the length of such visits except in accordance with regular institutional schedules and requirements.

2. Correctional authorities should facilitate and promote visitation of offenders by the following acts:

a. Providing transportation for visitors from terminal points of public transportation. In some instances, the correctional agency may wish to pay the entire transportation costs of family members where the offender and the family are indigent.

b. Providing appropriate rooms for visitation that allow ease and informality of communication in a natural environment as free from institutional or custodial attributes as possible.

c. Making provisions for family visits in private surroundings conducive to maintaining and strengthening family ties.

3. The correctional agency may supervise the visiting area in an unobtrusive manner but should not eavesdrop on conversations or otherwise interfere with the participants' privacy.

MEDIA. **Except in emergencies such as institutional disorders, offenders should be allowed to present their views through the communications media. Correctional authorities should encourage and facilitate the flow of information between the media and offenders by authorizing offenders, among other things, to:**

1. Grant confidential and uncensored interviews to representatives of the media. Such interviews should be scheduled not to disrupt regular institutional schedules unduly unless during a newsworthy event.

2. Send uncensored letters and other communications to the media.

3. Publish articles or books on any subject.

4. Display and sell original creative works.

As used in this standard, the term "media" encompasses any printed or electronic means of conveying information to the public including but not limited to newspapers, magazines, books, or other publications regardless of the size or nature of their circulation and licensed radio and television broadcasting. Representatives of the media should be allowed access to all correctional facilities for reporting items of public interest consistent with the preservation of offenders' privacy.

Offenders should be entitled to receive any lawful publication, or radio and television broadcast.

Commentary

The walls of correctional institutions have served not merely to restrain criminal offenders but to isolate them. They have been isolated from the public in general and from their families and friends. As a result, the public does not know what is happening in prisons, and in large part the offender does not know what is going on outside the prisons. While many restrictions on communication were imposed under theories of institutional security, they have resulted in making correctional programs more difficult. If corrections is to assure that an offender will readjust to the free society upon release, the adjustment process must begin long before the day of release. To accomplish this, the public must be concerned about what happens in corrections. Information is a prerequisite to concern. Likewise, the offender must retain his ties to the community and his knowledge of what the free community is like if he is to be able to live there satisfactorily upon release.

Isolation of correctional institutions also contains additional dangers. Judge Gesell commented in *Washington Post Co.* v. *Kleindienst,* 11 Crim. L. Rptr. 2045 (D.D.C. 1972):

> Whenever people are incarcerated, whether it be in a prison, an insane asylum, or an institution such as those for the senile and retarded, opportunity for human indignities and administrative insensitivity exists. Those thus deprived of freedom live out of the public's view. It is largely only through the media that a failure in a particular institution to adhere to minimum standards of human dignity can be exposed. Indeed, needed reforms in these areas have often been sparked by press attention. Conversely, secrecy is inconsistent with responsible official conduct of public institutions for it creates suspicion, rumor, indifference, if not distrust. Disinterest causes abuses to multiply.

The three major contexts in which the isolation of the offender from the public can be diminished are mail, visitation, and access to media. Involved 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. Standard 2.17 addresses specific aspects of mail, visitation, 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, correctional authorities have not limited themselves to keeping out harmful or potentially dangerous objects or substances. The censorship of mail all too often has been utilized to exclude ideas deemed by the censor to be threatening or harmful to offenders or critical of the correctional agency. These efforts result in the diversion of manpower from other tasks and, to avoid excessive manpower drains, limitations on the volume of correspondence permitted. Censorship and limitations on correspondence directly 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 authorities were limiting access to courts. Instances of failure to mail complaints, invasion of privileged attorney-client communications, and reprisals against inmates for attempting to send out information 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.

Correctional authorities have a duty to insure that offenders are able to correspond with members of the public. A reasonable postage allowance should be provided each offender as part of an affirmative program to help him retain community ties.

Visitation. Whether a person is confined across town in a jail or across the State in a prison, confinement totally disrupts his relationship with his community. The longer confinement persists, the more alienated the individual becomes. Strained ties with family and friends increase the difficulty of making the eventual transition back to the community.

The critical value for offenders of a program of visiting with relatives and friends long has been recognized. Nevertheless, a substantial number of jails have no visiting facilities. In many institutions the facilities are demeaning and degrading, as well as violative of privacy. This defeats the purpose of visiting. Screening or glass partitions between the offender and his visitor emphasize their separation rather than the retaining common bonds and interests.

Correctional authorities should not merely tolerate visiting but should encourage it. This extends to providing or paying for transportation when the cost of traveling to the facility would be a limiting factor. Such a provision is plainly needed to equalize the situation of rich and poor inmates. Expenses of this type can be minimized by incarcerating offenders in their own community or through expanded use of furlough programs.

Other steps to encourage visits are required. Family visits will overcome difficult and expensive babysitting problems. Seven-day visiting would permit visitors to come on days when they are not employed. Arbitrary time limits on the duration of visits discriminate against those who cannot make frequent visits. Expansion of visiting hours and facilities in institutions with consistently crowded visiting facilities would alleviate problems caused by inadequate space.

Visiting should not be barred under any but the most exceptional circumstances. Where the administrator can meet the test recommended in Standard 2.15 of clear and convincing evidence of a compelling state interest, visiting can be regulated and in unusual circumstances prohibited.

The standard recommends provisions for family visits in surroundings conducive to the maintenance and strengthening of family ties. The setting should provide privacy and a noninstitutional atmosphere. 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 conjugal visit is 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 offenders 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 customary 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' total ban 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 disciplinary 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 respected.

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

1. American Correctional Association. *Manual of Correctional Standards*. 3d ed. Washington: ACA, 1966.
2. *Burnham* v. *Oswald*, 333 F. Supp. 1128 (W.D.N.Y. 1971).
3. Comment, "Prisoner Mail Censorship and the First Amendment." *Yale Law Journal*, 81 (1971), 87.
4. *Fortune Society* v. *McGinnis*, 319 F. Supp. 901 (S.D.N.Y. 1970) (Upholding right of inmate to receive newsletter published by society of former inmates.)
5. Glaser, Daniel. *The Effectiveness of a Prison and Parole System*. Indianapolis: Bobbs-Merrill, 1964.
6. *Jackson* v. *Godwin*, 400 F. 2d 529 (5th Cir. 1968.)
7. *Nolan* v. *Fitzpatrick*, 541 F. 2d 545 (1st Cir. 1971) (Inmate right to correspond with news media upheld.)
8. *Palmigiano* v. *Travisono*, 317 F. Supp. 776 (D. R.I. 1970.)
9. Rowan, Joseph R. *Public Relations and Citizen Action in the Delinquency and Crime Field—Our Greatest Need*. Undated monograph.
10. Singer, Richard G. "Censorship of Prisoners' Mail and the Constitution," *American Bar Association Journal*, 56 (1970), 1051.
11. South Carolina Department of Corrections. *Emerging Rights of the Confined*. Columbia: 1972. Ch. 7.
12. *Washington Post Co.* v. *Kleindienst*, 11 Crim. L. Rptr. 2045 (D.C. 1972.)
13. Stollery, Peter. "Families Come to the Institution: A Five Day Experience in Rehabilitation," *Federal Probation*, 36 (1970), 346.

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 legislation, to insure proper redress 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. Policies which:

(1) Assure 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 worker.

(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 for 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 insure the protection of offenders' rights. 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 effective. 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 other statutory provisions govern correctional employment practices and require "cause" for removal, "cause" should either be defined to include violation of offenders' rights or should 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 the 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 the person 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 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 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 close 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 sentenced offenders to insure that the sentence imposed by the court is carried out. It may be necessary in assuring 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 insure 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

1. Goldfarb, Ronald, and Singer, Linda. "Redressing Prisoners' Grievances." *George Washington Law Review*, 39 (1970), 175.

2. *Jackson* v. *Hendrick*, 40 Law Week 2710 (Ct. Comm. Pls. Pa. 1972) (Appointing special master to supervise the Philadelphia Prison System.)

3. National Council on Crime and Delinquency. *A Model Act for the Protection of Rights of Prisoners*. New York: NCCD, 1972.

4. *Sostre* v. *McGinnis*, 442 F. 2d 178 (2d Cir. 1971) (Awarding compensatory damages of $25 per day for each day spent in segregation under conditions constituting cruel and unusual punishment and also punitive damages of $9,300.)

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 labelled. 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 proscribed 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 research has shown that those detained prior to trial are more likely to be convicted than those released. However, since pretrial release programs utilize a less drastic means of continuing with official processing rather than stopping official processing altogether, such activities fall within the scope of 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 processing for a drunkenness offender would qualify as diversion. In places where drunkenness has been decriminalized, however, treatment programs for drunkenness in the community would not technically be diversion programs under the definition given in this chapter since criminal processing would not be an option. Similarly, this report recommends that juveniles who have not committed acts that would be criminal if committed by adults should not be subject to the delinquency jurisdiction of the courts. Until that recommendation is implemented, however, programs that avoid formal court processing for truants, "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 proscribed and that justice system processing may result if alternatives are not made available.

One last definitional note is needed. Throughout 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 primarily by the role it plays in keeping the criminal justice system in operation. 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 illustrate, consider some national data for the year 1971. In that year, approximately 5,995,000 major felonies—murder, aggravated assault, rape, robbery, burglary, grand larceny, and auto theft—were reported to the police. These reports resulted in 1,707,600 arrests, with juvenile courts assuming jurisdiction over about 628,000 cases. Among the remaining cases, 82 percent were processed in criminal court. Sixty percent of the cases processed resulted in conviction as originally charged, and 11 percent for a lesser charge.[1]

On the basis of these figures it can be estimated that nearly 30 percent of all reported offenses result in arrest, and almost one-third of all arrests in criminal convictions. Not included among criminal convictions are cases handled by juvenile courts. The figures also fail to account for multiple reports against single offenders, and they are compromised by the notoriously inadequate records kept by most agencies. Nevertheless, they convey some impression concerning the extent to which the arrest-conviction-imprisonment model is circumvented in practice.

Preadjudication dispositions (diversion) occur in both the juvenile and adult justice system and for many of the same reasons. First, even with the best legislative formulations, definitions of legally proscribed conduct are likely to be ambiguous. The decision to divert out of the justice system is affected by many factors including the nature of the offense, the circumstances of its commission, the attitude of the victim, and the character and social status of the accused. The use of discretion is encouraged by the stigma associated with official processing. The stigma may seriously limit the social and economic opportunities of the accused or impose upon him deviant roles leading to further antisocial acts. Finally, the volume of cases processed is so large as to require some screening of less serious offenders in order to allow law enforcement, courts, and corrections to concentrate on the more serious cases.

Inadequacy of the Current System

Essentially, the argument generally put forth for diversion is a negative argument against the existing system. The assumption is that the present justice system is so bad that any alternative for diverting most offenders out of it, is better than any that will move the offender farther into it. In the current literature and knowledge in the field, there is evidence to support this assumption. But as the justice system becomes more rational, as called for by this Commission, a method or process is needed by which equitable and logical choices are made to exclude individuals who truly do not need the services and resources of the justice system agencies, even though they may need forms of help from outside the justice system. Thus far, no classification schema or system has successfully addressed this issue.

Although many of the diversion programs of the past are based on humanitarian interests, experience has demonstrated that humanitarian intentions alone do not guarantee either more humane treatment or more successful programs. The juvenile court and its procedures were developed to divert children and youth from the criminal justice system. Yet, it has been found that the court itself often infringes on the rights of the child and involves a problem of stigma equal to those associated with a child being handled through criminal procedures or processes.

California juvenile court practices offer an excellent example of the injustice experienced by many children and youth coming into the justice system for behavior that would not be an offense if engaged in by adults. Recent figures show that arrests for major offenses equivalent to adult felony offenses accounted for only 17 percent of all juvenile arrests. Arrests for offenses generally comparable at the adult level with misdemeanors accounted for 20 percent. The remaining 63 percent was made up of arrests of youths who were "in need of supervision."[2] In many of the cases the juveniles referred to as being in need of supervision were treated in exactly the same way as, or worse than, those referred for felony and misdemeanor offenses.

A study of the fates of serious delinquents (youths adjudicated on the equivalent of serious criminal charges) and youths in need of supervision (juveniles charged with acts that would not be criminal if committed by adults) in 19 major cities revealed the following results:[3]

1. Youths in need of supervision are more likely to be detained in detention facilities than serious delinquents (54 percent vs. 31 percent);
2. Once detained, youths in need of supervision are twice as likely as serious delinquents to be detained for more than 30 days (51 percent vs. 25 percent);
3. Youths in need of supervision are more likely to receive harsher dispositions in juvenile court and to be sent to confinement placement than serious delinquents (25 percent vs. 23 percent), with the average length of stay being much longer for the nondelinquent group.

Such findings raise serious questions about the way the resources of the juvenile justice system are being utilized. If evidence could convince us that current criminal and juvenile justice and correctional practices were effective in altering socially disapproved behavior, it is possible that we would continue to support such treatment of troublesome persons. However, the best of current evidence points strongly in the opposite direction.

More than three-fourths of the felonies processed in criminal courts are committed by repeaters. Recidivism rates ordinarily are highest among offenders discharged from prison at the expiration of their sentences, lower among parolees, and lowest among probationers.[4] It therefore seems clear that prisons 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 rehabilitating—conditions that encourage patterns of immorality, dependency, manipulation, irresponsibility, and destructiveness.

In recognition of this, much effort has recently been directed toward improvement of institutional programs. Among the programs developed in the last few decades are psychiatric therapy, group counseling, casework, role playing, and academic and vocational training. Prisoners, if sufficiently motivated, can gain proficiency in an occupation. But they may be unable to find related employment when released. Or they may not have learned how to get along with other people or how to perform the various nonoccupational tasks necessary for success in the community.

Programs may alleviate some pains of imprisonment and foster better institutional adjustment. Life in the free community, however, is an entirely different matter. Prison virtues such as dependency, subordination, and compliance are not always rewarded in the world outside. Thus a good prisoner does not necessarily make a good parolee or a good citizen.

The result is that prisoners who receive special "treatment" in the institution apparently have about the same recidivism rates as those who do not.[5] Even where treatment is institutionally successful, its effects seem to dissipate once the offender returns to the community. An illustration is the Fricot Ranch Project in California, which initially produced a drastic reduction in recidivism rates for offenders who received intensive treatment. A year after release the group that received treatment had

[1] Federal Bureau of Investigation, *Crime in the United States: Uniform Crime Reports, 1971* (Washington: Government Printing Office, 1971), pp. 35, 61, 115. Referred to hereinafter as *UCR*, with appropriate date.

[2] California Department of Justice, *Crime and Delinquency in California, 1970* (Sacramento: 1971), pp. 71–110.

[3] Statement by Allen F. Breed at the Critical Decision Maker Conference sponsored by the U.S. Youth Development and Delinquency Prevention Administration, Los Angeles, May 24, 1972.

[4] See National Council on Crime and Delinquency, *Policies and Background Information* (Hackensack, N.J.: NCCD, 1972), p. 14; and California Assembly, Committee on Criminal Procedure, *Deterrent Effects of Criminal Sanctions* (Sacramento: 1968).

[5] See, for example, Walter Bailey, "Correctional Outcome: An Evaluation of One Hundred Reports," *Journal of Criminal Law, Criminology, and Police Science*, 57 (1966), 153–160; Gene Kassebaum et al., *Prison Treatment and Its Outcome* (Wiley, 1970); James Robison and Gerald Smith, "The Effectiveness of Correctional Programs," *Crime and Delinquency*, 17 (1971), 67–80.

a recidivism rate of 37 percent, compared with 52 percent for a matched control group.[6] 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 short ones. In fact, if offense type, previous record, and similar variables are held constant, the probability of recidivism increases with the length of the sentence.[7] And the greater the number of times an offender is confined, the greater the risk of failure.

If, on the whole, the effects of incarceration are harmful, the prison, instead of deterring crime, may deter the offender's successful community performance. Diversionary methods, accordingly, work better than incarceration. Diverted offenders do not have to contend with the prison's criminogenic environment. Their lives are disrupted less seriously. Contacts with the community are not severed. Stigmatization is less severe. It seems that the earlier diversion occurs in the criminal or juvenile justice system, the greater its relative advantages.

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. One reason for this reluctance centers around a deeply rooted adherence to a treatment model as the answer to problems of crime and delinquency.

Many efforts to correct the deficiencies of the justice system are seriously limited by the medical model adopted for the correctional system. Tremendous pressures are put on staff and resources to offer "treatment" to those persons who are made subjects of the justice system. As a result of the assumption that all persons who find themselves within the correctional and justice system are necessarily in need of help or "treatment," many persons argue that there cannot be a diversionary program without in fact offering some kind of alternative service or help.

Perhaps the classic example of this dilemma is in relation to children with delinquent tendencies. At the moment there is considerable doubt in the field of juvenile justice as to whether these children should be subjected to "help." Yet, there is a consistent unwillingness to legislatively remove these children and youth from the system until such time as there is some other treatment to provide help. Apparently doing something, no matter how bad, is perceived as being better than doing nothing, even though evidence does not support this position.

Legislative or administrative action that excluded these children and youth from the "help" of the justice system would force development of whatever private or community alternatives were needed. Both indecision and ambivalence enable the field to avoid facing the issue of legislatively excluding from the juvenile justice system juveniles and youths who have not committed acts that would be criminal if committed by adults—a decision that would reduce workloads and offer greater opportunity for constructive work with delinquents remaining within the system.

Our society reflects a phenomenon that sociologist Erving Goffman[8] has identified as "ritual maintenance," which he describes as a universal feeling that when some sort of antisocial or disapproved act occurs something must happen. What happens need not necessarily be punitive, nor must it necessarily be therapeutic. The point is that there are alternatives to both punishment and treatment and a wide range between these two extremes if a willingness exists to consider them. The alternatives run a gamut from reprimand, release, fines, and informal supervision to forms of custody and restriction on freedom. Some imply treatment, but many do not. Most imply a willingness to consider noncriminal program dispositions—forms of help that are often best offered by non-justice system agencies, groups and individuals.

Society must act in some visible way against behavior that is defined as illegal. Action is a necessity; treatment is not—not necessarily.

To the extent that the foregoing has validity, the strategy and argument for diversion presents itself; namely, every effort should be made to keep juveniles and adults out of the justice system. Secondly, every effort should be made to minimize a juvenile's or an adult offender's penetration into the correctional system. This does not suggest that the agents of the system simply take advantage of ambiguities within the existing system. It does suggest that planned programs be developed as alternatives to needless processing into the justice system. To this end, every available alternative must be explored at each decision point; i.e., police contact, arrest, intake, detention, jail, court wardship, conviction, commitment, probation, parole, and, ultimately, even revocation. At each critical step, efforts should be made to exhaust and select the less rejecting, less stigmatizing recourses before taking the next expulsive step. This becomes particularly important during that short time between arrest and adjudication within which diversion for appropriate cases can be planned.

[6] Carl F. Jesness, "Comparative Effectiveness of Two Institutional Programs for Delinquents," unpublished paper, 1972.

[7] See, for example, Carol Crowther, "Crimes, Penalties, and Legislatures," *Annals of the American Academy of Political and Social Science*, 381 (1969), 147–158; Paul Mueller, *Advanced Releases to Parole* (Sacramento: California Department of Corrections, 1965); Dorothy Jaman and Robert Dickover, *A Study of Parole Outcome as a Function of Time Served* (Sacramento: California Department of Corrections, 1969).

[8] Erving Goffman, *Asylums* (Doubleday, 1961).

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 the 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 at the time. Furthermore, the recidivism rate among Crossroads participants was 22 percent, as opposed to 46 percent among a control group which did not receive project services.[9]

Diversion is an opportunity. It is not a solution.[10] If it is seen exclusively as a solution, diversion programs, like their correctional predecessors, will fail. To develop a system that utilizes diversion in a planned and constructive fashion, there must be a radical overhaul in the nature and character of some of today's most cherished social institutions. Commitment to diversion is a commitment to the principle of change.

Probably the most significant contribution to the field of criminal justice today would be development of a schema that systematically, and on a selected basis, effectively screens subjects out of the criminal justice system in terms of their real danger to society rather than the prejudices of individual members of the criminal justice system. As we now operate, diversion is advocated in the funding standards of the Law Enforcement Assistance Administration, the Youth Development and Delinquency Prevention Administration, and the American Correctional Association without uniform methods, theories, or procedures being given to describe specifically at what points diversion should occur, who should be diverted, under what conditions, to what programs, and for what purposes. National standards to guide the continuing development of diversion programs are essential.

[9] American Correctional Association, *Juvenile Diversion: A Perspective* (College Park, Md.: ACA, 1972), pp. 1–2.

[10] Allen F. Breed, "Diversion: Program, Rationalization, or Excuse?" address to the National Institute on Crime and Delinquency, Portland, Or., June 19, 1972.

IMPLEMENTATION OF DIVERSION

For communities interested in maximizing the planned use of diversion, it is necessary to identify the points at which diversion may occur and the individuals or groups primarily responsible for it at each of these points. There are three main points at which diversion may occur: prior to police contact, prior to official police processing, and prior to official court processing. Analysis of each of these potential points of diversion yields three basic models in terms of responsibility for diversion: community-based diversion programs, police-based diversion programs, and court-based diversion programs. While each of these models usually involves more than one agency or group, programs will be grouped according to who initiates and is primarily responsible for their operation.

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 was conducted on a sample of 10,000 households from July 1965 through June 1966.[11] These studies attempt to estimate the number of unreported offenses by asking persons if they or members of their families were victimized by crime during the preceding year. Some of the results are given in Table 3.1, with comparable statistics from the Federal Bureau of Investigation.

Two facts stand out in the comparison. The relative frequencies of specific serious crimes uncovered by the victimization survey are fairly similar to those obtained by the FBI from police agencies. Offenses are ranked in an identical order. However, the survey 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.

There can be little doubt that a large number of law violators go free because people fail to report offenses.

[11] Philip H. Ennis, *Criminal Victimization in the United States* (Washington: Government Printing Office, 1967), p. 8.

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

Offense	Rate per 100,000 Population	
	Victimization Survey	FBI Reports
Homicide	(Too few cases)	5.1
Forcible Rape	42.5	11.6
Robbery	94.0	61.4
Assault	218.3	106.6
Burglary, Grand Larceny, Auto Theft	1,761.8	790.0

Source: Philip H. Ennis, *Criminal Victimization in the United States*, (Washington: Government Printing Office, 1967), p. 8.

One of the main reasons for failure to report offenses, according to the survey, is that many people believe the authorities are unwilling or unable to do much about crimes that have occurred. Such attitudes are especially prevalent in disadvantaged areas where the crime rates are highest.

On the other hand, it is becoming increasingly clear that numerous responsible individuals and groups do not report some illegal incidents to the police because they think the matters can be handled better outside the criminal justice system. While some of this reaction may be characterized simply as toleration or lack of concern, much of it is quite to the contrary. That is, community agencies and residents around the country are seeking planned alternatives to official criminal justice processing that they hope will have better results. Such citizens and agencies are taking action of varying degrees of formality to increase the community's capability to respond to unwanted behaviors.

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 delinquent 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 attention of the authorities in 1968-1969—involving cases of drug violations, assault against school personnel, damage to school property, etc.—were processed without referral to the police.[11] Schools utilize counseling, disciplinary action, family conferences, special classes or special schools, referral to community social service agencies, and a whole range of other techniques before finally resorting 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 unofficially.

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 institutions and the recipients of the service. 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 programs and services that enhance both prevention 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 delinquent before rendering service. Units of State and local government traditionally have been constrained in their delinquency prevention and diversion efforts because they had no jurisdiction to intervene with a juvenile or his family until the youth committed one or a series of delinquent acts. The basic idea of this project is to provide a broad range of services, preventive, rehabilitative, health, tutorial, etc., to *all* youths, delinquent and nondelinquent, in a narrowly restricted target area containing large percentages of children and families at risk without regard to traditional eligibility requirements.

[11] Edwin M. Lemert, *Instead of Court: Diversion in Juvenile Justice* (Rockville, Md.: National Institute of Mental Health, Center for Studies of Crime and Delinquency, 1971).

It is the aim of such projects to coordinate all service programs to youth in the target area—Federal, State, county, city, private—and determine from model experimentation which agencies should eventually operate these services—private or public sector, local or State government, etc. The underlying hypothesis of the program is that crime and delinquency are due not so much to a lack of resources as to a failure on the part of the system to adequately focus on the needs of youth at appropriate times and places in ways that make existing services effective. The projects propose to provide new resources to the police and courts, on a 24-hour, 7-day-a-week basis, that will enable these agencies to divert children and youth.

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 projects are designed to assist youth involved in delinquent activities. The main focus of the programs is community involvement and community 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 the community, the youth may be required to carry out some useful community work under supervision. He is also asked to undergo a program of counseling with volunteers, paraprofessionals, or even established agency personnel on an informal basis.

Programs 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 increasingly gaining citizen support and public agency respect. In addition to evidencing an ability to deal with youthful offenders outside of the justice system, the community responsibility and concern for delinquent activities within the community also has a tendency to reduce the total volume of crime and delinquency within that area. It is hypothesized that some of the success of such programs is due to the fact that juveniles respond better to members of their own community than to personnel of the justice system, who are seen as part of the establishment. Many adult drug treatment programs have similar qualities and procedures.

The Youth Service Bureau

Of all of the recommendations made by the President's Crime Commission in 1967, none was regarded 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.[13] The 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 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 future of Youth Service Bureaus appears to be financially uncertain, and those bureaus that are surviving tend to be related to established agencies. Those related to the police, probation, or the courts are expanding and show the greatest evidence of being able to offer acceptable alternatives to justice system processing. Some may be incorporated with comprehensive youth service delivery systems.

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 at home, 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.

[13] Sherwood Norman, *The Youth Service Bureau* (Paramus, N.J.: National Council on Crime and Delinquency, 1972). See also William Underwood, *A National Study of Youth Services Bureaus* (Washington: U.S. Youth Development and Delinquency Prevention Administration, in process).

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 2 percent of arrested juveniles are referred to other community agencies by police departments,[14] and probably even fewer are served through police-run diversion programs.

The reasons for 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 mainly in terms of rigorous detection and apprehension of all violations of law, rather than such responsibilities tempered by roles in prevention, 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. Thus for example, the Wisconsin statutes provide that a police officer "shall arrest . . . every person found . . . in a state of intoxication 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.

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 the behavioral sciences; and the general absence 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,[15] and large metropolitan communities where the police force has not been highly professionalized.[16] Similar results are obtained in other studies.

[14] *UCR, 1971*, p. 112 (includes all offenses except traffic and neglect cases).

[15] Nathan Goldman, *The Differential Selection of Juvenile Offenders* (New York: National Council on Crime and Delinquency, 1963).

[16] James Q. Wilson, "The Police and the Delinquent in Two Cities," in Stanton Wheeler, ed., *Controlling Delinquents* (Wiley, 1968).

In addition, some juvenile courts are excluding certain types of cases, especially those involving dependency, runaways, ungovernable conduct, and other kinds of family problems. These cases are often aggravated 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 (Seattle) Washington to avoid the use of official sanctions unless they are necessary for community protection or offender control.

The same objective applies to adult offenders. Even where guilt probably could 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 marring the lawbreaker's record by a criminal conviction. Again, the primary responsibility for initiating informal procedures, instead of official sanctions, is delegated to the police.

For example, the police commonly use alternatives to arrest, such as reprimanding a suspected 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 arrest is clearly inappropriate. This is normally true when the police are trying to resolve conflicts between husbands and wives, landlords and tenants, businessmen and 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 these circumstances, the police are called upon to play the roles of counselor, technical expert, or referral 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 offense is reported, the police need to decide if it warrants investigation. Likewise, it must be determined if the offender should be arrested, if he should be taken into custody, and if he should be detained. Before any court action can occur, the nature 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 make an arrest unless they believe it necessary. Judgments concerning the necessity of an arrest are influenced by numerous subjective factors. Probably one of the most important is the attitude or demeanor of the suspected offender. If the suspect is contrite, cooperative, and compliant, the likelihood of an arrest is lessened. But if he displays a bold, brusque, and belligerent attitude, the probability of action is greatly increased.[17] Other factors affecting discretionary decisions are the roles played by the victim, the complainant, and any witnesses; the community's attitudes and interests; the perceived severity of the offense; and the policies of courts and other agencies.[18]

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 agencies have arrived at the point of adopting formal diversion programs.

Family Crisis Intervention Projects

There are indications that the police, by identifying conflict 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.[19] 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 program 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 sought out team members for advice. 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 that would divert 77 percent of those children arrested and previously referred to the probation department.[20] Referred to as the 601 Diversion Project, 12 law enforcement agencies in the county receive a reward commensurate with the degree of reduction in referrals of children "in need of supervision" to alternative community-based programs. The funds received by the law enforcement agencies are used to purchase services for the children referred from other private and public agencies or resources. The probation department administers the program, and all 12 law enforcement agencies voluntarily participate in its design and implementation.

The program identifies a kind of police behavior—diversion of children in need of supervision from the juvenile justice system—and rewards those engaging in the approved behavior. Further, the proposal identifies levels for performance; i.e., 77 percent reduction from past practice of law enforcement agencies. The program specifies objectives, outlines activities, and requires evaluation for reimbursement. It proposes a planned diversion to identified programs. It is highly visible as well as measurable.

A Police Youth Service Bureau

The first Youth Service Bureau to be affiliated with the local police department was started 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 teenage lawbreakers, the youth service bureau offers a variety of counseling programs, including family 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-youth rap sessions.

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

[17] See Irving Piliavin and Scott Briar, "Police Encounters with Juveniles," *American Journal of Sociology*, 70 (1964), 206–214; Lyle Shannon, "Referral in a Middle-Sized City," *British Journal of Criminology*, 3 (1963), 24–26; Robert Terry, "Discrimination in the Handling of Juvenile Offenders by Social Control Agencies," *Journal of Research in Crime and Delinquency*, 3 (1967), 218–230; and Wayne La Fave, *Arrest: The Decision to Take a Suspect into Custody* (Little, Brown, 1965).

[18] Donald Black, "Production of Crime Rates," *American Sociological Review*, 35 (1970), 733–748; Donald Black and Albert Reiss, "Police Control of Juveniles," *American Sociological Review*, 35 (1970), 63–77.

[19] Morton Bard, *Training Police as Specialists in Family Crisis Intervention* (Washington: Government Printing Office, 1970).

[20] "Predelinquent Diversion Project," proposal submitted by Santa Clara County Juvenile Probation Department, 1972, and funded by the California Council on Criminal Justice, Sacramento. 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 to the bureau. 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 by the Pleasant Hill police—about 294—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 funded jointly by the Federal Government and the city. Sixty percent of the bureau's $89,000 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.[21]

Richmond, California Police Diversion 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.[22] Program elements include crisis intervention, behavior management training for parents, counseling, tutorial services, and employment assistance. These services traditionally have been provided by other agencies such as probation staffs, 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 service.

The basic thrust of this project is that the police 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 staff, the police 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 Delinquency and Crime Commission recommended that the Los Angeles County Department of Community Services and the Los Angeles County Sheriff's Department enter into discussions relative to the establishment of a county-wide delinquency prevention program. After careful examination of numerous prevention strategies, it was determined that a juvenile diversion program would provide the most effective and mutually beneficial prevention effort directly applicable to the highly diversified areas and the 1¾ million people served directly by the 14 sheriff's stations in Los Angeles County.[23]

The decision was made to focus on juveniles as the target population for the Los Angeles County Sheriff's Department diversion program. An important first step in planning the program was analysis of the current juvenile disposition data for the department. This analysis revealed that the department traditionally "counseled and released" the least serious 55 percent of all juvenile arrests. About 25 percent were released to the custody of their parents and a non-detained petition filed with the probation department requesting a juvenile court hearing. The remaining 20 percent of the cases represented the most serious of the offenders. Because they were viewed as a hazard to themselves or the community, these offenders were referred to juvenile hall for detention via detained petition requests.

By more detailed analysis of the characteristics of the juveniles comprising each of the above three groups, it appeared that a significant portion of the youth in the mid-range of seriousness appeared to be in a "high-risk" situation in regard to developing delinquent lifestyles. Although many of the juveniles in this area would not be termed delinquent, records indicated that they were the most likely of all those in the non-delinquent category to have further contacts with law enforcement and thus create the "cycle of failure" which ultimately leads to a delinquent and criminal lifestyle.

On the basis of this information and in an effort to break the "cycle of failure," it was decided to select a target of 10 percent of youths in this category to be diverted to community-based organizations trained specifically to provide personal, nonstigmatizing supportive guidance.

An important aspect of the program was the decision to make complete referrals as opposed to merely "forwarding problems." That is, the department assumed responsibility for gaining extensive knowledge of community resources, making evaluations of them, communicating directly with agency personnel to familiarize them with problems at hand, preparing the juvenile to accept the agency, and following up after referral to see that contact actually was carried out. The decision was also made to deal with agencies offering direct services and those with aggressive outreach and followup services, rather than umbrella agencies engaging in rereferral.

[21] "Police Department Opens Youth Bureau," *Contra Costa Times*, Nov. 11, 1971.

[22] Information supplied by the California Youth Authority.

[23] Information supplied by the Los Angeles County Sheriff's Department.

Court-Based Diversion Models

The opportunity to divert does not cease even after an arrest has been made.[24] Many arrested offenders are diverted at a later stage in the judicial process. Whether or not these various discretions constitute diversion is another question. In some cases, the district attorney, the court, the public defender, and others have specific programs aimed at diverting people out of the criminal justice system. They have a specific target population and specific programs to which offenders can be diverted. To the extent that these activities are formally designed to divert a defined offender population, they are diversion programs, as the term is used in this chapter.

Diversionary methods have been used most extensively for persons accused of white-collar offenses, shoplifting, family disturbances, misdemeanors of all kinds, and first offenses. They are employed at all stages of the judicial process. In many cases diversionary decisions have such low visibility that it is difficult to describe them and nearly impossible to assess their value. However, some of the decisions reflect more or less standardized policies, and they are indicative of general trends in informal procedure.

Minor offenses have long been characterized by a low incidence of official sanctions. This is especially true of what have been called crimes without victims and class crimes. Victimless crimes include liquor and drug violations, gambling, numbers rackets, prostitution, homosexuality, and so on. Class crimes involve offenses categorized as vagrancy, drunkenness, disorderly conduct, and suspicious behavior.

These offenses are notoriously resistant to law enforcement tactics. Unless they seriously disturb the public conceptions of order and decency, they are not likely to arouse official reaction. Indeed, the authorities sometimes may try to regulate these activities to minimize their public visibility. In spite of sporadic and half-hearted enforcement, however, the offenses mentioned were responsible for 45 percent of the 8.6 million arrests that occurred in 1971 in the United States.[25]

[24] See Martin Gold, *Delinquent Behavior in an American City* (Brooks-Cole, 1970); Eugene Doleschal, Hidden Crime, *Crime and Delinquency Literature*, No. 2 (New York: National Council on Crime and Delinquency, 1970); Roger Hood and Richard Sparks, *Key Issues in Criminology* (McGraw-Hill, 1970); Clarence Schrag, *Crime and Justice: American Style* (Rockville, Md.: National Institute of Mental Health, Center for Studies of Crime and Delinquency, 1971).

Civil Commitment

Criminal justice concepts are being revised because of the increasing tendency of courts and the public to hold authorities responsible for the consequences of their decisions. This is perhaps best evidenced in the rapid expansion of civil commitment and other procedures based on a medical model that holds that some types of deviance, instead of indicating criminal intent, are symptoms of illness.

Civil commitment can be described as a procedure, theoretically noncriminal and employed without stigmatization, for diverting selected types of deviants from the criminal justice system. Such diversions can occur either before or after trial. The offenders—juveniles, drug abusers, sex offenders, and the mentally ill or retarded, for example—are hospitalized for treatment instead of being imprisoned. Community protection is promised by removal of the "sick" person and by therapies aimed at restoration of health or normalcy before the patient is returned to free society.

Yet there are some doubts about the wisdom of civil commitments. Such commitments are ordinarily viewed by the patient as involuntary, and his rights may be violated even though no criminal charges are made against him. Moreover, there is much concern that the treatment given may not be any different or any more effective than that received in many correctional facilities. Although these charges present some problems, the Commission endorses the use of civil commitment under certain conditions. A discussion of this concept may be found in the Commission's Report on Police and in the chapter dealing with drug abuse in its Report on Community Crime Prevention.

Pretrial Intervention Programs

Many pretrial programs aimed at reducing criminalization have been developed. Their main process is screening cases appearing on the first arraignment calendar to select those that are good prospects for diversion. The screening is done by interview with some corroborative investigation. Interviews are conducted by different personnel in different programs—probation officers, public defenders, prosecuting attorneys, court staff, law students, ex-offenders, VISTA volunteers, or special project employees.

Court-based diversion programs are administered

[25] *UCR, 1971*, p. 115.

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, began as an independently administered diversion resource that accepted referrals from juvenile court intake and judges. In 1971, when the project's grant was terminated, its staff and program were incorporated in the local court system.

The purpose of the growing number of pretrial diversion programs is to provide the court 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 projects 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 a number of criteria to determine whether he is eligible for participation in a formal diversion program. Such screening criteria vary, depending on the scope and range of the particular project. For example, a project may be willing to accept only juvenile first offenders or offenders who have not committed offenses in certain categories. If an individual meets the particular criteria, the project staff explains the program to the individual. If he is interested in participating, the staff will ask the court to defer formal charging. If the individual successfully completes the program, which usually involves regular participation in certain activities and acceptance of assistance, the staff will ask the prosecutor to dispense entirely with the case. For those individuals who do not wish to participate or who indicate a desire to participate but then withdraw or are terminated unfavorably, charging will proceed as otherwise would have occurred.

In the other model, formal charges are lodged but individuals are screened for eligibility in a particular intervention project. If they and the court agree, further criminal proceedings are suspended pending the outcome of the individual's participation. In these programs, successful completion of the program results in a request that charges be dropped. Unsuccessful participation results in regular proceedings on the charges.

The attractive feature of both approaches is that further opportunities to avoid criminalization are introduced without the prosecutor and the court having to terminate their interest and authority in the matter. The individual is able to avoid criminal prosecution and at the same time avail himself of whatever services he may need. In this sense, the programs are planned interventions, not simply the result of chance fluctuations in the broad range of discretions represented in the justice system.

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 reports 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 resistant to any kind 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 giving 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 training.

Pretrial intervention projects have been funded 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, which were experimental and demonstration projects. Sponsorship for pretrial projects can include cities and counties as well as private nonprofit corporations.

Project staffs include both paid workers and community volunteers with responsibilities in one of the following areas: screening of potential participants, counseling, employment services, and education. Nonprofessional staff members with backgrounds similar to those of the offenders are used in what have been traditionally professional occupational roles.

Program counselors screen all defendants prior to each day's arraignment. If an eligible defendant wants to participate in the program, the counselor, with the approval of the prosecuting attorney, makes a recommendation to the judge in arraignment court for a continuance of the case to permit the defendant to participate in the project (usually for 90 days). The enrollment criteria vary. Different projects have considered such factors as sex, age, residence, employment status, present charge, pretrial release status, and previous record. Accused offenders have been accepted while facing such various charges as petty larceny, attempted auto theft, receipt of stolen property, use of false pretenses, forgery, solicitation for prostitution, attempted burglary, simple assault, unlawful entry, and destruction of property.

At the end of the prescribed period of the continuance, the participant's counselor may recommend one of the following three actions to the court:

- Dismissal of pending charges based on satisfactory project participation and demonstrated self-improvement.
- Extension of the continuance to allow the program staff more time to work with the person (usually for an additional 30 to 90 days).
- Return of the defendant to normal court processing, without prejudice, because of unsatisfactory performance in the program.

Of 753 young first offenders enrolled in one of the first projects, charges were dropped for 468 who completed the program successfully, while 285 offenders were returned to face prosecution because of unsatisfactory performance. The recidivism rate (using a 15-month period following arrest as the base) was 14 percent lower for project participants than for a control group of first offenders.[26]

Recently pretrial pilot projects have been funded by the Manpower Administration in Baltimore, Boston, Cleveland, Minneapolis, San Antonio, and the San Francisco Bay Area. A similar project has been funded in Newark, N.J., by the Law Enforcement Assistance Administration.

New Haven Pretrial Diversion Program

An interesting example of a spin-off from the pilot projects funded by the Manpower Administration is the establishment of the New Haven Pretrial Diversion Program in the Sixth Circuit Court in New Haven.[27] 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 to focus on the problems of pretrial criminal justice.

Formation of the Council in 1971 marked the first effort in New Haven to develop a formal mechanism for coordinating activities of local criminal justice agencies. The decision was made to focus upon the pretrial stage of the criminal process in order to enable the Council to concentrate upon a critical problem area.

The New Haven criminal justice community responded favorably to the idea of establishing a local Pretrial Services Council. The agencies which designated local representatives included:

New Haven Department of Police Services
Department of Corrections
Department of Adult Probation
Sixth Circuit Court Prosecutor's Office
Sixth Circuit Court Public Defender's Office
New Haven County State's Attorney's Office
New Haven County Public Defender's Office
New Haven Legal Assistance Association
Judicial Department; Circuit Court Clerk's Office
Connecticut Bail Commission
New Haven County Bar Association
Yale Law School

A full-time professional staff was hired to assist the Council in program planning and implementation under the close supervision of Council members. Federal assistance under the provisions of the Omnibus Crime Control and Safe Streets Act was secured to enable the project to get underway.

The Pretrial Services Council is designed to serve a double function for the New Haven criminal justice system. First, the Council improves the ability of New Haven criminal justice agencies to both coordinate and cooperate in upgrading the pretrial criminal process. Second, the Council through its staff can institute and operate pilot projects which require interagency coordination.

The New Haven Pretrial Diversion Project is the first program developed by the Pretrial Services Council. It is modelled after successful diversion programs which have been operating in New York City and Washington, D.C. for over four years. The program is designed to channel eligible defendants into a specifically developed set of services focusing upon employment and counseling.

The ultimate goals of the program are to assist in reducing congestion in the Circuit Court System; avoid unnecessary prosecution, trial, and the development of conviction 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

[26] *Manpower Programs for Offenders* (Washington: Manpower Administration, U.S. Department of Labor, 1972), p. 12.
[27] Information from Pretrial Diversion Program, Sixth Circuit Court, New Haven.

illustrate the variety of programs that are being implemented in response to those 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.[28] The fact that most persons arrested for drunkenness are homeless and indigent chronic offenders [29] suggests that drunkenness and related offenses should be treated through social service 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 the 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.[30] 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 detoxification center in 1966 for the diversion of drunkenness offenders.[31] 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 State Hospital.

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 to undergo treatment, criminal charges are 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, a 1- to 3-day program is available to "walk-ins" 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 a subacute 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 30 days in jail. Critics of the centers feel that a 30-day sentence at least gave an offender the opportunity to "dry out" and a place to sleep. Now the large turnover and volume of 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 patient day for 7 days as 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 arrest system; 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. No police time is saved, however, as police are still responsible for keeping inebriates off 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 reducing them to corrals for herds of unfortunates. A minimum of services is provided and individual programming is nonexistent.

[28] Robert T. Nimmer, *Two Million Unnecessary Arrests* (Chicago: American Bar Foundation, 1971), p. 1.
[29] Gerald Stern, "Public Drunkenness: Crime or Health Problem?" *Annals of the American Academy of Political and Social Science*, 374 (1967), 148.
[30] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington: Government Printing Office, 1967), pp. 236–237.
[31] Data on St. Louis and Washington centers from Nimmer, *Two Million Unnecessary Arrests*, and Helen Erskine, *Alcoholism and the Criminal Justice System: Challenge and Response* (Washington: Law Enforcement Assistance Administration, 1972).

Manhattan Bowery Project

The Manhattan Bowery Project in New York City is a detoxification center operated by the Vera Institute 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 rehabilitative services to homeless alcoholics in the Bowery.[32]

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, intoxicated 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 accept aid, and, upon release, over 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 the willingness of many problem drinkers to accept treatment, if only for free room and board. Opening the D.C. center to walk-ins has resulted in a patient population that is 50 percent self-referred.[33]

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 care and cure to social service agencies that can better address long-range projects for housing and employment. Prison does not rehabilitate drunkenness offenders and neither does forced, short-term treatment. To rehabilitate problem drinkers, an alternate lifestyle must be offered, and the problem drinker must bring with him a desire to change his habits.

Until the distribution of public monies makes feasible a transfer of responsibility, drunkenness offenses will continue to drain law enforcement resources. Diversion of such cases into therapy may, in the long run, prove to be the most practical means of dealing with this problem.

[32] Criminal Justice Coordinating Council of New York City and Vera Institute of Justice, *The Manhattan Bowery Project* (New York: CJC, 1969).
[33] Nimmer, *Two Million Unnecessary Arrests*, p. 20.

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. Diversion 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 clearly 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 reorient the offender in society and to spare the criminal justice system the time and 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 diversionary procedure for narcotics offenders, especially heroin addicts, and in 1968, the Illinois Drug Abuse Program (IDAP) was established. Financed entirely 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-

tion Act were channeled to the program through the National Institute of Mental Health (NIMH). IDAP's budget increased from $185,000 in 1968 to $2.4 million in 1971, with the State gradually assuming more financial responsibility. By 1972, the budget increased to $4.5 million, with NIMH funds accounting for only 14 percent.[34]

IDAP has been expanded to treat users of amphetamines, barbiturates, and hallucinogenic drugs so that by July, 1971, about 2,000 individuals had received treatment in over 20 clinics. In 1972, IDAP had resources and facilities to handle 3,000 patients. Twenty-five percent of the patient population are referred from criminal court.

The structure and function of every agency involved are defined by State law. The court determines eligibility for offenders according to statutory requirements. Not eligible are offenders charged with violent crimes, drug-related criminal conspiracy, 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 enrollments in a drug program within any consecutive 2-year period.[35]

An IDAP intake representative screens arrestees for drug use. Potential candidates are interviewed and given a medical examination to detect signs of addiction and to determine the likelihood of rehabilitation. The Illinois law (Ill. Rev. Stat. ch. 91½, 120.3-4, Smith-Hurd Supp., 1972) incorporates 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 . . . addiction."

IDAP reserves the right to refuse any candidate, a safeguard against overcrowding its facilities. If IDAP approves a referral, the court makes a final ruling, either continuing the case for the duration of treatment or granting convicted persons probation, with drug treatment a condition.

To treat offenders who are technically ineligible for treatment, IDAP has contractual agreements with government and private agencies. One such organization is Gateway Houses Foundation, a private nonprofit corporation operating three therapeutic communities for first offenders charged with possession of marijuana and other drugs. IDAP operates two multimodality residential centers, one in downtown Chicago and one outside the city. These centers serve narcotic drug users, non-narcotic drug users, those who have been detoxified by methadone, methadone-maintained patients, and those now abstaining from drugs. Some of the staff are rehabilitated addicts.

The maximum referral period is 2 years for preadjudication cases. Under the statute, treatment can be successfully completed at any time during that period. If an offender leaves the program or if IDAP dismisses him, pending criminal charges are 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 modifications.

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 rather than statute. The State's Attorney's office works with the director of the program to divert from prosecution first offenders charged with possession of small amounts of marijuana, stimulants, depressants, and hallucinogens. The Illinois Cannabis Control Act offers guidelines to determine whether the quantity of a drug in an offender's possession is for personal use or for sale.

Eligible offenders must waive the right to a speedy trial, and the court continues the case for the program's 2 or 3 months' duration. Participants attend five weekly group therapy sessions and submit urine samples for up to 3 months. Arrest, absence from group therapy, or traces of opiates, amphetamines, or barbiturates in the urine are cause for removal from treatment and either a resumption of prosecution or enrollment in a more intensive program, such as IDAP or Gateway House.

The State's Attorney moves to nolle prosequi charges against persons who successfully complete treatment and refrain from further arrest. Failure in the program does not influence the court in cases where prosecution is resumed. The State's Attorney's Office plans to expand the process of diverting users of "soft" drugs from prosecution. Approximately 80 percent of the cases have been successful, lending credence to the argument for diversion of drug offenders.[36]

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 $390,000 research grant through the National Institute of Mental Health, Daytop Village is now a private nonprofit foundation receiving funds from the New York State Narcotic 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 500 addicts; the annual dropout rate was 50 percent.[37]

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 of that crime.

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, and renewal is based on his progress at Daytop. After 6 to 8 months of compliance with program requirements, his case is dropped.

Daytop's program includes daily meetings at the Village, chores, seminars, classes, and encounter groups led by a staff of former addicts. Younger participants (under 20 years) and marijuana users report to storefront day-care centers for daily therapy. These storefronts have a dual purpose: to reorient offenders into their everyday environment without drugs and to force community awareness of the drug problem and Daytop's program. Although the number of cases diverted through Daytop has been small—100 cases in 1969—it serves as a hopeful alternative to criminal processing of drug offenders.

All Daytop programs depend on a preliminary interview with each candidate to determine his willingness to accept treatment, and all reserve the right to refuse a referral. For preconviction referrals, charges are dismissed at a hearing after the completion of drug treatment.

Narcotics Treatment Administration

The District of Columbia's Narcotics Treatment Administration (NTA) differs from the models described above in its primary goal: to treat all the addicts in the community, regardless of their previous offenses and program failures. The only prerequisite for enrollment is a desire to break the drug habit, and failure in treatment does not result in expulsion.

NTA's long-term objective is to enable every participant to live a life free of illegal drug use and arrest and to function as a contributing member of society. Beginning with one clinic serving 100 patients, the program has expanded its services to treat 3,500 addicts in 12 centers and four private contract facilities.[38] With the exception of the most affluent residential area, heroin use is spread throughout the city. Because heroin addiction is known to be related to criminality, NTA treatment centers are strategically located in areas with high crime rates.[39] A few are outside the core area where heroin use is not yet rampant.

A budget of $7 million in 1972 supported units for methadone maintenance, methadone detoxification, urine surveillance only, and total abstinence. There is no waiting list for voluntary patients. They are sent immediately to a holding facility and begin methadone maintenance until the appropriate treatment modality is determined. Each week about 175 heroin users volunteer for treatment.[40]

Each day NTA representatives screen all defendants entering Superior Court to identify heroin users. The court approves the administration of narcotics tests, and eligible offenders are released to NTA's Criminal Justice Intake Service on bail. Thorough examinations are performed, and a counselor refers each patient to the treatment facility nearest his home that can best serve his needs. NTA operates separate units for those not yet 18 years old.

[31] Except as otherwise noted, information on IDAP is from American Psychiatric Association and National Association for Mental Health, *The Treatment of Drug Abuse: Programs, Problems, Prospects* (Washington: Joint Information Service, 1972), pp. 127–152.

[35] Wayne Kerstetter, "Diversion of Narcotics Offenders Three Formats," unpublished paper prepared for the Law Enforcement Assistance Administration, 1971, p. 8.

[36] Kerstetter, "Diversion of Narcotics Offenders," p. 25.

[37] APA–NAMH, *The Treatment of Drug Abuse*, pp. 83–103, 242–244.

[38] Comptroller General of the U.S., *Narcotic Addiction Treatment and Rehabilitation Programs in Washington, D.C.*, Report to Subcommittee No. 4, House Committee on the Judiciary, 92 Cong., 2 sess., 1972.

[39] Barry S. Brown, Robert L. DuPont, and Nicholas J. Kozel, "Heroin Addiction in the City of Washington," unpublished paper for Narcotics Treatment Administration, Washington, 1971.

[40] Robert L. DuPont, "Trying to Reach All the Heroin Addicts in a Community," unpublished paper, Narcotics Treatment Administration, Washington, 1971, pp. 2, 5.

Six bureaus at NTA provide medical, management, youth, research, information, and special services. The Special Services Bureau supervises and coordinates counseling, criminal justice referrals, and patient referrals to other programs and agencies. Legal advice is available through Legal Services to Addicts, a special project of NTA and the Washington Lawyer's Committee for Civil Rights under Law.[41] A central computerized data bank compiles information from all facilities for program evaluation including patients' arrest records, employment status, urinalysis reports, and length of treatment.

From May, 1970, to November, 1971, NTA studied the progress of 450 adult and 150 youth patients, selected at random.[42] Most of the adult patients were enrolled in methadone maintenance; most of the youths were in a methadone detoxification program. After 18 months, 46 percent of the adults were still in treatment; 19 percent were meeting all program goals of abstinence from illegal drug use, no arrests, and employment or training. Twenty-seven percent of those still 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 18 months, with only 1 percent satisfying all treatment goals. Twelve percent of those in treatment failed to meet one or more program goals. Ninety-two percent were arrested within the study period. No followup data concerning dropouts are available.

Results of the study seem discouraging, but in a city with an estimated 20,000 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 highly professional staff as priorities.

Public endorsement is essential if NTA is to reach the entire addict population. Because of the cooperation and interaction of law enforcement and social service agencies with NTA, duplication of efforts has been avoided 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. One result of the widespread interest has been a duplication of services between State and local, public and private agencies. Coordination and cooperation among social service and law 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 responsible for the overall planning, policy, and budget of all Federal drug programs. Although the multiplicity of approaches to treatment is extensive, a variety of modes is necessary to reach the large numbers of addicts, because no "cure" for addiction exists. With multimodality treatment, a patient failing in one type of treatment may succeed in another.[43]

Criminal prosecution does not rehabilitate the drug user; in fact, his knowledge of drug use may be increased after a prison term.[44] Diversion into treatment programs may not break the habit of 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 emergencies 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, some social service agencies recommend filing a disorderly conduct complaint against a person in need of care, leaving the responsibility for psychiatric examination to the court. Obviously, this solution is unfair to the individual and a burden on the criminal justice system.[45]

Insane and mentally incompetent offenders can be excused from criminal prosecution, but they are processed through jail and court before an official diagnosis is made. Diversion of such persons from the criminal justice system at the outset, eliminating the record of arrest, would be more humane and expedient.

Police Emergency Programs

State laws provide for emergency detention, authorizing a police officer to take into custody and transport to a mental health center for short-term detention anyone he considers to be mentally incompetent and an immediate danger to himself or to other persons. Admissions procedures at most receiving centers, however, preclude expediency. A signed petition is usually required, and police officers, whose legal authority ends at the center, refuse to sign.

The Los Angeles Police Department, in cooperation with the county hospital, has assigned a detail of seven officers to expedite cases of mental illness.[46] All such cases are screened by the hospital detail for disposition: release, arrest, or admission to the hospital for 72 hours of emergency detention. Detail officers do not receive special training, but they are made familiar with admissions procedures and the guidelines for determining a need for hospitalization. California law provides for emergency detention, and the Los Angeles Police Department has taken the responsibility of acting as petitioner for admission when no family member or friend of the offender is available. The final decision for admission is left to the admitting physician, so that the petition is a mere formality.

New York and San Francisco have reception facilities in large hospitals to accept emergency cases brought by the police. An admissions staff performs psychiatric examinations, and police officers file an application or petition for admission.[47] Because the judgment of the hospital staff is the basis for admission, a policeman's signature is only a formality. He is not held responsible for the admission, and the court and health officers are eliminated from the process.

Most hospitals, however, do not have sufficient staff for round-the-clock admissions and, 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 Wheaton, Ill., police department, in cooperation with the Graduate School of Social Work of the University of Illinois, operates a crisis intervention program offering services 24 hours a day to youths referred by the police.[48]

To deal effectively with the problem of mental illness, public health services must be funded and staffed with professionals to treat those persons who cannot afford private care and those who have neglected a mental disturbance until it has reached a dangerous stage. The police deal with cases of mental illness daily because people have nowhere else to go or are unaware of existing social service organizations. The public must be made aware of 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 centers are ideal facilities for the diversion 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 satellites in storefronts, some with day-care programs, all with an informal atmosphere. Services will be free or priced according to a patient's ability to pay; funds will be contributed by State and Federal governments; existing agencies will cooperate with private organizations and public agencies on local, State, and Federal levels. An example is the St. Joseph Hospital Mid-Houston Community Health Center which has satellites offering screening and intake services for welfare, vocational rehabilitation, and employment counseling.[49]

Public relations is an important element in the community center project; the center must be known and accepted by the neighborhood residents in order to accomplish its therapeutic and educational goals. At some centers, local leaders—teachers, clergymen, probation officers—are a liaison to the community. Many centers recruit foreign-speaking and ethnic personnel to create better relations and communication with the public. Rehabilitative programs for reentry into society as well as vocational training and counseling are part of the treatment for the mentally ill. Job placements and on-the-job training are secured for patients, with a goal of reducing the future rate of hospitalization and arrest. The spread of available services in community health centers should reduce the number of

[41] *Comprehensive Plan for Law Enforcement and Criminal Justice in the District of Columbia* (Washington: Office of Criminal Justice Planning, D.C. Government, 1971), p. 197.
[42] Comptroller General, *Narcotic Addiction Treatment*, pp. 22–24.
[43] Roger E. Meyer, *Guide to Drug Rehabilitation: A Public Health Approach* (Beacon Press, 1972), p. 37.
[44] John P. Bellassai and Phyllis N. Segal, "Note, Addict Diversion: An Alternative Approach for the Criminal Justice System," *Georgetown Law Journal*, reprinted in *TASC: Treatment Alternatives to Street Crime* (Washington: Special Action Office for Drug Abuse Prevention, 1972), pp. 18–61.
[45] Arthur R. Matthews, Jr. "Observations on Police Policy and Procedures for Emergency Detention of the Mentally Ill," unpublished paper prepared for the Law Enforcement Assistance Administration, 1972, p. 18.
[46] Matthews, "Observations on Police Policy," p. 26.
[47] Matthews, "Observations on Police Policy," p. 23–24.
[48] *Models for Delinquency Diversion* (Athens, Ga.: Institute of Government, University of Georgia, 1971).
[49] National Institute of Mental Health, Office of Program Planning and Evaluation, *The Mental Health of Urban America* (Chevy Chase, Md.: NIMH, 1969), p. 76.

police contacts with the mentally ill. In addition it will offer to police officers a receiving facility for unstable offenders 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 cooperate by eliminating the red 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 correctional or justice job. Frequently, the modifications require 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 recent statutory enactment 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 was followed. An excellent theoretical model for diversion was subverted since the idea could not be translated into a "real" program. The concept, however, is very important. In writing statutes regarding legally prescribed acts, for example, the legislature should provide that the police *may* make an arrest, rather than that they *shall* do so.

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 "ungovernable," "runaway," or "curfew violation." Indeed, it seems probable that indiscretions 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 without 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 such as *Gault* can be meaningful if the definitions of offense categories are unconstitutionally vague.

Legislative Authorization of Diversion Programs

Another important way that legislatures can enhance and extend diversion is by authorization or creation of diversion programs. Formal legislative 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 are much 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 meet certain criteria, and funding for diversion programs within the administrative framework of Federal district courts. Although the bill did not come to the floor in 1972, it is expected 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 change the way regular business is transacted. Procedures are changed, not law. Take for instance the chief of police in a large metropolitan area who, in written orders, instructed his field force to ignore persons selling flowers at the public freeway entrances, a misdemeanor in the State. By administrative order a diversion program of "no action" was operationalized. 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 advocates as substitutes for detention and petitions. 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 pending some dispositional decision before the juvenile court. Whether or not the court acts is determined by the juveniles' behavior while in house detention.

The project makes extensive use of paraprofessionals and sets qualifications for employees. It seeks to find individuals within the community who have the same cultural and socioeconomic backgrounds as the youth being supervised. Hired on a full-time basis, the paraprofessionals are paid salaries equal to those received by regular employees working in the detention center. Although they have no offices (hence, no regularly scheduled office hours), they are required to provide services to their clients when needed. Caseloads of five children and/or families permit the paraprofessionals to be almost another member of the child's family. The limited caseload permits the worker to become involved in real problem-solving activities with the client, his family, the school, law enforcement agencies, and others. Practical in approach, the paraprofessional's efforts are directed at the immediate resolution of the practical problems that may have led to the child's arrest.[50]

RAMIFICATIONS OF DIVERSION

It is obvious that diversion is both a new idea and a very old practice. It is also obvious that prevention, diversion, screening, and minimizing penetration are closely related concepts that become easily confused by those attempting to deal with alternatives to criminal justice processing. Each, however, is predicated on the assumption that the existing system is often destructive and that it is better to direct many offenders to programs that are less stigmatizing, less restricting, less punitive, than it is to escalate them through the justice system. Unfortunately, however, diversion may be used as an excuse for not addressing the very real problems associated with the development of effective preventive, correctional, differential care, custody, and treatment programs. Many programs that are labeled diversion did not originate as formal efforts to divert people from the criminal justice process but came about through ambiguities in the law or the discretionary practices of individual agents of the justice system. Real programs of diversion specify objectives, identify a target group, outline means and activities for achieving the goals, implement programs, and produce evidence of a plan to at least attempt to evaluate whether or not the means employed are successful in achieving the goals desired.

Because of the variety of diversionary methods, it is essential that the community obtain reliable information concerning their effectiveness in crime control. Information is needed regarding diversion's impact on the justice system, the role diversion plays in crime prevention, and the relative rates of success on cases diverted from the system at different stages as compared with cases subjected to varying degrees of criminalization. Such information is not now available, nor will it be available until records are kept on diversion as well as on cases processed officially.

When two or more control methods appear to be

[50] Information from Youth Development and Delinquency Prevention Administration, U.S. Department of Health, Education, and Welfare.

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 reordering 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.

Diversion 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 complied with.

References

1. Bard, Morton. *Training Police as Specialists in Family Crisis Intervention.* Washington: Government Printing Office, 1970.
2. Brakel, S. "Diversion from the Criminal Process: Informal Discretion, Motivation, and Formalization," *University of Denver Law Journal,* 48 (1971), 211.
3. Doleschal, Eugene. "Hidden Crime," *Crime and Delinquency Literature* (National Council on Crime and Delinquency), 2 (1970).
4. Gold, Martin. *Delinquent Behavior in an American City.* Belmont, Calif.: Brooks-Cole, 1970.
5. Kliene, Malcolm. "Police Processing of Juvenile Offenders: Toward the Development of Juvenile System Rates" in *Criminal Justice Planning Projects,* Los Angeles County, 1970.
6. Nimmer, Raymond T. *Two Million Unnecessary Arrests.* Chicago: American Bar Foundation, 1971.
7. Nimmer, Raymond T., and McIntyre, Donald M. "Draft of Proposed Standards Relating to Diversion," paper prepared for the National Advisory Commission on Criminal Justice Standards and Goals.
8. Schrag, Clarence. *Crime and Justice: American Style.* Rockville, Md.: National Institute of Mental Health, Center for Studies of Crime and Delinquency, 1971.
9. Skolnick, Jerome H. *Justice Without Trial.* New York: Wiley, 1966.

Related Standards

The following standards may be applicable in implementing Standard 3.1.

6.3 Community Classification Teams.
7.2 Marshaling and Coordinating Community Resources.
7.3 Corrections' Responsibility for Citizen Involvement.
8.2 Juvenile Intake Services.
9.4 Adult Intake Services.
15.5 Evaluating the Performance of the Correctional System.

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, the courts, and police. Judges seldom order persons detained pending trial; they simply set bail. Prosecutors and defenders do not lock people up; they merely argue their recommendations to the court. Sheriffs and wardens make no detention decisions; they only act as custodians for those who fail to gain pretrial release. Taken together, these abdications relegate the pretrial process to the role of stepchild in the criminal justice system and explain why the problem remains so troublesome.

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 its 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 commingling 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.[1] 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

[1] Neil Fabricant, "Bail as a Preferred Freedom and the Failures of New York's Revision," *Buffalo Law Review*, 18 (1969), 303, 304–307.

Table 4.1 Sentence, by Jail Status and Charge

Charge on Which Guilt Determined	At Liberty Before Trial			Detained Before Trial		
	Suspended Sentence (Percent)	Prison (Percent)	Total Cases	Suspended Sentence (Percent)	Prison (Percent)	Total Cases
			Felonies			
Assault	42	58	26	6	94	73
Dangerous Weapons	30	70	10	9	91	11
Larceny	42	48	40	7	93	107
Narcotics	41	59	17	—	100	16
Robbery	22	78	18	3	97	59
Others	43	56	14	12	88	17
			Misdemeanors [1]			
Assault	68	32	134	13	87	159
Dangerous Weapons	49	51	65	25	75	43
Larceny	72	28	193	14	86	357

Source: Charles E. Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," *New York University Law Review*, 38 (1963), 67, 85.

[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.[2] A 1963 study of New York practices indicated that detention before trial had an effect both on sentence and on conviction rates.[3] 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, two 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., no previous record, family stability, employment stability), the fact of pretrial detention has an adverse effect. Table 4.3, from a study of arraignments in Manhattan's Magistrate's Felony Court between October 16, 1961 and September 1, 1962, indicates such an effect.[4]

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 reached similar results when other factors were isolated.[5]

In addition to these tangible effects from pretrial detention it is not unreasonable to assume that the attitude of a person detained prior to trial is markedly different from that of a person who was at liberty. The man who has met with the indecent 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 and in practice is generally based not on any 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 inhumane 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. Many 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 and judicial agencies is essential. Police will determine in some measure the number of persons with which the pretrial process must cope. Police 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 the principal method of handling persons awaiting trial even though alternatives to detention have not been fully studied 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 pursue alternatives to detention as well as alternative means of treating those detained 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-

[2] Bar Association of the District of Columbia, Junior Bar Section, *The Bail System of the District of Columbia*, Report of the Committee on the Administration of Bail, Washington: 1963.

[3] Charles E. Ares, Anne Rankin, and Herbert Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," *New York University Law Review*, 38 (1963), 67, 85.

[4] Anne Rankin, "The Effect of Pretrial Detention," *New York University Law Review*, 39 (1964), 641, 654.

[5] *Bellamy* v. *The Judges and Justices Authorized to Sit in the New York City Criminal Court*, New York Supreme Court, Appellate Division, First Dept., Plaintiff's Memorandum, Motion No. 10864.

Table 4.2 Case Dispositions, by Jail Status and Charge

Charge	At Liberty Before Trial: Percent Convicted	At Liberty Before Trial: Percent Not Convicted	At Liberty Before Trial: Total Cases	Detained Before Trial: Percent Convicted	Detained Before Trial: Percent Not Convicted	Detained Before Trial: Total Cases
Assault	23	77	126	59	41	128
Grand Larceny	43	57	96	72	28	156
Robbery	51	49	35	58	42	100
Dangerous Weapons	43	57	23	57	43	21
Narcotics	52	48	33	38	62	42
Sex Crimes	10	90	49	14	86	28
Others	30	70	47	78	22	23

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

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

	Number of Favorable Characteristics							
	None		One		Two		Three	
Disposition	Bail (%)	Jail (%)	Bail (%)	Jail (%)	Bail (%)	Jail (%)	Bail (%)	Jail (%)
Sentenced to prison	[72] [1]	82	26	73	17	52	6	—
Convicted without prison	[6]	2	42	8	44	24	48	—
Not convicted	[22]	16	32	19	39	24	46	—
Number of defendants	(18)	(107)	(68)	(110)	(122)	(62)	(67)	(2)

Source: Anne Rankin, "The Effect of Pretrial Detention," *New York University Law Review*, 39 (1964), 654.

[1] Brackets indicate the number of cases is small and the percentage should be read with caution.

fully studied and organized by others.[6] Alternatives to the bail and jail system have been proposed, implemented, evaluated, and found successful in enough jurisdictions that recommendations for wholesale adoption are practical without extended elaboration.[7]

PROBLEMS IN PRETRIAL DETENTION

Pretrial detention today is a no man's land in both the administration and the reform of the criminal justice process. It lies at the intersection of conflicting values and concerns—the right to bail, the risk of flight, the presumption 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 political leaders.

The fragmentation of responsibilities contributing to pretrial detention makes the plight of pretrial detainees typically worse than that of convicted 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 United States than does imprisonment after sentencing.[8] In many jurisdictions, the rate of pretrial detention is rising at the same time that postconviction imprisonment is dropping. Despite the crisis in public budgets, new multimillion-dollar pretrial jails, larger than their antiquated predecessors, are being built or planned. At the same time, a decline in postsentence imprisonment is producing forecasts of or recommendations for the abandonment of some maximum security institutions for convicted offenders.

These paradoxes inevitably exact a high price in citizen disrespect for law. How else can a rational person view a system of justice that detains vast numbers of accused persons in maximum security institutions during the period of their presumed innocence, only to release most of them when they plead or are found guilty?

Excessive detention is only one aspect of a seriously flawed pretrial process. Uncontrolled release can produce a high rate of defaults in appearance for trial, thus flouting the historical purpose of bail and jeopardizing the integrity of the judicial process. In periods of rising crime and delayed court dockets, outright release facilitates the prompt continuation of criminal careers, often rooted in addiction, which demoralize the police and endanger the community. Overwhelmed prosecutors may oppose pretrial release because detention is an incentive to a quick plea of guilty. Citizen cooperation with the police is discouraged when a seemingly guilty person whom a victim has helped arrest is promptly released on bail and returned to the streets.

The problems of excessive detention are caused or compounded by a number of widely acknowledged institutional defects in the system of pretrial justice. These include:

- Excessive reliance on money bail.
- Confusion of responses to crime on bail.
- Substantial trial delays.
- Abridgment of detainees' rights.
- Overuse of the criminal process.
- Haste to build large new jails for pretrial detention.

Excessive Reliance on Money Bail

By perpetuating excessive reliance on money bail and professional bail bondsmen, the pretrial system continues to detain large numbers of poor persons by setting the price of freedom too high. The pretrial process lacks the kind of candid judicial decision typically issued after conviction when the sentencing judge states explicitly 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 in *Ackies* v. *Purdy*, 322 F. Supp. 38 (S.D. Fla. 1970), which voided the use of master bail bond schedules for setting conditions of pretrial release.

In the decade since bail reform was introduced by the Manhattan Bail Project, release on a promise to appear (release on recognizance, or ROR) or in some places on 10 percent cash deposits,[9] have become significant alternatives to money bail bonds. However, the criteria for these options for the most part have been applied either too conservatively (releasing mostly persons who could have posted bond anyhow)[10] or too carelessly (with substantial increases in the default rate).

The reform effort generally has been hindered by inadequate bail-setting information, too narrow a range of decisional options to match the variety of risks presented, too little supervision of persons released, and too little enforcement against those who default. The principle of replacing money bail by pretrial reform is sound, but the range and administration of reform measures in some places has been deficient.[11] A comprehensive system of controlled pretrial release has a vast untapped potential. Bringing today's system up to that level would greatly reduce needless detention of persons unable to make money bail.

Fear of Crime on Bail

A second factor that promotes substantial pretrial detention is public fear that persons released pending trial will commit crimes. This concern has long motivated judges to set intentionally high bail to keep some arrested persons in jail. It is a practice which, though widely used, is of doubtful constitutionality.

This practice, preventive detention, has produced much dissatisfaction with the administration of pretrial justice. Some oppose it as an unwarranted abridgment of the pretrial presumption of innocence, since it predicates detention on possible future guilt before the current charges have been adjudicated. Others oppose it as an ineffective protection against pretrial crime, since successful criminals can simply buy their freedom from bondsmen. The arguments for and against the present system are collected in two valuable compilations by Senator Ervin's Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary.[12]

The unresolved legal status of pretrial detention to deter future crime requires resolution of a number of conflicting values and issues. These include:

- The historical purpose of bail to insure appearance at trial.
- The right to bail under Federal law and most State constitutions.
- 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 current charge and weight of the evidence against the accused.
- The record, from parole systems and other settings, in predicting human misbehavior.
- The relative merits—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 believed essential to thwart incessant thefts to support expensive habits—be held in lockups or hospitals or be treated on an outpatient basis in the future? What alternative measures short of detention will become available in the next decade to reduce the risk released persons pose to the community? It would be foolhardy to invest large sums in enlarging today's 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 programs—assuring the presence of the accused for trial. The Commission is not unaware of the controversy over the constitutionality, advisability, or necessity of preventive detention. It is recognized that in theory preventive detention seems to run counter to many of the major principles recommended in this report. Standards and criteria for determinations of dangerousness are difficult formulations at best. The result

---

[6] See generally, Comment, "Bail: An Ancient Practice Reexamined," *Yale Law Journal*, 70 (1961), 966; Caleb Foote, "The Coming Constitutional Crisis in Bail," *University of Pennsylvania Law Review*, 113 (1965), 959; and Hermine H. Meyer, "Constitutionality of Pretrial Detention," *Georgetown Law Journal*, 60 (1972), 1139.

[7] David McCarthy and Jeanne J. Wahl. "The District of Columbia Bail Project: An Illustration of Experimentation and a Brief for Change," *Georgetown Law Journal*, 53 (1965), 675; Gerald Levin, "The San Francisco Bail Project," *American Bar Association Journal*, 55 (1969), 135; Ares, Rankin, and Sturz, "The Manhattan Bail Project,"; and *Bail and Summons, 1965*, Proceedings of the Institute on the Operation of Pretrial Release Projects (New York: Vera Foundation and U.S. Department of Justice, 1966).

[8] The *1970 National Jail Census* (Washington: Law Enforcement Assistance Administration, 1971), p. 1 shows that half of the adults and two-thirds of the juveniles confined in jails on March 15, 1970, were pretrial detainees or other unconvicted persons.

[9] In this system the accused risks his own resources by paying 10 percent of the bail in cash or placing his own property as security for his appearance. See Charles Bowman, "The Illinois Ten Percent Bail Deposit Provision," *University of Illinois Law Journal*, (1965), 35.

[10] See McCarthy and Wahl, "The District of Columbia Bail Project," 704–705.

[11] *Preventive Detention*, Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 91 Cong., 2 sess. (1970).

[12] *Ibid.*, and *Amendments to the Bail Reform Act of 1966*, Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 91 Cong., 1 sess. (1969).

possibly could be more detention instead of less. On the other hand, we know that the present system of money bail is essentially a preventive detention system, with judges setting bond inordinately high to insure detention prior to trial. This form of hypocrisy runs counter to the need for the criminal justice system to breed respect rather than hostility for law.

The Commission feels, however, that it may be premature to recommend a system of pretrial preventive detention. In most jurisdictions, implementation of this chapter's recommendations will bring about 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.[13] 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 continuances, inefficient use of judicial system personnel, long delays in trial calendars, and lengthy interludes between the finding of guilt and the imposition of sentence.[14] Through increased resources 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, speedier 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.[15] Thus, a more efficient court process can reduce the need for any detention in many cases.

With such important values at stake, it is surprising to many that the speedy trial prescribed by the Constitution is more rhetoric than fact in most communities. A number of factors are responsible. Most new criminal justice funds in recent years have been channeled into law enforcement, not courts.[16] Increasing the ability of the police to make arrests without compensating for the additional burden thrust on the courts aggravates judicial incapacity to try criminal cases currently and to dispose of them on their merits.

The setting of time limits within which cases are either to be tried or dismissed has often been legislated or proposed.[17] But such limits either are waived by consent, beset with exceptions, or imposed so as to pressure overworked prosecutors into negotiating inadequate dispositions. A major issue in the field is which part of the problem to address first: establish effective time limits, add new resources, or revamp inefficient prosecution and court management procedures. Because each has its advocates and all compete in the legislative arena, the speedy trial goal remains elusive.

As with bail reform and preventive detention, the most valuable compilation of studies on the subject of speedy trials has been published by Senator Ervin's Subcommittee on Constitutional Rights.[18] Even without new legislation, a number of the projects and proposals contained in that volume could contribute notably toward expediting criminal trials and reducing interim detention. This problem is addressed in detail in the Commission's report on courts.

Abridgment of Detainees' Rights

The rights of prisoners convicted of crime are the subject of a substantial range of standards promulgated by the United Nations, Federal and State constitutions, judicial decisions, statutes and administrative rules, and various professional organizations. (See Chapter 2, Rights of Offenders.)

With rare exceptions, however, codifications of prisoner rights have dealt exclusively with convicted offenders in prisons or have obliterated the distinction between accused and convicted persons lodged behind bars. Most litigated attacks on conditions of confinement have focused on sentenced offenders and on postconviction prisons. Pretrial jails and detainee rights appear to have been discovered only recently by the judicial process.[19]

[13] Nan C. Bass and William F. McDonald, *Preventive Detention in the District of Columbia: The First Ten Months* (New York: Vera Institute of Justice and Georgetown Institute of Criminal Law and Procedure, 1972).

[14] *Speedy Trial*, Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 92 Cong., 1 sess. (1971).

[15] McCarthy and Wahl, "The District of Columbia Bail Project," pp. 715–718.

[16] See Law Enforcement Assistance Administration, *3rd Annual Report, Fiscal Year 1971.*

[17] American Bar Association Project on Minimum Standards for Criminal Justice, *Standards Relating to Speedy Trial* (New York: Office of the Criminal Justice Project, 1967), sec. 4.1.

[18] In *Speedy Trial*, Hearings before the Subcommittee on Constitutional Rights, 1971.

[19] See generally, William Turner, "Establishing the Rule of Law in Prison: A Manual for Prisoners' Rights Litigation," *Stanford Law Review*, 23 (1971), 473; and Charles R. Hollen, "Emerging Prisoners' Rights," *Ohio State Law Journal*, 33 (1972), 1.

[20] *Barker* v. *Wingo*, 407 U.S. 514 (1972); *Valvano* v. *McGrath*, 325 F. Supp. 408 (E.D. N.Y. 1971).

By the same twist of irony that finds pretrial release alternatives struggling to catch up to the wide array of programs called corrections in the community, pretrial detainees have been fighting an uphill battle—through violence as well as law [20]—to gain equality inside institutions with their posttrial counterparts.

But 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 *Brenneman* v. *Madigan*, 11 Crim. L. Rptr. 2248 (N.D. Cal. 1972). 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 stated as follows:

> Incursions 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 come and go as he pleases, a pretrial detainee retains all of the rights of the bailee, and his rights may not be ignored because it is expedient or economical to do so. Any restrictions and deprivations of those rights, beyond those inherent in the confinement itself, must be justified by a compelling necessity. . . .
>
> The court is aware that according pretrial detainees those rights to which they are constitutionally entitled will entail additional expenditures of available resources. Notwithstanding the legitimacy of this concern, the present existence of deficiencies in staff, facilities, and finances cannot excuse indefinitely depriving pre-trial detainees of the maximum enjoyment of the rights accorded to all citizens who are unconvicted of any crime. . . .
>
> Enough has been said to establish the right of pretrial detainees to be free from any privations and restrictions which are not absolutely necessary to insure their presence at trial.

At the conclusion of the *Brenneman* case, Judge Zirpoli's order gave Sheriff Madigan and the Board of Supervisors of Alameda County, California, 90 days from May 12, 1972, within which to submit "proposed rules for the treatment of pretrial detainees" that meet constitutional standards. The detailed impact of the decision thus remains to be determined in the months and years ahead. But traditional rules, management techniques, and resources for the administration of jails holding pretrial detainees are now open to question, and every jail planned on the pattern of the past runs the risk that its security hardware and architectural design, as well as restrictions embodied solely by its 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 in the same facility and far worse than that of a person confined in a felony institution after conviction for a serious offense. Thus a judicial decision requiring only that persons awaiting trial should be accorded treatment and opportunity equal to that of convicted felons would cause major changes in the construction and operation of jails. Court decisions demanding a higher standard for persons presumed innocent than for convicted persons would make obsolete existing facilities and programs, as well as many presently planned for future construction and implementation.

A few illustrations will suggest the scope of the problem faced by each administrator and jurisdiction now building, planning, or contemplating a new pretrial jail.

Take, for instance, the matter of classification. Most jails have been built to a single security system (often maximum), which assumes for administrative convenience that all detainees pose the same risk of escape or institutional misconduct. Sentenced offenders in the same institution, or in the same jurisdiction's other correctional institutions, are usually classified on a variable security basis, from minimum up. Some classification systems offer wide variations in institutional freedom, individual and group accommodations, recreational and work opportunities, etc. In this light, a pretrial institution that uniformly imposes greater security classifications and constraints on accused persons than on minimum-security sentenced offenders in the same jurisdiction may be unconstitutional.

Similarly, sentenced offenders are generally classified by degrees of dangerousness, age, vulnerability to assault, illness, and ability to reform. Persons awaiting trial are generally classified in one class, under the rationale that they are all presumed innocent and no information base is 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.

Another area in which many pretrial detainees in cities are worse off than convicted offenders is indoor confinement. The high cost of inner-city land, 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. Pretrial detainees thus are denied ingredients of personal health and individual freedom found in many postconviction prisons in the United States. These deprivations, even though cemented in the

choice of a jail site and the architect's plan, may be unconstitutional.

Finally, the criminal justice system discriminates against the pretrial detainee in the length of time he serves. In most States, the sentenced felon automatically earns "good time" credit when he avoids disciplinary action, and he may obtain additional credit against his sentence by exceptional performance. More important, by participation in work and treatment programs, he may be able to secure an early release from the parole authority or even a pardon from the executive.

The person awaiting trial has no such ameliorating options. The period of detention is determined by the pace of judicial proceedings or the ability of his family and friends to raise sufficient money bail. He seldom has an opportunity to have the detention decision reviewed; indeed in most instances no affirmative decision to detain was made. There is no parole board to act as an administrative check on the judicial officer's determination of the amount of bail, the length of detention required, or the case for delay in the trial. Programs to improve his position for return to the community or for leniency in sentencing generally are not available. His ties to the community become strained or totally severed.

The longer a sentenced offender remains confined, the better his chance for release. The longer a person is detained awaiting trial, the better his chance for further confinement if a conviction results.

The foregoing illustrations are, at present, speculative and scantily developed for purpose of constitutional challenge. But they are typical of the kinds of inquiries detainees and their attorneys will be presenting to the courts with increasing frequency in the years ahead. They may seem far-fetched or outrageous to wardens and sheriffs plagued by the tense, overcrowded, contraband-ridden pretrial institutions of today. But they represent vital interests of both the detainee and the citizen concerned about a system of law which for the most part has only two alternatives in dealing with persons charged with crimes while they are awaiting trial—security detention or freedom on the street. So long as these polar alternatives prevail, multimillion-dollar expenditures for secure detention facilities for accused persons will remain a risky investment of public funds.

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, alcoholics, heroin addicts, marijuana users, prostitutes, mentally ill persons, homeless men, runaway or neglected children, and others whose principal victims are themselves.[21] In a large proportion of such cases, the person is destined for a long cycle of release, arrest, and return, at a substantial cumulative cost to the public and with doubtful benefit to him or to his community. Whether the more appropriate solution is hospitalization, detoxification, legalization, or alternative methods of social control, it is clear that secure detention 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, directly concerns 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 sentenced, 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 considered until the tradition-bound system has run its course and the person pleads guilty or is convicted.

Such a system is increasingly recognized as a senseless dissipation of scarce criminal justice resources. Crime control suffers when the time of prosecutors and judges is consumed and new maximum security institutions are projected for pretrial populations, including large numbers of persons destined to be removed entirely from the criminal process or willing to accept correctional dispositions without the need for prosecution, trial, and formal sentence. On repeal of unnecessary criminal laws and development of procedures for pretrial diversion, funds saved by reduced 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. What purpose was the original jail designed to serve? How well or poorly has it performed, and why? What alternatives are available to perform those functions that remain valid today? What competing demands and cooperative arrangements should influence the allocation of limited resources?

There is substantial information on which to base answers to these questions. Few institutions in society have been so repeatedly studied and condemned—and left for future generations to remedy—as the local jail. For more than a century, executive commissions, legislative inquiries, and private research have detailed the physical and human dimensions of the problem and the case for change. Two of the best analyses have appeared within the past year: Mattick's The Contemporary Jails of the United States: An Unknown and Neglected Area of American Justice; and Rothman's The Discovery of the Asylum.[22]

These studies of prisons and local jails demonstrate that in neither concept nor practice have they 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 Act of 1968 and in the guidelines for its administration issued by the Law Enforcement Assistance Administration and the National Clearinghouse for Correctional Programming and Architecture.[23] Each urges that a plan for pretrial construction simultaneously incorporate bail reform and other community alternatives. The difficulty with these standards is that they are addressed basically to administrators (sheriffs and correctional personnel) who lack jurisdiction over, or political power to influence, other indispensable measures for a comprehensive criminal justice process. This subject is discussed in more detail in Chapter 9, 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 over night. Many jurisdictions have begun programs which have alleviated the hardships of an exclusive money bail system for pretrial release. Such programs are primarily based on the premises that detention is overused and that a person's financial resources ought not determine his status awaiting trial.

Programs now operational, generally 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 in 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 have been replaced and defendants are allowed 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, 1972. Also indicated are the number of summons 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.

Citation in Lieu of Arrest Programs

1. Oakland (California) Police Citation Program. In Oakland, police officers are authorized to issue citations in lieu of arrests for misdemeanor crimes where basic criteria are met. The defendant is instructed where to appear for booking and charging. If the field officer decides to take a defendant into physical custody, the stationhouse officer is also authorized to release on a citation where warranted. The program was instituted in February 1970. At first there was a high rate of failure to appear for booking or trial (17 percent), but by May 1971, the rate had fallen to 4.5 percent. (See the Commission's report on the police.)

2. Stationhouse Release. A number of cities have programs which utilize only stationhouse release. In each case the arresting officer takes the defendant to the police station, where the defendant can be booked and then released with a citation to appear for trial. The Manhattan Summons Project in New

[21] See Hans W. Mattick, "The Contemporary Jails of the United States: An Unknown And Neglected Area of Justice" in Daniel Glaser, ed., *Handbook of Criminology*, (forthcoming).

[22] Mattick, Contemporary Jails"; and David J. Rothman, *The Discovery of the Asylum* (Little, Brown, 1971).

[23] Frederic D. Moyer et al., *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults* (Urbana: University of Illinois Department of Architecture, 1971).

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

State	Number Programs Operational	Number Programs Planned	Number Summons-Citations Operational
Alabama	—	1	—
Alaska	1	—	—
Arizona	1	—	—
Arkansas	—	—	—
California	13	2	5
Colorado	2	—	1
Connecticut	2*	—	2
Delaware	1*	—	—
D.C.	1*	—	1*
Florida	5	—	—
Georgia	1	—	—
Hawaii	1	—	—
Idaho	—	—	—
Illinois	1	—	—
Indiana	2	—	—
Iowa	1	—	—
Kansas	—	—	—
Kentucky	1	—	—
Louisiana	2	—	—
Maine	—	—	—
Maryland	2	—	—
Massachusetts	1	—	—
Michigan	4	1	—
Minnesota	1	—	—
Mississippi	—	—	—
Missouri	3	—	—
Montana	—	—	—
Nebraska	—	—	—
Nevada	—	—	—
New Hampshire	—	—	—
New Jersey	7	—	—
New Mexico	1	—	1
New York	9	—	—
N. Carolina	1	—	—
N. Dakota	—	—	1
Ohio	3	—	—
Oklahoma	1	—	1
Oregon	2	—	—
Pennsylvania	5	—	—
Rhode Island	—	—	—
S. Carolina	—	—	—
S. Dakota	—	—	—
Tennessee	1	1	—
Texas	5	1	—
Utah	1	—	—
Vermont	—	—	—
Virginia	—	—	—
Washington	4	—	—
W. Virginia	2	—	—
Wisconsin	1	—	—
Wyoming	1	—	—

Source: Data from the Office of Economic Opportunity Pre-Trial Release Program.
*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.[24]

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 summons, 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.[25]

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, 1961, through April 8, 1964, out of 13.000 total defendants, 3,000 fell into the excluded offense category, 10,000 were interviewed, 4,000 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 65 defendants per week have been granted parole on Vera's recommendations.[26]

2. Philadelphia Common Pleas 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 obtain and verify information regarding the accused. The information sought includes residence, family ties, employment, and prior record. The interviewer submits copies 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 report by 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 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.[27]

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 promise to appear. Ninety percent returned for trial and only 1 percent evaded justice altogether.[28]

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 bonds-

[24] *Handbook for Expansion of Pretrial Release in the San Francisco Bay Area* (Berkeley, Calif.: Association of Bay Area Governments, 1971).
[25] *The Manhattan Summons Project* (New York: Criminal Justice Coordinating Council of New York City and Vera Institute of Justice, 1970), p. 2.
[26] Daniel Freed and Patricia Wald, *Bail in the United States: 1964*, Working paper for the National Conference on Bail and Criminal Justice (New York: Vera Institute of Justice and U.S. Department of Justice), pp. 62–63.
[27] Information supplied by the Pretrial Services Division, Philadelphia Common Pleas and Municipal Court.
[28] Gerald Levin, "The San Francisco Bail Project," *American Bar Association Journal*, 55 (1969), 135.

man forfeited the entire amount of the bond. If the accused appeared, he did not recoup the 10 percent he had paid the bondsman. Thus, the bondsman and not the accused had the financial interest in the accused's appearance. Studies of the Municipal Court of Chicago for the year 1962 indicated that bondsmen wrote 51,161 bonds for which they were entitled to receive fees of $18,513,965. For the same year, the bondsmen forfeited $183,938 for failures to appear. The cost to those accused of crime was $1,667,458.

The Illinois cash bond program allows the court to accept the personal bond of the accused and a deposit of 10 percent of the bond in cash. When the accused appears for trial, 90 percent of the deposit is returned, the remainder going toward the cost of operating the program. This gives the financial incentive to the accused rather than the professional bondsman.

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 686 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.[29]

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.[30]

Number of defendants held for bail	4,346
Number making bail and released	3,552
Number making bail by posting 10 percent	3,111
Rate of those on bail who posted 10 percent	87.6%
Number of court appearances scheduled for 10 percenters	3,058
Number failing to appear	201
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 forfeited 10-percent deposits, by collecting 10 percent of the full bonds which are forfeited, and by investing the money generated, the program produces more than enough income to finance itself. Furthermore, it is estimated that defendants and their families will save at least $1,500,000 as a result of the program each year.

The success of these and other bail reform programs throughout the country provide sufficient evidence to support more widespread implementation of such programs. The fact that such programs have thrived where attempted makes the pace of progress in pretrial reform in this country disappointingly slow.

STANDARDS FOR REFORM

Within the past decade, defects in pretrial justice have been attacked from many sides, by many professions, in many places. Through legislation, litigation, and administrative action, strands of change have begun to emerge. The categories include bail reform, preventive detention statutes, pretrial diversion programs, speedy trial rules, expansion of detainee rights, and modern jails. Yet no jurisdiction 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 pretrial detainees in particular. Instead, piecemeal changes of uneven quality are being urged by separate organizations, some openly pushing in opposite directions, others proceeding unaware of the counterproductive consequences that can flow from "success" in a unilateral mission.

The problems resulting from compartmentalized pretrial reform seem all too evident. The problems are too pervasive, the cost of attempting to remedy all of them at once is too large, and the interplay and potential conflict among simultaneous changes (like more release *and* more detention) are often too unpredictable. No community should tolerate a situation in which each court and each agency spends public funds and adopts public rules unilaterally, in its own direction and at its own pace, aloof from a process of cooperative change.

For these reasons, the standards proposed in this chapter are designed as a package. They should be arranged by all parties concerned into combinations or sequences of priority and be monitored by a system that acknowledges accountability to the public. It is essential that the standards be adaptable to immutable characteristics of each jurisdiction. But changes of doubtful validity, such as construction of facilities based on the system of the past, should be promptly reconsidered, delayed, or discontinued.

[29] Charles Bowman, "The Illinois Ten Percent Bail Deposit Provision," *University of Illinois Law Forum* (1965), 35.
[30] Information provided by Pretrial Services Division, Philadelphia 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 collected:

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, including the number released on bail, released on nonfinancial conditions, and detained.

4. The disposition of such persons after trial including, for each form of pretrial release or detention, the number of persons who were convicted, who were sentenced to the various available sentencing alternatives, and whose cases were dismissed.

5. Effectiveness of pretrial conditions, including the number of releasees who (a) failed to appear, (b) violated conditions of their release, (c) were arrested during the period of their release, or (d) were convicted during the period of their release.

6. Conditions of local detention facilities, including the extent to which they meet the standards recommended herein.

7. Conditions of treatment of and rules governing persons awaiting trial, including the extent to which such treatment and rules meet the recommendations in Standards 4.8 and 4.9.

8. The need for and availability of resources that could be effectively utilized for persons awaiting trial, including the number of arrested persons suffering from problems relating to alcohol, narcotic addiction, or physical or mental disease or defects, and the extent to which community treatment programs 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 and detention.

2. A plan for improving the programs and facilities relating to pretrial release and detention, including priorities for implementation of the recommendations in this chapter.

3. A means of implementing the plan and of discouraging the expenditure of funds for, or the continuation of, programs inconsistent with it.

4. A method of evaluating the extent and success of implementation of the improvements.

5. A strategy for processing large numbers of persons awaiting trial during mass disturbances, in-

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 and then a private bail bondsman 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 as 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 with broad representation also have been established at the regional or metropolitan level to assist the State agency in comprehensive planning. Where 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 detainees, resources available, etc.), such planning should be accomplished at the local level wherever possible.

References

1. Freed, Daniel J., and Wald, Patricia M. *Bail in the United States: 1964.* Washington: U.S. Department of Justice and Vera Foundation, 1964.
2. Moyer, Frederic D., et al. *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults.* Urbana: University of Illinois, Department of Architecture, 1971. Part C.
3. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: The Courts.* Washington: Government Printing Office, 1967.
4. *Preventive Detention,* Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 91 Cong., 2 sess. (1970).
5. *Speedy Trial,* Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 92 Cong., 1 sess. (1971).

Related Standards

The following standards may be applicable in implementing Standard 4.1.

2.1-2.18 Rights of Offenders.
3.1 Use of Diversion.
4.8 Rights of Pretrial Detainees.
4.9 Programs for Pretrial Detainees.
5.8 Credit for Time Served.
5.10 Judicial Visits to Institutions.
6.3 Community Classification Teams.
7.1 Development Plan for Community-Based Alternatives to Confinement.
7.2 Marshaling and Coordinating Community Resources.
9.1 Total System Planning.
9.4 Adult Intake Services.
9.10 Local Facility Evaluation and Planning.
13.2 Planning and Organization.
15.1 State Correctional Information Systems.
15.5 Evaluating the Performance of the Correctional System.

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 insure 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 to address the evil of detention itself, whether in an antiquated, insecure, and unsafe facility or in a modern, sanitary one.

Improvement of existing facilities or adaptation of other types of structures for housing pretrial detainees may be required in some jurisdictions. 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

1. Freed, Daniel J., and Wald, Patricia M. *Bail in the United States: 1964*. Washington: U.S. Department of Justice and Vera Foundation, 1964.
2. Moyer, Frederic D., et al. *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults*. Urbana: University of Illinois, Department of Architecture, 1971. Part C.
3. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: The Courts*. Washington: Government Printing Office, 1967.

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 carry out additional legitimate investigative action;

e. The accused has no ties to the jurisdiction reasonably sufficient to assure his appearance, and there is a substantial risk that he will refuse to respond to the citation; or

f. It appears the accused has previously failed to respond to a citation or a summons or has violated the conditions of any pretrial release program.

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 in 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.

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:

1. 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 that:

a. The accused has previously willfully failed to respond to a citation or summons or has violated the conditions of any pretrial release program.

b. The accused has no ties to the community and there is a reasonable likelihood that he will fail to respond to a summons.

c. The whereabouts of the accused is unknown or the arrest warrant is necessary to subject him to the jurisdiction of the court.

d. Arrest and detention are necessary to carry out additional legitimate investigative action.

2. Discretionary authority for judicial officers to issue a summons in lieu of an arrest warrant in all cases where the officer has reason to believe that the accused will respond to the summons.

3. A requirement that a judicial officer issuing a warrant instead of a summons state his reason for doing so in writing.

4. Criminal penalties for willful failure to respond to a summons.

To facilitate the use of citations and summons in lieu of arrests, police agencies should:

1. Develop through administrative rules specific criteria for police officers for determining whether to issue citations or to request issuance of a summons in lieu of arrest.

2. Develop training programs to instruct their officers in the need for and use of the citation and summons in lieu of arrest.

3. Develop a method of quickly verifying factual information given to police officers which if true would justify the issuance of a citation in lieu of arrest.

4. Develop a method of conducting a reasonable investigation concerning the defendant's ties to the community to present to the judicial officer at the time of application for a summons or an arrest warrant.

Commentary

The strategy for minimizing the detention of persons not yet convicted of a criminal offense must begin at the point of first contact between police officer and accused. The tradition in most jurisdictions is that a physical arrest initiates the criminal justice process. Legal rules normally authorize an arrest without a warrant for a misdemeanor committed in the officer's presence or where he has reasonable grounds to believe that the person has committed a felony. Rules governing police arrest customarily do not reflect concepts relating to whether the person represents a risk of nonappearance at formal judicial proceedings. With the range of activity governed by the criminal code, it is difficult to justify the assumption that the public interest is served by the physical arrest of all criminal law violators. In fact the high economic, social, and human costs of pretrial detention would indicate that the interest of both the public and the accused would be better served by another means 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. Thus 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

the extent of the risk. Likewise where the accused refuses to sign the citation, he has in fact refused to promise to appear when required. In some circumstances, the officer may reasonably believe that a physical arrest is necessary to protect himself or others. In those situations, it is unreasonable to expect the officer to issue a citation.

The officer has little time to verify facts. While the right to bail may require that the risk of nonappearance be the only factor relevant to pretrial release, the use of citation may be more restricted by the lack of time available for deliberation and the need in some circumstances to effectuate custody to let tempers cool or to prevent immediate further criminal conduct.

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 constitute justification for not issuing a citation. However, where such procedures can be accomplished other than immediately on apprehension, the citation should state that the accused must appear at a certain time for participation in further investigating activities.

One of the best indications that an accused will voluntarily appear for trial or other proceedings is the fact that he has ties to the community in which he is arrested. A person with property, employment, relatives, or other such community connections is less likely to flee than the person with no community ties. Thus where the accused cannot show any community ties, the officer should be authorized to detain him, at least until such information can be developed.

When a police officer fails to issue a citation and makes a physical arrest, he should be required to indicate in writing his reasons for doing so. This report should allow his superior officers to reexamine the case, once the accused is brought to the police station. Superior officers with more time to deliberate and to verify information should be authorized to issue a citation at the police station and release the accused. This allows an internal administrative review and insures the release of those persons who are unable, in the short time available, to convince the officer on the street that their ties to the community indicate little risk of flight.

In many jurisdictions, officers at the station house are authorized to grant "station house" bail, which is a monetary bond to insure appearance at an arraignment. This standard does not recommend such procedures but would substitute the issuance of citations for bail. Money bail authorizes only the release of those financially able to make bond rather than those who represent a good risk of voluntary appearance. The citation procedure focuses more appropriately on the factors that should be considered in releasing those accused of crime.

In situations where law enforcement officers request the issuance of an arrest warrant before placing the accused in physical custody, the magistrate or other judicial officer should be authorized to issue a summons in lieu of the warrant. Such a summons would be, in effect, an order by a judicial officer to the accused to appear at a designated time and place for a hearing, trial, or pretrial investigation. Legislation authorizing such a procedure exists in almost half the States, but, as in the case of legislative authority granting the discretionary issuance of the police citation, it appears to be seldom used. Those States authorizing such a procedure limit its use to relatively minor offenses such as traffic violations and misdemeanors. In the Federal system, a distinction is made between the authority of the U.S. commissioner and the district court. Under Rule 4(a) of the Federal Rules of Criminal Procedure, the commissioner is authorized to issue a summons upon the filing of a complaint only upon the request of the U.S. attorney. Upon the filing of an information or the return of an indictment, however, Rule 9(a) requires the clerk to issue a summons if either the U.S. attorney or the court so directs.

The primary reason that the procedure is so infrequently used seems to be that, in those few cases in which a complaint is represented to the magistrate, there is no duty imposed on the prosecutor, police officer, or the judicial officer himself to make a conscious choice between a warrant for arrest and a summons. Legislation should be enacted encouraging the use of the summons rather than arrest where there is no apparent need for physical custody of the accused.

Implementation of this procedure requires that the judicial officer have a certain amount of basic information so that he can make an intelligent choice between the alternatives. The prosecutor or police official who applies for such warrant should be required to accompany the request with the results of a brief investigation of the defendant's personal background and stability in the community.

If the judicial officer should discover that the defendant has no meaningful ties with the community, he may issue a warrant. Likewise, a warrant may be necessary to obtain jurisdiction over an accused person whose whereabouts are unknown. Physical custody, where deemed necessary for any of these purposes, should be viewed only as temporary until further proceedings can be instituted to consider other forms of pretrial release.

If a person accused of crime has previously failed to respond to a citation, summons, or other form of voluntary pretrial release conditions, he represents a greater risk of nonappearance than a person without such a history. Evidence of failure to appear should justify physical custody but should not make it mandatory. More deliberate proceedings before judicial officers focusing primarily on the risk of flight should develop further information that may make release on personal recognizance appropriate.

Limiting the use of pretrial detention and physical arrest through the use of citations and summonses cannot be accomplished without the full cooperation of the appropriate law enforcement agencies. Police departments should insure through administrative rules and regulations that their officers understand the need for and use of citations and summonses. Likewise, procedures should be developed 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. Much of the information necessary to determine the extent of ties the accused has with the community already is uncovered during routine police investigations.

References

1. American Bar Association. Project on Standards for Criminal Justice. *Standards Relating to Pretrial Release*. New York: Office of the Criminal Justice Project, 1968.
2. American Bar Association, Project on Standards for Criminal Justice. *Standards Relating to the Urban Police Function*. Tentative Draft. New York: Office of the Criminal Justice Project, 1972.
3. Freed, Daniel J., and Wald, Patricia M. *Bail in the United States: 1964*. Washington: U.S. Department of Justice and Vera Foundation, 1964.
4. La Fave, Wayne. "Alternatives to the Present Bail System," *University of Illinois Law Forum*, (1965), 8.
5. Note, "An Alternative to the Bail System: Penal Code Section 853.6," *Hastings Law Journal*, 18 (1967), 643. (Law enforcement agency experiments with pretrial release.)
6. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: The Courts*. Washington: Government Printing Office, 1967.

Related Standards

The following standard may be applicable in implementing Standard 4.3.

4.4 Alternatives to Pretrial Detention.

Standard 4.4

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 alternatives to the detention of persons awaiting trial. The use of these alternatives should be governed by the following:

1. Judicial officers on the basis of information available to them should select from the list of the following alternatives the first one that will reasonably assure the appearance of the accused for trial or, if no single condition gives that assurance, a combination of the following:

a. Release on recognizance without further conditions.

b. Release on the execution of an unsecured appearance bond in an amount specified.

c. Release into the care of a qualified person or organization reasonably capable of assisting the accused to appear at trial.

d. Release to the supervision of a probation officer or some other public official.

e. Release with imposition of restrictions on activities, associations, movements, and residence reasonably related to securing the appearance of the accused.

f. Release on the basis of financial security to be provided by the accused.

g. Imposition of any other restrictions other than detention reasonably related to securing the appearance of the accused.

h. Detention, with release during certain hours for specified purposes.

i. Detention of 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, and his record of appearance at court proceedings or of flight to avoid prosecution.

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

4. Willful 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. The extent to which the accused is financially committed to appear is determined by the amount of collateral the bail bondsman requires 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, out 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 increased. Chicago initiated a release program in early 1963 for defendants charged with misdemeanors and experienced similarly favorable results. Numerous other cities have established release-on-recognizance 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 standard 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 required 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 accused in the amount of the bond. Such a condition would not require the intervention of a compensated surety.

Release on recognizance 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 American processes or 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 Constitution may require an affirmative showing of such relationship in the record.

Likewise, partial confinement should be preferred over total detention. Programs comparable to work release for sentenced offenders should be available if required in a particular case. The accused could be left at liberty for specific purposes including employment, consultations with counsel, and other legitimate purposes but be required to be detained during his leisure hours. Again, such restrictions should be related directly to the risk of nonappearance. (See Chapter 9, Local Adult Institutions.)

In some instances, financial conditions may be more appropriate. Generally, 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 presence 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 bondsman would improve the system of criminal justice.

References

1. *Amendments to the Bail Reform Act of 1966,* Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary. 91 Cong., 1 sess. (1969).
2. American Bar Association, Project on Standards for Criminal Justice. *Standards Relating to Pretrial Release.* New York: Office of the Criminal Justice Project, 1968.
3. Freed, Daniel J., and Wald, Patricia M. *Bail in the United States: 1964.* Washington: U.S. Department of Justice and Vera Foundation, 1964.
4. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: The Courts.* Washington: Government Printing Office, 1967.
5. *Preventive Detention,* Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary. 91 Cong., 1 sess., (1970).

Related Standards

The following standards may be applicable in implementing Standard 4.4.

4.3 Alternatives to Arrest.
10.5 Probation in Release on Recognizance Programs.

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 subpena 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.

5. 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 willful 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 subpena 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 activity. 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 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 revoking 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

1. American Bar Association, Project on Standards for Criminal Justice. *Standards Relating to Pretrial Release.* New York: Office of the Criminal Justice Project, 1968.
2. Federal Bail Reform Act of 1968, 18 U.S.C. 3146 et seq.
3. *Morrissey* v. *Brewer,* 408 U.S. 471 (1972) (Procedural safeguards for parole revocation.)
4. Wright, Charles A. *Federal Practice and Procedure.* St. Paul: West, 1969. Vol. 1, secs. 80–82.

Related Standards

The following standards may be applicable in implementing Standard 4.5.

2.1 Access to Courts.
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 for 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 presumption 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 close 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 yet this is where persons not yet convicted of crime, and presumed innocent, are detained. Unification of these facilities into a State system of corrections provides the best hope 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

1. American Correctional Association. *Manual of Correctional Standards.* 3d ed. Washington: ACA, 1966. Ch. 2.
2. Illinois Unified 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.)
3. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections.* Washington: Government Printing Office, 1967.
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.

5.10 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 accused of crime who is incompetent to stand trial is in an even more ambiguous position. He becomes the captive of both the criminal law and public health systems, neither of which wants to assume full responsibility for his welfare. The criminal justice system cannot deal with him in a manner consistent with due process until he is competent to understand the trial and assist his counsel in its preparation. On the other hand, health officials are often reluctant to allocate already scarce resources to individuals who, if treated, will be subjected to prosecution and possible punishment.

The result at present is that many individuals languish for long periods either in jail or mental institutions, uncared for and untreated, even though they have never been convicted of a crime. In many instances individuals remain confined in these conditions for a period longer than the sentence which could have been imposed for the crime they allegedly committed.

In most jurisdictions, the prosecutor, defense, or judge on his own motion may raise the issue of the defendant's competency to stand trial. Where such issue is raised, the defendant generally is confined for a diagnosis, on the basis of which the court determines whether he is able to stand trial. If he is adjudged incompetent, a majority of the States require that he be committed to an institution until "cured." Rules governing his right to speedy trial are suspended. When he is certified as able to understand the proceedings, he is then prosecuted for the offense charged. In many instances, the time that has elapsed makes prosecution or defense difficult. Witnesses have died or disappeared. Evidence has deteriorated. In many instances, trial for the offense even while the defendant is incompetent would have less serious ramifications for the defendant than an adjudication of incompetency.

The U.S. Supreme Court has recently reviewed the procedures applicable to persons alleged to be incompetent and has found them constitutionally deficient. In *Jackson* v. *Indiana*, 406 U.S. 715 (1972), the Court invalidated Indiana's procedures as violations of equal protection and due process of law. On the issue of equal protection, the Court stated:

> . . . we hold that by subjecting Jackson to a more lenient commitment standard and to a more stringent standard of release than those generally applicable to all others not charged with offenses, and by thus condemning him in effect to permanent institutionalization without the showing required for commitment or the opportunity for release afforded by [civil commitment statutes] Indiana deprived petitioner of equal protection of the laws under the fourteenth amendment.

The Court thus suggests that persons accused of crimes cannot be treated differently than persons in the free community who suffer mental illness.

On the question of due process the Court announced:

> We hold . . . that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed in trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant. Furthermore, even if it is determined that 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 a competent defendant to stand trial. Detention beyond the needs of this interest can be justified by other state interests reflected in civil commitment procedures, but then 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 already adjudged incompetent) the same as any other person who is accused of a crime but has not been tried. Only minor modifications of the rules of criminal procedure need be made to carry out the additional state interest of attempting to return an incompetent to a state of competency.

Too often where incompetence is raised, the automatic response is to confine the person in an institution either for purposes of diagnosis or, after adjudication, treatment. Neither diagnosis nor treatment requires confinement in all cases. In many instances a better diagnosis or treatment program can be implemented on an outpatient basis. A presumption against detention and in favor of the least restrictive measures to effectuate the state interest should be as applicable to incompetents as it is to sentenced offenders and other persons awaiting trial. Detention should be imposed only when it is required for assuring the person's presence for trial or the nature of the diagnosis or treatment program requires confinement. The U.S. Court of Appeals for the District of Columbia has ruled in *Marcey* v. *Harris*, 400 F. 2d 772 (D.C. Cir. 1968), that the Federal bail statutes require an alleged incompetent to be granted bail.

After a person is adjudged incompetent, the state has an interest in attempting to treat him in order to return him to competency to answer for the alleged crime. Where treatment has a reasonable chance of being unsuccessful, however, confinement based on treatment should be prohibited. It is not only wasteful of treatment resources but, as suggested in *Jackson* v. *Indiana*, unconstitutional. Thus where incompetency is established, further inquiry should be undertaken to determine if treatment will 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 means.

A person may be incompetent to stand trial and still not be a danger to himself or others. Confinement under the guise of treatment 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 of crimes. Different standards would clearly violate the dictates of *Jackson*. While it is recognized that civil commitment procedures are far from models of governmental humanity and that confinement in mental institutions may be as dehumanizing as confinement in a correctional facility, the principle of similar treatment of persons accused of crime and those not so accused supports this recommendation. Recommendations regarding the operation of mental health facilities are outside the scope of this report.

The interests protected by the right to a speedy trial are twofold:

- A person should not be forced to spend long periods with the burden of an impending criminal prosecution hanging over him.
- As indicated earlier in this section, the lapse of a long period between the offense and the trial may make both the prosecution and the defense more difficult.

Traditionally rules governing the right to a speedy trial have provided that a period of incompetency is not to be considered when determining whether the trial occurred within a reasonable time. Furthermore, most courts do not allow a person adjudged incompetent to consent to trial during his incompetency. The result has been that periods of "treatment" for incompetency have extended far beyond what the maximum prison sentence would have been if the defendant had been convicted. If, subsequently, the defendant does regain his capacity, he is unable because of the passage of time to present an adequate defense. Rules should be developed to resolve both of these difficulties.

The Court recognized in *Jackson* that treatment could be pursued only where it has reasonable chance of success and then only for a limited period. While the Court was not willing to rule on what a permissible period would be, the Commission recommends 2 years or the maximum prison sentence for the offense charged, whichever is shorter. It is difficult to justify forced treatment for extended periods of time where conviction for the offense would result in probation or a minimal prison sentence. Misdemeanants are particularly disadvantaged when there are no limitations on treatment for incompetency. If treatment cannot be successful in 2 years, it is difficult to see what interest society has in continuing its option to prosecute the offense.

The issue of a speedy trial for an incompetent person is a difficult one. Due process prohibits conviction of an individual who cannot understand the proceedings and is unable to cooperate with counsel. On the other hand, depriving this person of the opportunity to present an affirmative defense that would prove his innocence is wasteful of resources, makes identification of the guilty party more difficult, and is unfair to the accused person.

The standard recommends that the court periodically review the cases of persons who have been adjudged incompetent to stand trial and, where restoration to competency seems unlikely within the immediate future, discharge the accused or commence civil commitment proceedings.

References

1. Comment, "Competency to Stand Trial: A Call for Reform," *Journal of Criminal Law, Criminology, and Police Science*, 59 (1968), 569.
2. Comment, "Illinois' Alternative to Indefinite Pretrial Commitment of Incompetents," *University of Illinois Law Forum* (1971), 278.
3. Engelberg, Steven L. "Pretrial Criminal Commitment to Mental Institutions: The Procedure in Massachusetts and Suggested Reforms," *Catholic University Law Review*, 17 (1967), 163.
4. *Jackson* v. *Indiana*, 406 U.S. 715 (1972). (Detention must be limited in time and justified on the basis of State's interest in having a competent defendant to stand trial.)
5. Kaufman, Harold. "Evaluating Competency: Are Constitutional Deprivations Necessary?" *American Criminal Law Review*, 10 (1972), 465.
6. *Marcey* v. *Harris*, 400 F. 2d 772 (D.C. Cir. 1968).
7. Matthews, Arthur R. *Mental Disability and the Criminal Law: A Field Study*. Chicago: American Bar Foundation, 1970.
8. *Pate* v. *Robinson*, 383 U.S. 375 (1966) (Hearing required on issue of incompetency.)

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.

2.1 Access to Courts.
3.1 Use of Diversion.
4.4 Alternatives to Pretrial Detention.
4.5 Procedures Relating to Pretrial Release and Detention Decisions.
4.8 Rights of Pretrial Detainees.
9.4 Adult Intake Services.
9.7 Internal Policies (Local Adult Institutions).

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 deriving from the rationales of punishment, retribution, deterrence, or rehabilitation should be prohibited.

b. The conditions of confinement should be the least restrictive alternative that will give reasonable assurance that the person will be present for his trial.

c. Persons awaiting trial should be kept separate and apart from convicted and sentenced offenders.

d. Isolation should be prohibited except where there is clear and convincing evidence of a danger to the staff of the facility, to the detainee, or to other detained persons.

5. Administrative cost or convenience should not be considered a justification for failure to comply with any of the above enumerated rights of persons detained awaiting trial.

6. Persons detained awaiting trial should be authorized to bring class actions to challenge the nature of their detention and alleged violations of their rights.

Commentary

The last few years have seen a dramatic expansion of the courts' willingness to evaluate correctional practices and policies in light of constitutional re-

quirements. In most cases, wholesale alterations have been required. Most lawsuits have been brought by sentenced prisoners seeking release or an amelioration of the conditions of their confinement. Only recently have the courts focused their attention on the plight of the pretrial detainee.

The person confined awaiting trial is more often than not detained in a local jail—the correctional facility that suffers most from lack of resources, programs, and professional personnel. Living conditions are intolerable. Yet, the person awaiting trial is 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 form 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 inhumane treatment 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 expenditures an offender can reasonably require. Society authorizes detention of presumably innocent persons solely to assure presence at trial. If the cost in authorizing such detention fully respective of the rights of pretrial detainees is prohibitive, then 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 violation 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

1. *Brenneman* v. *Madigan,* 11 Crim. L. Reptr. 2248 (N.D. Cal. 1972) (Outlines rights of pretrial detainees.)
2. Comment, "Constitutional Limitations on the Conditions of Pretrial Detention," *Yale Law Journal,* 79 (1970), 941.
3. *Davis* v. *Lindsay,* 321 F. Supp. 1134 (S.D. N.Y. 1970) (Isolation of pretrial detainee not justified unless based on evidence of threat to his safety.)
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 motivated by rationale of punishment, retribution, deterrence, or rehabilitation.)
5. *Jackson* v. *Indiana,* 406 U.S. 715 (1972) (Limited time of detention for incompetents.)
6. *Jones* v. *Wittenberg,* 323 F. Supp. 93 (N.D. Ohio 1971) aff'd. sub nom. *Jones* v. *Metzger,* 456 F. 2d 854 (8th Cir. 1972) (Allows class action for pretrial detainees.)
7. Turner, William. "Establishing the Rule of Law in Prisons: A Manual for Prisoner's Rights Litigation," *Stanford Law Review,* 23 (1971), 473.

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.

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

1. American Correctional Association. *Manual of Correctional Standards*. 3d ed. Washington: ACA, 1966.
2. *Brenneman* v. *Madigan*, 11 Crim. L. Rptr. 2248 (N.D. Cal. 1972) ("Merely because all such resources may be labelled 'rehabilitative' in other institutional contexts does not justify denying them to pretrial detainees.")
3. Comment, "Constitutional Limitations on the Conditions of Pretrial Detention," *Yale Law Journal*, 79 (1970), 941.
4. National Sheriffs' Association. *Manual on Jail Administration*. Washington: NSA, 1970.
5. Panel Discussion, "Pretrial Release Problems," *University of Illinois Law Forum* (1965), 20.
6. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington: Government Printing Office, 1967.

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.

Standard 4.10

Expediting Criminal Trials

Each State should enact legislation, and each criminal justice jurisdiction should develop policies and procedures, to expedite criminal trials and thus minimize pretrial detention. Such legislation and policies and procedures should include:

1. Time limits in which a defendant must be brought to trial. The limits that can be imposed effectively will vary among jurisdictions depending on the number of criminal cases and the availability of judicial, prosecutorial, and defense resources. As an objective to be achieved by 1978, sufficient resources should be available so that the time limits imposed would not exceed the following:

a. For felony prosecutions, 60 days from the arrest, receipt of summons or citation, or filing of an indictment, information, or complaint, whichever comes first. In misdemeanor cases, 30 days.

b. In felony prosecutions, 60 days from the filing of new charges arising out of the same conduct after the original charge was dismissed upon motion of the defendant. In misdemeanor cases, 30 days.

c. In felony prosecutions, 60 days from a declaration of a mistrial, order for new trial, or remand from an appeal or collateral attack if the defendant is retried. In misdemeanor cases, 30 days.

2. Periods which would be excluded in computing the time for trial. Such periods should relate to the complexity of the case and the rights of the prosecution and defense for a fair trial.

3. Authorization for the temporary assignment or relocation of judges, prosecuting attorneys, defense counsel, and other officers essential for the trial of a criminal case to a jurisdiction where crowded dockets prohibit or make difficult compliance with the time limits for bringing defendants to trial.

Each criminal court or, where appropriate, the highest court of each jurisdiction should promulgate rules assuring criminal defendants a speedy trial on all pending charges. Such rules should include the recommendations of this standard not adopted by legislation and in addition the following:

1. To the extent practical, scheduling of cases in accordance with the following priority:

a. Criminal cases where the defendant is detained awaiting trial.

b. Criminal cases where the defendant is at liberty awaiting trial and is believed to present unusual risks to himself or the public.

c. Criminal cases where the defendant is subject to substantial conditions or supervision awaiting trial.

d. All other criminal cases.

e. Civil cases.

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 system 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 Tombs in New York City and in the District of Columbia Jail stemmed 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 inflexible 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 be related 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 resources so that 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 trial.

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

1. American Bar Association, Project on Standards for Criminal Justice. *Standards Relating to Speedy Trial.* New York: Office of the Criminal Justice Project, 1967.
2. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: The Courts.* Washington: Government Printing Office, 1967.
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.
4. Committee on Rules of Practice and Procedure, Judicial Conference of the United States. *Alternative Drafts of Proposed Amendments to Rule 45, Federal Rules of Criminal Procedure.* Washington: Judicial Conference, 1971.

Related Standards

The following standards may be applicable in implementing Standard 4.10.

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 paroling 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 impingements 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 court will determine whether a given 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, the courts will determine the maximum length of time during which the state may exercise control.

These decisions are extremely difficult. They require the court to choose between competing general principles that serve as bases for sentencing—deterrence, reintegration, retribution—and, once the appropriate 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 decision as to where and how a man may spend years of his life is made by one man, whose discretion is virtually unchecked or unguided by criteria, procedural requirements, or further 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. Oftentimes, the information base for sentencing decisions consists largely of hearsay and unreliable testimony. Some evidence used may have been seized in violation of constitutionally or statutorily 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 imposed. 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 jurisdictions, so long as a sentence is within the maximum allowable under the law, it is not directly reviewable by another court or other 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, mandatory sentences allow the court no discretion. 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 sentence 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 a coherent sentencing policy in most jurisdictions. Statutes provide little guidance in terms of what the sentencing courts are expected to accomplish through the imposition of a criminal sentence. Few procedural safeguards have been legislatively imposed to assure accurate and useful information for sentencing. Moreover, legislatures all too often have enacted a proliferation of various maximum and minimum sentences unrelated to the gravity of the offense.[1] Inconsistency in legislatively authorized sentences makes judicial consistency impossible.

The result—widely confirmed and deplored[2]—is the grossest kind of sentence disparity, both within and between jurisdictions. Disparity in sentencing has been attacked and analyzed extensively. Although the American Bar Association, the National Council on Crime and Delinquency, various Presidential commissions, and many other interested groups have criticized this situation, its alteration has been slow and arduous.[3]

In the last decade alone, three major studies of sentencing have been published, and the material in this chapter draws heavily on their observations and recommendations. In 1962, the American Law Institute, after a decade of study of the criminal justice system, proposed a "Model Penal Code," part of which suggested ways out of the sentencing morass. In 1963, the National Council on Crime and Delinquency published its "Model Sentencing Act." Finally, between 1966 and 1970, the American Bar Association produced a number of significant publications in its Project on Minimum Standards for Criminal Justice.

Only in the last few years has any constitutional focus been placed on the sentencing process. The early concept was that due process applied only to the accused in a criminal trial. Once he was convicted, he was no longer protected by the panoply of rights that until that time had been his.

Several rationales, besides the strict interpretation of the language of the Constitution, suggested that:

1. Sentencing is a matter within the judge's discretion and is virtually unreviewable, either substantively or procedurally.
2. Sentencing is effectively an administrative matter and subject to the rules governing other administrative agencies—the concept having been established when few constitutional guarantees applied to administrative agencies.
3. Sentencing per se is not really a judicial but a quasi-judicial, quasi-legislative, quasi-executive function, not susceptible to judicial review and hence not procedurally subject to due process protections.
4. If the judge has discretion in sentencing, any sentence less than the maximum is a "privilege" or "grace" and is not subject to due process protection.

These outmoded concepts have governed sentencing procedures too long. Formal safeguards to assure the accuracy and reliability of information on which a sentence is based are as important as the safeguards provided for the determination of guilt. Particularly in light of the broad discretion granted to sentencing courts in most cases, basic fairness requires that a reexamination of sentencing procedures take place.

ROLE OF LEGISLATURE IN SENTENCING

Many of the suggestions and standards in this chapter will require consideration by the appropriate legislature. Three aspects of sentencing are particularly dependent on legislation: (1) articulation of the goals of the sentencing process; (2) authorization of a variety of sentencing alternatives; and (3) articulation of the general criteria to be used in determining sentence.

The legislature's responsibility includes a clear articulation of the goals of the criminal justice system in general and sentencing in particular. The power of the state should not be exercised over an individual without some socially useful purpose. Once the purpose of sentencing is determined, the courts must have a number of alternatives for the disposition of criminal offenders. Many possible alternatives require specific legislative authorization and procedures for the protection of offenders subjected to them. In addition the legislature can assure fulfillment of the established goal if appropriate criteria are determined for guiding and structuring sentencing decisions.

Standards for the adoption of legislation governing these three aspects of sentencing are contained in Chapter 16. Legislatures, of course, have additional responsibilities and can make greater contributions to the process of sentencing through implementation of other reforms. Many of these are considered in this chapter.

EFFECTIVENESS AND EQUALITY OF SENTENCES

Problems confronting sentencing judges revolve around two interrelated issues: sentence effectiveness and sentence equality. Most jurisdictions today refuse to deal with these difficult issues. The result is to force sentencing judges to wrestle with the problems without the benefit of a clear declaration of public policy or provisions which limit or check their discretion.

Whether any particular sentence is effective depends on the purpose for which it is imposed. Throughout the history of criminal law, there have been competing purposes for applying the criminal sanction. Imposition of punishment has been defended on the basis of retribution, deterrence, incapacitation, rehabilitation, and reintegration. Surprisingly, little information is available to show that punishment or confinement achieves any of these purposes except incapacitation and retribution.

The Commission believes that restrictions on liberty should be justified by some legitimate purpose and that the state in imposing sanctions should bear some burden of proving that the means employed have some reasonable relationship to the purpose selected. This requires not only an articulation of what those purposes are but also a measured application of sanctions in general.

The standards seek to insure that the goals of the criminal sanction are articulated in a general way by the legislature and then more specifically by the sentencing court for each case. The standards also seek to limit the discretion of courts in imposing sentence consistent with the present level of information about the effect of sanctions.

At present, many States authorize extended periods of confinement for many offenses. Individual sentences can range to 50 years or more. (Where more than one offense is proved, consecutively imposed sentences can subject an offender to the State's control for hundreds of years.) There is little justification for such long terms, regardless of the purpose for which sentence is imposed. And in fact, even with long sentences authorized, few offenders actually serve extended periods of time. The gap between sentences imposed and sentences served, as shown in Table 5.1, indicates the lack of agreement regarding the purpose and effects of criminal sanctions. It also reflects the broad disparity in sentences which currently exists.

[1] Edmund C. Brown and Louis B. Schwartz, "Sentencing under the Draft Federal Code," *American Bar Association Journal*, 56 (1970), 935.

[2] See discussions under Standards 5.6–5.8 and 5.23–5.27 below.

[3] See American Bar Association Project on Standards for Criminal Justice, *Standards Relating to Sentencing Alternatives and Procedures* (New York: Office of the Criminal Justice Project, 1968.)

Table 5.1 Sentence and Actual Time Served by First Releases[1] from State Correctional Institutions in 1970

Column:	1	2	3	4	5	6
	1–5 Years (Percent)		5–10 Years (Percent)		10+ Years (Percent)	
State	Sentenced	Served	Sentenced	Served	Sentenced	Served
Arizona	34.56	88.54	42.44	9.22	23.00	2.44
California	15.21	81.32	66.51	16.13	9.49	2.55
Colorado	21.30	95.70	32.45	3.42	46.25	.88
Connecticut	51.59	97.86	42.39	1.58	6.02	.56
Delaware	87.00	98.65	10.31	.90	2.24	.45
Georgia	56.68	88.80	27.84	9.48	15.47	1.72
Hawaii	4.26	80.85	17.02	13.83	78.72	5.32
Idaho	47.26	94.56	32.88	3.40	19.86	2.04
Illinois	48.47	89.00	30.16	8.00	21.37	3.00
Kansas	8.50	91.51	39.44	6.73	52.05	1.76
Kentucky	72.55	94.14	12.20	5.28	15.25	.58
Louisiana	56.98	88.84	26.97	9.84	16.04	1.32
Maine	76.95	95.20	13.26	3.00	9.80	1.80
Maryland	78.97	97.17	15.12	2.14	5.91	.69
Massachusetts	14.66	92.30	55.43	6.47	19.91	1.23
Minnesota	21.94	5.81	39.35	31.61	38.71	62.58
Mississippi	63.38	87.36	19.89	6.69	16.73	5.95
Missouri	74.81	96.05	19.39	2.74	5.80	1.21
Montana	54.70	95.30	25.17	4.03	20.13	.67
Nevada	38.53	93.51	29.87	6.49	31.60	0.00
New Hampshire	54.44	97.78	34.44	2.22	11.11	0.00
New Mexico	8.54	86.65	47.49	10.83	43.97	2.52
New York	57.40	89.79	28.26	7.61	15.86	2.59
North Dakota	68.47	96.40	19.82	2.70	11.71	.90
Ohio	5.43	84.77	19.95	10.74	74.62	4.49
Oklahoma	73.80	95.57	17.82	3.61	8.37	.82
Oregon	65.90	95.62	25.09	4.26	9.01	.12
South Carolina	64.41	92.62	20.46	5.16	15.12	2.22
South Dakota	86.19	95.24	38.10	4.29	4.29	.48
Tennessee	61.69	90.20	19.46	8.33	18.84	1.47
Utah	10.55	90.45	21.11	9.55	68.34	0.00
Vermont	70.37	100.00	25.93	0.00	3.70	0.00
Washington	3.06	95.78	2.75	3.06	94.19	1.16
West Virginia	0.00	87.15	10.10	10.76	89.90	2.08
Wyoming	73.72	94.89	16.06	3.65	10.22	1.46

Source: *National Prisoner Statistics: State Prisoners, Admissions and Releases, 1970* (Washington: Federal Bureau of Prisons, 1971), pp. 45, 47–81.

[1] A first release is a prisoner released for the first time on his current sentence.

Explanation of Table:
Column 1: Percent of first releases sentenced to 1 to 5 years.
Column 2: Percent of first releases who actually served less than 6 months to 5 years.
Column 3: Percent of first releases sentenced to 5 to 10 years.
Column 4: Percent of first releases who actually served 5 to 10 years.
Column 5: Percent of first releases sentenced to 10 or more years.
Column 6: Percent of first releases who actually served 10 or more years.

Some difference between sentence imposed and time served is supported by the need to individualize sentence and to give some discretion to parole boards to release individuals when they are ready. However, the longer an offender is subjected to absolute discretion, the more frustrated 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.

Table 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 only those States which 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 5 years or more but a relatively small percentage had actually served more than 5 years. A very small percentage had served 10 years or more. (See Table 5.1.)

The standards in this chapter recommend that legislatures authorize a maximum sentence of 5 years for felonies unless courts find that a particular offender is in a special category for which a longer period of incarceration is allowed. It seems clear from the table that implementing these standards would not substantially alter the pattern of present sentencing practice. But the standards do require that legislatures articulate the purpose of sentences they authorize and that courts state specifically the purpose of sentencing each individual. These actions would do a great deal to make sentencing provisions consistent with actual practice and would do much to alleviate disparity in sentencing.

There are those who argue that long sentences ought to be imposed for the purposes of deterrence, incapacitation, or retribution. If one of the intentions of criminal law is to institutionalize retribution to avoid private vengeance, it is doubtful that increasing the length of sentences will have any tangible effect. Pure retribution is related directly to what society comes to believe is a substantial punishment. Five years for most offenses allows sufficient play for this purpose without foreclosing the possibility that the offender can be successfully returned to the free society.

There are, obviously, offenders who must be isolated from society; there are those for whom present knowledge does not provide effective treatment. The standard designates three categories of offenders for whom such incapacitation is appropriate, and it would not prevent long confinement in those cases. But the wholesale use of incapacitation as a goal in sentencing is counterproductive. Ninety-nine percent of those confined will eventually be released, and their attitude toward society at that point may well determine whether they continue to endanger the public safety. Long periods of isolation from society as an answer to increased crime may be self-defeating.

Extending sentences to serve as a deterrent to criminal conduct is one of the most difficult issues facing the criminal law. Those studies that have been done indicate that no generalization can be made about the deterrent effect of any sanction.[4] The threat of punishment has different results depending on the nature of the offense and the offenders. While punishment may deter white-collar crime, it may have little effect on crimes of passion. In addition, the certainty of punishment may have a far greater deterrent effect than the severity of punishment. The fact remains that if society had to bear the burden of showing that increased restrictions on liberty deter crime, it would undoubtedly fail. In a free society, long prison sentences cannot be justified on the basis of speculation concerning deterrence, particularly where the detrimental effects of imprisonment for the individual offender are known and demonstrable.

The entire tenor of this report is that incarceration is not an effective answer for most criminal offenders. It is neither effective in reducing criminal behavior nor efficient in the utilization of scarce resources.

The effectiveness of sentences is thus irrevocably tied to the purposes established for 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

[4] For a review of the literature on deterrence, see Fran[illegible] in E. Zimring, *Perspectives on Deterrence* (Rockville, Md.: National Institute of Mental Health, Center for Studies of Crime and Delinquency, 1971).

assumptions about the role of the criminal law and of criminal sentencing will only be proved or found wanting if the system articulates in open fashion what it thinks it is doing and for what purpose.

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, fought for more than 50 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 10 years before he first becomes eligible for parole; one convicted of a lesser degree of murder may be forced to serve 15 years or more. Destruction of a house with fire is punishable by a maximum of 20 years; destruction of the same house with explosives carries a 10-year maximum . . . [In Iowa] burning of an empty isolated dwelling may lead to a 20-year sentence while the burning of a church or school carries only a 10-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.[1]

Such discrepancies arise from the failure of the legislature to review other provisions of 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 the same courthouse 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 the philosophical outlook of the sentencing judge, cannot be dispelled. But at the least some dialog 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 one judge as too lenient, another as very harsh, and evaluate minima 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 the ignorance perpetrated 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.

[1] *Standards Relating to Sentencing Alternatives and Procedures*, p. 49.

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 the 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

1. Goodman, Louis E. "Would a System Where Sentences are Fixed by a Board of Experts be Preferable?" *Federal Rules Decisions,* 30 (1961), 319.
2. Knowlton, Robert E. "Problems of Jury Discretion in Capital Cases," *University of Pennsylvania Law Review,* 101 (1953), 1099.
3. Mitford, Jessica. "Kind and Unusual Punishment in California," *Atlantic Monthly,* 227 (1971), 45.
4. Note, "Jury Sentencing in Virginia," *Virginia Law Review,* 53 (1967), 968.
5. Rubin, Sol. "Allocation of Authority in the Sentencing-Correction Decision," *Texas Law Review,* 45 (1967), 455.

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. 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 if 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 depreciate 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. Imprisonment 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 dragnet approach often results in imposition of 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 standard retains the concept that for specific offenders who are considered dangerous, a more extended term of imprisonment should be authorized. (See Standard 5.3). The American Bar Association, the National Council on Crime and Delinquency, and the American Law Institute have proposed sentencing legislation basically consistent with this standard. The standard also adopts a qualified version of the indeterminate sentence with authorization for the court to impose a maximum less than that authorized by law.

The indeterminate sentence has come under increasing attack in recent years. The opponents' argument is based on essentially two factors: (1) the uncertainty of the indeterminate sentence affects the offender's morale and makes his planning for release difficult; and (2) the breadth of the discretion authorized by indeterminate sentencing subjects the offender to the use of power that is unchecked and often abused or misused by correctional staff and parole boards. It is certainly true that in the context of present sentencing practices the indeterminate sentence magnifies the opportunity for abuse and creates serious restraints on correctional effectiveness. However, generalized criticism of indeterminate sentencing as the major source of the difficulties oversimplifies the problem.

The indeterminate sentence authorized by State laws varies from jurisdiction to jurisdiction. In most States, statutory provisions place a maximum limit on the sentence that can be imposed by the court. This is an attempt to make the sentence proportionate to some degree with the crime. Elsewhere it is pointed out that the inconsistencies of maximum sentences set by legislatures within a single jurisdiction make it hard to discern any legislative intent regarding the gravity of various offenses. But the maximum, whatever it is, provides some check on the discretion of the sentencing court. Even in States where the court is required to impose a set term, the authority for parole prior to completion of the term imposed makes the sentence in effect indeterminate.

California comes the closest to the original notion of the indeterminate sentence. There most offenders sentenced to imprisonment are subject to confinement for life with authority granted to the Adult Authority to establish subsequently the length of sentence to be served. The Adult Authority is granted additional authority to alter the sentence at any time.

State laws fixing parole eligibility will determine in large measure the time an offender actually will serve. Provisions for "good time" credits earnable during confinement also can have an impact. But whatever the laws provide, the actual practices of the various agencies granted discretionary power will determine the effectiveness or abuses of the indeterminate sentence. Thus an indeterminate sen-

tence may have drastically different effects on the offender in one State than in another.

This report recognizes throughout the need for development of legal devices to control, review, and structure correctional decisionmaking power. The need is equally applicable to the sentencing decision.

The Commission accepts the concept of indeterminacy, notwithstanding the validity of many criticisms of current practice. The major reason for this position is that the alternative—a pure determinate 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.

This acceptance of the indeterminate sentence should be considered with reference to the recommendations that would eliminate abuses inherent 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 offenders greater participation in decisions that affect their sentences, and generally reduce authorized maximums would tend to alleviate many difficulties presently experienced with indeterminacy while 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 statutorily approved maximum and (2) a minimum term to be served prior to parole eligibility. The standard authorizes the former but not the latter.

On the surface the question of judicial control over the maximum sentence appears to center on whether the court or the paroling authority should determine the best time for an offender to be released. Proponents for removing judicial control of the maximum argue that the parole board can determine more easily the precise point when an offender should be released. Likewise it is argued that sentencing disparities will be diminished if the sentencing court has no control over the maximum.

On the other hand, it appears that, by removing judicial control over the maximum, discretion is transferred not to the paroling authority but to the prosecutor. Many offenders who plead guilty do so because they hope that the sentencing court will be lenient. Where the court's power is removed, the defendant must negotiate for a reduction of charge by the prosecutor. Thus the prosecutor has more control over the eventual maximum sentence than the court, especially in view of the large proportion of offenders who plead guilty.

It is becoming increasingly clear that the confinement of most criminal offenders, at least under present circumstances, offers little of benefit to the offender or the public. This report has recommended elsewhere that incarceration be considered the alternative to be used only when no other disposition would protect the public. The length of confinement is likewise of critical importance. To remove discretion of the court to set the sentence anywhere between no confinement and confinement for 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 more difficult question. While most recent sentencing proposals agree that legislatively imposed minimums are detrimental to the criminal justice system, the question of whether the judge should be able, in appropriate cases, to impose a minimum sentence has caused great controversy. The American Bar Association advisory committee split on the issue, the majority choosing to support judicially imposed minimums in rare instances where public protection requires it. The Model Sentencing Act does not authorize a minimum sentence. The Model Penal Code provides a legislative minimum of one year, with judicial authority to raise it.

The major argument in favor 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 reassured if the court provides a period of time in which the offender may not be released on parole. It is understandable that some jurisdictions may wish to provide judicial authority for minimum sentences for dangerous offenders. Standard 5.3, which authorizes extended maximums for certain offenders where the court makes affirmative findings of dangerousness, would allow a judicially imposed minimum sentence.

The traditional sanction imposed for violation of the criminal law in this country was confinement. Any other sentence that in some way moderated the nature or extent of confinement was considered a lenient act on the part of the state. It is more clearly recognized today that confinement is unnecessary and inappropriate in a large number of cases. Supervision in the community has been demonstrated to be at least as effective in insuring future law-abiding conduct without the human degradation, hostility, and public expense associated with confinement. Confinement thus should be considered the alternative to be used when no other disposition will protect the public safety. The Commission considered addressing itself to the question of using a death penalty to deter or punish murderers. However, because of the unresolved constitutional and legal questions raised by recent legal decisions, the Commission decided not to speak on the subject but rather to leave the question to be resolved by possible referendum, State legislatures, or courts.

The standard provides criteria for making the sentencing decision. The broad grounds listed in Item 2 indicate the general factors that should be present before confinement is imposed. The three criteria are derived from the Model Penal Code and also were proposed by the National Commission on Reform of Federal Criminal Laws. The more detailed factors to be weighed against incarceration in Items 2-a through 3-l are derived from the same sources. An additional factor reads: "The correctional programs within the institutions to which the defendant would be sent are inappropriate to his particular needs or would not likely be of benefit to him." It is hardly productive to have a court sentence an offender to incarceration so that he may receive "treatment" if such treatment is not available. The court should determine before imposition of sentence whether its sentence can be met in any way by the correctional system. Absence of beneficial programs should weigh heavily against incarceration.

The standard recommends that sentencing agencies impose the least drastic alternative consistent with the public safety. Item 1 of the standard proposes that during the sentencing deliberation the court should approach the problem of disposition by considering each alternative beginning with the one providing the least amount of state control and impose that alternative unless the court believes the public safety would not be adequately protected. Each alternative in ascending order of severity should be considered until the appropriate sanction is found.

An Associated Press story carried in *The Washington Post*, Wednesday January 3, 1973, reported that there is a "small but growing number of judges throughout the country who are seeking alternatives to jail sentences for defendants convicted of a variety of crimes." Excerpts from the article follow.

Several judges have sentenced people convicted of minor crimes to perform some kind of community service. Commissioner Marrie Matcha of Citrus Municipal Court in West Covina, Calif., said he and Judge Sam Cianchetti order about 10 to 15 percent of defendants found guilty to work in schools, hospitals or charity programs rather than sending them to jail or fining them.

Another California jurist, Los Angeles Superior Court Judge Richard Hayden, sentenced a pickpocket to wear gloves or mittens whenever he was in a crowd. Under the sentence, Hayden said, police could arrest the pickpocket if they caught him bare-handed in a crowded area.

Hayden said he hasn't heard of the man since.

Superior Court Judge Charles Z. Smith of Seattle, Wash., tried to make the punishment fit the crime.

When James M. Tidyman, 32, was found guilty of exhibiting obscene movies, Smith sentenced him to two years in jail, but suspended the sentence on the condition that the defendant contributed 100 hours of service to a charity of his choice and establish a $2,000 trust fund to be used to purchase educational films for area schools. The case has been appealed.

"My approach to sentencing," Smith said, "is that prison or jail should be used only if it is necessary."

Similar crime-related sentences have been handed down in New York's Bronx Criminal Court by Judge Louis A. Cioffi, who has ordered graffiti scrawlers to perform various clean-up chores.

Judges in Florida have been among the leaders in seeking alternatives to prison.

A Miami woman found guilty of abandoning a refrigerator in which a 3-year-old boy suffocated was sentenced to two years' probation with the proviso that her criminal record would be cleared if she found and reported at least 10 illegally abandoned iceboxes.

Within a month, Earline Clark, a divorcee with two sons, had more than fulfilled the judge's order. "She had not only found and reported 10, she's found about 15 and she's still looking," reported Assistant State Attorney Terry McWilliams.

The refrigerator hunt was McWilliams' idea. "Putting someone in jail isn't really constructive," he said, "and you rarely get a chance to really see a debt repaid to society."

References

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968.
2. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: ALI, 1962.
3. "Judges Seek Alternatives to Jailing," *Washington Post,* Jan. 3, 1973, p. A3.
4. Mitford, Jessica. "Cruel and Usual Punishment in California," *Harper's Magazine,* 45 (March 1971).
5. National Council on Crime and Delinquency, *The Model Sentencing Act.* New York: NCCD, 1963.
6. Note, *University of Pennsylvania Law Review,* 101 (1952), 257.
7. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: The Courts.* Washington: Government Printing Office, 1967.
8. Pugh, George W., and Carver, M. Hampton. "Due Process and Sentencing: from Mapp to Mempa to McGautha," *Texas Law Review,* 49 (1970), 25.
9. Tappan, Paul W. "Sentencing under the Model

Penal Code," *Law & Contemporary Problems*, 23 (1958), 529.

Related Standards

The following standards may be applicable in implementing Standard 5.2.

5.3 Sentencing to Extended Terms.
5.4 Probation.
5.5 Fines.
6.3 Community Classification Teams.
16.7 Sentencing Legislation.
16.8 Sentencing Alternatives.
16.10 Presentence Reports.
16.11 Probation Legislation.
16.12 Commitment Legislation.
16.14 Community-Based Treatment Programs.

Standard 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

of the imposition of a minimum to recommend to the board of parole at time of sentencing that the offender not be paroled until a given period of time has been served.

Commentary

The traditional American approach to sentencing legislation has been to establish maximum sentences in contemplation of the most dangerous offender who might commit the offense in question. The result has been sentences authorized and imposed far in excess of what is required to satisfy both the public safety and the offender's needs. Standard 5.2 recommends that, as a rule, no sentence should exceed 5 years.

On the other hand, there are some offenders whose aggressive, repetitive, violent, or predatory behavior poses a serious threat to the community. In many instances, these offenders are not responsive to correctional programs. Public safety may require that they be incapacitated for a period of time in excess of 5 years. This standard provides that different approaches should be authorized for such offenders when there is supporting evidence.

The arguments for incapacitating the "dangerous offender" are threefold:

1. Modern American statutes contain excessively high maximum sentencing provisions largely aimed at controlling the "dangerous" offender, but unfortunately often ensnare the nondangerous offender as well, needlessly increasing the period of his incarceration.

2. Current attempts to classify the "dangerous" offender in terms of sexual crimes or by "habitual offender" laws are undeniably ineffective and have become so distorted in their application as to be meaningless.

3. Clear authority to sentence the "dangerous offender" to a long term of incapacitation may induce the legislature to agree more readily to a significantly 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 standard is patterned after the latter, with the exception that for a finding of dangerousness a psychiatric report indicating that 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 should base its finding on material in the presentence report, which should reflect a pattern of behavior indicating the potential threat that the offender may or may not present to the public safety.

Virtually every State has a "habitual offender" law. Approximately half have special provisions dealing with sexual offenders or "sexual psychopaths." The goals of these statutes are similar and raise similar problems. They provide for extended incarceration, often life, often without eligibility for parole; they require a finding that the defendant fits within the specified category; they seek to prevent the return to the community of persons deemed especially dangerous. In the case of the sexual offender, specific psychiatric findings are required, while in the case of the recidivist, the danger is presumed from the fact of his repeated criminality.

"Sexual psychopath" laws follow a general pattern: they accept as a premise the theory that a "sexual" criminal is likely to repeat his crime unless removed from society for many years. The laws have been criticized for vagueness, overbreadth in application, and as imposing cruel and unusual punishment. Nevertheless, a majority of States now have sexual psychopath laws of one kind or another.

Both "recidivist" and "sexual psychopath" laws are aimed at the removal of potentially dangerous offenders from the society they otherwise might harass and damage. But each is grossly overbroad, poorly defined, often resulting in mismanagement and distortion of the criminal process and perpetuation of the arcane concept that the recidivist is *automatically* a danger to society, while the first offender is not. A repeater bad-check artist is hardly to be considered as dangerous to society as the professional killer who has been apprehended for the first time in his life. Within the spectrum between those two extremes lies an infinite variety of combinations of dangerousness and recidivism.

Different jurisdictions have accepted, to different degrees, the general premise that recidivism and sexual psychopath statutes, per se, are unwise, and have adopted some changes in the current law. Thus, for example, Congress, in the Organized Crime Control Act of 1970, provided for increased sentences for "dangerous special offenders" who include (a) recidivists, where the last crime committed was within five years of the present offense, (b) persons who commit acts "as part of a pattern of conduct which was criminal . . . which constituted a substantial source of his income and in which he manifested special skill or expertise," or (c) a crime committed as part of a larger conspiracy. Illinois' Proposed Criminal Code (1972) provides for some extended terms for those involved in crimes involving serious bodily injury, while Ohio's proposed code would make the factors outlined in the model statutes criteria for imposing the highest possible sentence permissible under existing law.

The standard authorizes extended maximum sentences beyond 5 years if the court finds that the defendant is a danger to the public *and* he fits within one of the three categories of offenders to which the standard is applicable; persistent offenders, professional criminals, and dangerous offenders.

The "persistent 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 little in such a situation 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 persons involved in organized crime. 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 is perhaps the only appropriate sanction.

The definition of dangerous offender is an attempt to avoid psychiatric definitions of mental abnormality, which are not necessarily accurate and whose terminology may produce judicial reactions that can result in highly inappropriate sentencing. The history of the offender as contained in the presentence report should indicate whether or not he has a longstanding pattern of behavior threatening to the public. As stated in Standard 5.19, the court should be required to state in writing the reasons for the sentence imposed.

This standard also authorizes, in addition to an 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 it 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 may feel the community needs reassurance 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 paroling 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 feelings without making the sentence unduly rigid.

References

1. Fahr, Samuel M. "Iowa's New Sexual Psychopath Law—An Experiment Noble in Purpose," *Iowa Law Review,* 41 (1956), 523.
2. Katkin, Daniel. "Habitual Offender Laws: A Reconsideration," *Buffalo Law Review,* 21 (1971), 99.
3. National Commission on Reform of Federal Criminal Laws. *Study Draft of a New Federal Criminal Code.* Washington: 1970.
4. Note, *Howard Law Journal,* 16 (1970), 166.
5. Note, *New York University Law Review,* 40 (1965), 332.
6. Tappan, Paul W. "Some Myths about the Sex Offender," *Federal Probation,* 19 (1955), 7.

Related Standards

The following standards may be applicable in implementing Standard 5.3.

5.2 Sentencing 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 be authorized to request clarification of any condition from the sentencing judge. 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 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 substantial 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.

c. Authorization of informal alternatives to formal revocation proceedings for handling alleged violations of minor conditions of probation. Such alternatives to revocation should include:

(1) A formal or informal conference with the probationer to reemphasize the necessity of compliance with the conditions.

(2) A formal or informal warning that further violations could result in revocation.

d. A requirement that, unless waived by the probationer after due notification of his rights, a hearing be held on all alleged violations of probation where revocation is a possibility to determine whether there is substantial evidence to indicate a violation has occurred and if such a violation has occurred, the appropriate disposition.

e. 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 subpena witnesses in his own behalf, and the right to confront and cross-examine witnesses against him.

f. A requirement that before probation is revoked the court make written findings of fact based upon substantial evidence of a violation of a condition of probation.

g. 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 was available to the court at the time of initial sentencing. In resentencing a probation violator, the following rules should be applicable:

(1) Criteria and procedures governing initial sentencing decisions should govern resentencing decisions.

(2) Failure to comply with conditions of a sentence that impose financial obligations upon the offender should not result in confinement unless such failure is due to a willful refusal to pay.

(3) Time served under probation supervision from initial sentencing to the date of violation should be credited against the sentence imposed on resentencing.

5. Probation should not be revoked for the commission of a new crime until the offender has been tried 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

deem appropriate and as the offender's circumstances change.

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, *Morrissey* v. *Brewer*, 408 U.S. 471 (1972), the Court outlined in detail the procedural aspects constitutionally required for parole revocation. The revocation of probation and parole 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 *Morrissey* decision. The Court in *Morrissey* 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

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968. Sec. 64.
2. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: ALI, 1962, Art. 301.
3. *Mempa* v. *Rhay*, 389 U.S. 128 (1967).
4. *Morrissey* v. *Brewer*, 408 U.S. 471 (1972).
5. National Commission on Reform of Federal Criminal Laws. *Study Draft of a New Federal Criminal Code.* Washington: 1970. Ch. 31.

Related Standards

The following standards may be applicable in implementing Standard 5.4.

2.10 Retention and Restoration of Rights.
2.11 Rules of Conduct.
10.2 Services to Probationers.
16.11 Probation Legislation.

Standard 5.5

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 or 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 imposition will not interfere seriously with the offender's ability to make reparation or restitution to the victim.

Legislation authorizing the imposition of fines also should include the following provisions:

1. Authority for the court to impose a fine payable in installments.

2. Authority for the court to revoke part or all of a fine once imposed in order to avoid hardship either to the defendant or others.

3. A prohibition against court imposition of such sentences as "30 dollars or 30 days."

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 where 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 thrust 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 *Tate* v. *Short,* 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 state to utilize the same means as private creditors to recover an unpaid fine. This would include such civil 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 uncollectable 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

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968.
2. Miller, Charles H. "The Fine—Price Tag or Rehabilitative Force?" *National Probation and Parole Association Journal,* 2 (1956), 377.
3. National Commission on Reform of Federal

Criminal Laws. *Study Draft of a New Federal Criminal Code.* Washington: 1970.
4. Note, *University of Pennsylvania Law Review,* 101 (1953), 1013.
5. Rubin, Sol, et al. *The Law of Criminal Correction.* St. Paul: West, 1963. Ch. 7.

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 apprised 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. Depending on the circumstances, 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 either 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.

Multiple 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 needs of the particular offender or the requirements of public safety, amounts to the imposition of sanction purely for punishment purposes.

In addition, the ability to impose consecutive sentences often is subject to the charging discretion of the prosecutor or fine legal distinctions as to whether two acts amount to separate offenses or 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. 386 (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—*Ashe* 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 should 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 may pose the same type of unusual 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 preclude a maximum sentence of more than double the maximum for the most serious offense. Under the recommendations of Standard 5.2, 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 another of imposing the appropriate sentence. If guilt is admitted to crimes involving the kinds of conduct indicating that the offender is "dangerous," the court should delay its decision until a full presentence 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 nolo contendere, to waive trial in the district 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 is 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 concomitant 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

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968. Secs. 3.4, 3.5, and 5.2.
2. Council of State Governments. *Handbook on Interstate Crime Control.* rev. ed. Chicago: CSG, 1949.
3. Wendell, Mitchell. "Multijurisdiction Aspects of Corrections" in H. Perlman and T. Allington, eds. *The Tasks of Penology.* Lincoln: University of Nebraska Press, 1969.

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 unseemly 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 plea 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 necessarily 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 will receive the maximum, any guilty plea stemming from that announcement clearly is less than voluntary and should be invalidated. But even if the court does not take that drastic step, the guilty plea has no direct bearing upon repentance and, if that is the purpose of considering the plea in determining the sentence, it should not be placed into the calculus of the decisionmaking process.

Another factor associated with guilty pleas is the current condition of other parts of the criminal justice system. For several reasons, including bail system inequities, overcrowded dockets, and judges who do not spend a full day in trying cases, defendants who do not plead guilty may spend

months, even years, awaiting trial. Such lengthy incarceration in local jails, where conditions are appalling, may have a significant coercive effect on defendants. Again, the plea will have little connection with any feeling of repentance.

This enigma also has a legal twist. If defendants who plead guilty are given consideration for doing so, it may be objected that this penalizes the defendant who does not plead guilty and seeks his constitutional right to trial. This potential constitutional problem adds additional weight to the recommendation that the guilty plea not be considered in setting sentence.

Relief of the difficulties caused by delay in the trial process should not depend on the willingness of those who are incarcerated in deplorably crowded jails, beset with financial problems, and quite likely without sufficiently eager and helpful counsel, to plead guilty to the charges placed against them. To rely on the coercive effects of such factors and then reward those who succumb is demeaning to the criminal justice process.

References

1. Alschuler, Albert W. "The Prosecutor's Role in Plea Bargaining," *University of Chicago Law Review,* 36 (1968), 50.
2. Enker, Arnold. "Perspectives on Plea Bargaining," in President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts.* Washington: Government Printing Office, 1967. Appendix A.
3. Newman, Donald J. *Conviction: The Determination of Guilt or Innocence without Trial.* Boston: Little, Brown, 1967.
4. Note, *University of Pennsylvania Law Review,* 112 (1964), 865.
5. Note, *Yale Law Journal,* 66 (1956), 204.

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 eventually is committed for service of sentence. This should include time spent in custody prior to trial, prior to sentencing, pending appeal, and prior to transportation to the correctional authority.

2. Where an offender is serving multiple sentences, either concurrent or consecutive, and he successfully invalidates one of the sentences, time spent in custody should be credited against the remaining sentence.

3. Where an offender successfully challenges his conviction and is retried and resentenced, all time spent in custody arising out of the former conviction and time spent in custody awaiting the retrial should be credited against any sentence imposed following the retrial.

The court should assume the responsibility for assuring that the record reveals in all instances the amount of time to be credited against the offender's sentence and that such record is delivered to the correctional authorities. 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 of 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.

Commentary

This standard provides recommendations on the extent to which time spent in custody in various circumstances should be credited against a sentence to confinement. The issue arises in several different contexts, each with its own rationale and justification. It is evident that throughout the criminal justice process, individuals spend time in custody that is not directly related to their sentence. It has consistently been the view that, where an individual is held in custody and subsequently found innocent, the government in only unusual situations has an obligation to recompense him for his inconvenience, loss of income, and other injury. It is of course impossible to return to him the time he has lost. However, it is possible to credit an offender with such time when he is found subject to a sentence of confinement.

The usual occasion for the application of the principle of granting credit arises out of pretrial detention. In many areas, a large percentage of accused defendants await trial in jail, for the most part because they are poor and unable to make bail. Reforms in the procedures applicable to pretrial release should minimize the number of those detained, but all proposed reforms contemplate some individuals who will await their trial in confinement. Fairness, if nothing more, requires that in the event these individuals are sentenced to confinement they receive credit for the time they served awaiting trial. Credit also should be granted for time spent in detention between the trial and sentence, pending appeal, or awaiting transfer to the institution to which the defendant is sentenced. Approximately 24 States now provide some form of credit for this period either on a mandatory basis or at the discretion of the sentencing courts.

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 consecutive 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 conviction should be granted against other sentences validly imposed.

The standard also provides that where an offender successfully challenges his conviction, is retried and resentenced, 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.

Credit granted for time spent in confinement under the standard should be automatic. Many States leave granting of credit to the sentencing courts. It is often argued that mandatory credit for time served is unnecessary because the courts take the time spent in custody into consideration anyway. However, offenders are often not apprised of the granting or refusal of credit.

It would seem a minimal requirement to assure that offenders be informed how their sentence is arrived at. By allowing discretionary credit, the problems of disparate treatment are encountered. Offenders not receiving credit for time spent in custody feel discriminated against and are less receptive to correctional programs. The standard thus recommends that the court assume responsibility for insuring that the record reveals the amount of credit due and that the correctional authorities be required to grant such credit and to inform the offender that they have done so.

An increasing number of courts are deciding that the refusal to grant credit for pretrial detention violates the equal protection and due process clauses of the Constitution. This is particularly true where the reason for detention is that the accused is indigent and unable to make bail. In *Workman* v. *Cardwell,* 338 F. Supp. 893 (N.D. Ohio 1972), the court held the statute authorizing the granting of good time unconstitutional because it limited credit for time served to the period following the verdict, thus denying equal protection to the indigent who had to serve time before the verdict because he could not make bail. The decision must, however, be further considered in view of the Supreme Court decision in *McGinnis* v. *Royster,* 12 Crim. L. Rep. 3143 (Feb. 21, 1973).

In many jurisdictions, bail reforms have resulted in persons awaiting trial being released from confinement but subject to various conditions and levels of supervision. In many instances the supervision is minimal and, for all practical purposes, the individual is as free as a citizen not accused of a crime. In some cases, however, conditions for pretrial release are substantial and involve serious restrictions on liberty. Where supervision is substantial, courts should be authorized to grant a measure of credit for such time against the sentence imposed. Because of the varying intensities of supervision, the award and the amount of credit for this period should be left to the discretion of the sentencing court.

References

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968. Secs. 3.6 and 5.8.

2. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: American Law Institute, 1962. Sec. 709.
3. National Commission on Reform of Federal Criminal Laws. *Study Draft of a New Federal Criminal Code.* Washington: 1970. Sec. 3207.
4. Schornhorst, F. Thomas. "Presentence Confinement and the Constitution: The Burial of Dead Time," *Hastings Law Journal,* 23 (1972).

Related Standards

The following standards may be applicable in implementing Standard 5.8.

5.2 Sentencing the Nondangerous Offender.
5.3 Sentencing to Extended Terms.
5.4 Probation.
5.19 Imposition of Sentence.
16.7 Sentencing Legislation.

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-

carceration could be heard. Today, however, these 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 sentencing scheme elaborated in this chapter would be under an obligation to consider 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 institutionalized mistrust of any such unchecked and unbalanced power over essential liberties. That mistrust does not depend on an assumption of inveterate venality or incompetence on the part of men in power, be they Presidents, legislators, administrators, judges, or doctors. It is not doctors' nature, but human nature, which benefits from the prospect and the fact of supervision . . . . Judicial review is only a safety catch against the fallibility of the best of men; and not the least of its services is to spur them to double-check their own performance and provide them with a checklist by which they may readily do so. *Covington* v. *Harris*, 419 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 shorten a sentence. The Commission is aware of the possibility of abuse of this power. As the American Bar Association recognized, a court could impose a long sentence for publicity 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 factors 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 initiation of either the offender or the correctional agency. Other standards requiring that the court indicate in writing at the time of sentencing the purpose of its sentence would assist the court in further proceedings.

References

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968. Sec. 6.1.
2. Lay, Donald P. "A Judicial Mandate: Rehabilitation." *Trial,* 7 (1971), 17.
3. Mosk, Richard M. "The Role of Courts in Prison Administration," *Los Angeles Bar Bulletin,* 45 (1970), 319.
4. Note, *University of Pennsylvania Law Review,* 110 (1962), 985.
5. Note, *Yale Law Journal,* 72 (1963), 506.

Related Standards

The following standards may be applicable in implementing Standard 5.9.

2.1–2.18 Rights of Offenders.
16.3 Code of Offenders' Rights.
16.7 Sentencing Legislation.
16.12 Commitment Legislation.

Standard 5.10

Judicial Visits to Institutions

Court systems should adopt immediately, and correctional agencies should cooperate fully in the implementation of, a policy and practice to acquaint judges with the correctional facilities and programs to which they sentence offenders, so that the judges may obtain firsthand knowledge of the consequences of their sentencing decisions. It is recommended that:

1. During the first year of his tenure, a judge should visit all correctional facilities within his jurisdiction or to which he regularly sentences offenders.

2. Thereafter, he should make annual, unannounced visits to all such correctional facilities and should converse with both correctional staff and committed offenders.

3. No judge should be excluded from visiting and inspecting any part of any facility at any time or from talking in private to any person inside the facility, whether offender or staff.

Commentary

Half a century ago, George Bernard Shaw remarked in his preface to Sidney and Beatrice Webb's *English Prisons under Local Government:*

> Judges spend their lives in consigning their fellow creatures to prisons; and when some whisper reaches them 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 comfortable; 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 undebatable. 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

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968. Sec. 7.4.
2. Hyde, Laurence M., Jr. "If Prisoners Could Talk to Judges," *Judicature,* 51 (1968), 257.
3. Loveland, Frank. "Treatment Resources in Prisons and Jails," *Federal Rules Decisions,* 40 (1966), 440.

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.
11.1–11.10 Major Institutions.
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 sole 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 sentence also becomes 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 reformative efforts on his behalf. Arbitrary sentencing decisions, based on irrelevant factors, also are counterproductive to the entire correctional process.

A number of techniques have been developed and utilized to reduce disparate and irrational sentencing. 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 many jurisdictions, all 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 statutory authority.

Courts have been reluctant to consider the sentence or its effect on the offender once it is imposed. Many appellate courts refuse to construe their general appellate jurisdiction over criminal convictions as including the power to review the sentence imposed. Others oppose the review of the appropriateness of the sentence on appeal.

The arguments against appellate review of sentences 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 inappropriate or grossly excessive sentence is hardly frivolous in terms of correctional programming or 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 sentences is that there are no standards upon which such a review can be based. The Commission recommends elsewhere the enactment of statutory criteria for sentencing patterned after the Model Penal Code and the articulation of more precise sentencing criteria by the courts. The Commission also recommends 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 determine the appropriateness of the sentence imposed.

The American Bar Association in its recent study of appellate review found that in 21 States an appellate 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, courts have moved with great caution. In many instances, it is suspected that appellate court decisions 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 or sentencing principles to guide judges throughout the State. Furthermore, appellate review may be constitutionally 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 defendant has been sentenced.

Whether or not the appellate court should be allowed to increase sentence is one of the most controversial issues surrounding appellate review. In England, the courts had the power to increase sentences upon review 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 sentences, while Nebraska, Illinois, and Iowa do 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 increase should not be authorized.

Where the power to increase does exist, it is seldom used. No system without the authority to increase 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 apparatus for appellate review is to determine whether the function should be handled by an existing judicial tribunal or a newly established nonjudicial body. Connecticut, Maine, Maryland, and Massachusetts placed the power into the hands of a specially created "court," staffed primarily by trial judges; the remaining States simply added to the power 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" tribunal might create serious jurisdictional conflicts, and that distances would be prohibitive if there were only one tribunal within a jurisdiction (citing particularly the Federal system).

While this viewpoint has validity, there are advantages in experience and uniformity in having one board of fixed membership determine all sentencing appeals within the State of jurisdiction. Appointment of persons from a wide variety of disciplines well may increase sentencing effectiveness. Experimentation with this concept should be undertaken as an alternative to normal appellate channels.

References

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Appellate Review of Sentences.* New York: Office of the Criminal Justice Project, 1968.
2. Brewster, Leo. "Appellate Review of Sentences," *Federal Rules Decisions,* 40 (1965), 79.
3. Mueller, Gerhard O. W. "Penology on Appeal, Appellate Review of Legal but Excessive Sentences," *Vanderbilt Law Review,* 15 (1962), 671.
4. Note, *Yale Law Journal,* 69 (1960), 1453.
5. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: The Courts.* Washington: Government Printing Office, 1967.
6. Sobeloff, Simon E. "The Sentence of the Court: Should There Be Appellate Review?" *American Bar Association Journal,* 41 (1955), 13.
7. Thomas, D. A. "Appellate Review of Sentences and the Development of a Sentencing Policy: The English Experience," *Alabama Law Review,* 20 (1968), 193.

Related Standards

The following standards may be applicable in implementing Standard 5.11.

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 visitations; 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

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968. Sec. 7.3.
2. "Pilot Institute on Sentencing," *Federal Rules Decisions,* 26 (1959), 231.
3. 28 U.S.C. Section 334.

Related Standards

The following standards may be appplicable 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 sentencing 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

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures*. New York: Office of the Criminal Justice Project, 1968 Sec. 7.1.
2. Doyle, Richard F. "A Sentencing Council in Operation," *Federal Probation*, 25 (1961), 27.
3. Levin, Theodore. "Toward a More Enlightened Sentencing Procedure," in H. Perlman and T. Allington, eds., *The Tasks of Penology*. Lincoln: University of Nebraska Press, 1969.
4. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: The Courts*. Washington: Government Printing Office, 1967.

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 Sentencing Legislation.
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, 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 drafters 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

1. Evjen, Victor H. "Some Guidelines in Preparing Presentence Reports," *Federal Rules Decisions*, 37 (1964), 177.
2. Sharp, Louis J. "The Presentence Report," *Federal Rules Decisions*, 30 (1962), 242.

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) the 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.

However, the idea of preparing a report in advance is a good one, particularly since it may allow the defendant to obtain a sentence of nonincarceration or community supervision shortly after his guilt is adjudicated. This avoids the unseemly final rush to avoid removing the offender from the community for the few days between adjudication and sentence.

The economics are sufficiently encouraging: approximately 97 percent of those defendants who agreed to this practice in the Federal system either pleaded or were found guilty. Since the standard itself restricts the advance preparation of these reports to defendants who presently are incarcerated, preparation of the report prior to guilt adjudication may be a distinct benefit to him in terms of removal from a local jail facility. This benefit would seem to outweigh the possible inconvenience to the investigative department.

References

1. Note, *Georgetown Law Journal,* 58 (1960), 451.
2. Note, *Washington University Law Quarterly,* (1964), 396.

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 relying 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 sources for the information are the defendant himself and the "public records"; and that there is need for assurance 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 the 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 envisioned 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

1. Hincks, Carroll C. "In Opposition to Rule 34 (c) (2), Proposed Federal Rules of Criminal Procedure," *Federal Probation,* 8 (1944), 3.
2. Katkin, Daniel. "Presentence Reports: An Analysis of Uses, Limitations and Civil Liberties Issues," *Minnesota Law Review,* 55 (1970), 736.
3. Lorenson, Willard D. "The Disclosure to Defense of Presentence Reports in West Virginia," *West Virginia Law Review,* 69 (1967), 159.
4. Note, *Columbia Law Review,* 55 (1958), 702.
5. Parsons, James B. "The Presentence Investigation Report Must be Preserved as a Confidential Document," *Federal Probation,* 30 (1964), 3.
6. Sharp, Louis J. "The Confidential Nature of Presentence Reports," *Catholic University Law Review,* 5 (1956), 127.
7. Stanley, Edwin. Dissent from the ABA sentencing standards recommendation, in American Bar Association Project on Standards for Criminal Justice, *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968. Pp. 303–305.
8. Zastrow, William G. "Disclosure of the Presentence Investigation Report," *Federal Probation,* 35 (1971), 20.

Standard 5.17

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 hearing reflecting the following:

1. At the hearing the defendant should have these rights:

a. To be represented by counsel or appointed counsel.

b. To present evidence on his own behalf.

c. To subpena witnesses.

d. To call or cross-examine the person who prepared the presentence report and any persons 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 sentences, as follows:

a. The exclusionary rules of evidence applicable to criminal trial 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 sentence 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 local 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 these 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 allocution 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 allocution. 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 rebut the material in it. The key case is *Townsend* v. *Burke,* 334 U.S. 736 (1948), 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 not predicated 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 there is both a right to present witnesses at a sentencing procedure and perhaps even to subpena 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 notorious cases 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 current 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 defendants 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 on the issue of guilt.

The standard does not recommend that all of the exclusionary 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 regulatory 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 the requirement for 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 available, he should testify personally in open court. The Supreme Court recently held in *Morrissey* 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.), *aff'd.*, 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

1. Brancale, Ralph. "Diagnostic Techniques in Aid of Sentencing," *Law and Contemporary Problems,* 23 (1958), 442.
2. Cohen, Fred. "Sentencing, Probation, and the Rehabilitative Ideal: The View from *Mempa* v. *Rhay*," *Texas Law Review,* 47 (1968), 1.
3. Davis, Kenneth C. *Administrative Law Treatise*. St. Paul: West, 1958. Sec. 1404.
4. Note, *Columbia Law Review,* 71 (1971), 1102.
5. Note, *University of Pennsylvania Law Review,* 101 (1952), 257.
6. Simpson, Bryan. "Utilization of the Presentence Report and Other Presentence Resources," *Federal Rules Decisions,* 30 (1961), 247.

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.

Standard 5.18

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 the 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 *Mempa* 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 hearings 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 there 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 retry and 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

1. Boroch, Richard. "Offender Rehabilitation Services and the Defense of Criminal Cases: The Philadelphia Experience," *Criminal Law Bulletin*, 7 (1971), 215.
2. Portman, Sheldon, "The Defense Lawyer's New Role in the Sentencing Process." *Federal Probation*, 34 (1970), 3.
3. Teitelbaum, William J. "The Prosecutor's Role in the Sentencing Process: A National Survey," *American Journal of Criminal Law* 1 (1972), 75.
4. Wald, Michael. *The Use of Social Workers in a Public Defender Office: An Evaluation of the Offender Rehabilitation Project of the Public Defender Office for Santa Clara County*. Santa Clara, Calif.: Santa Clara Public Defender's Office, 1972.

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 on an official record of the sentencing hearing. The record should be similar in form to the trial record but 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 advance 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. The standard also requires the record to show findings of fact, reasons justifying the sentence, and the purpose the sentence is intended to serve. Experience with articulating these items not only should assist in the implementation of appellate review of sentences but also should make courts more careful and less mechanical in their sentencing decisions. With time, courts will develop more specific criteria than that provided by statute to govern sentencing decisions. This will reduce the need or desirability of appealing sentences in many instances. By articulating the purpose of the sentence, the court will, in addition, have a standard by 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 appeals 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

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures*. New York: Office of the Criminal Justice Project, 1968.
2. Cohen, Fred. "Sentencing, Probation, and the Rehabilitative Ideal: The View From Mempa *v.* Rhay," *Texas Law Review*, 47 (1968), 1.
3. Davis, Kenneth Culp. *Administrative Law Treatise*. St. Paul: West, 1958, plus supplements.
4. Pugh, George W., and Carver, M. Hampton. "Due Process and Sentencing: From Mapp to Mempa to McGautha," *Texas Law Review*, 49 (1970), 25.

Related Standards

The following standards may be applicable in implementing Standard 5.19.

5.2 Sentencing the Nondangerous Offender.
5.3 Sentencing to Extended Terms.
5.7 Effect of Guilty Plea in Sentencing.
5.8 Credit for Time Served.
5.9 Continuing Jurisdiction of Sentencing Court.
5.11 Sentencing Equality.
5.16 Disclosure of Presentence Report.
5.17 Sentencing Hearing—Rights of Defendant.
5.18 Sentencing Hearing—Role of Counsel.

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 or 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 corrections 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 correctional classification 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, that may be the only useful system today, given the current state of knowledge about crime and offenders. It is important, however, that corrections 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, lewdness 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-

ommended that neophytes should be separated from hardened offenders, and that prisoners should be separated by sex, age, and type of offense. Crude as it was, this was the beginning of classification.[1]

Both elements of the prison reform movement—Christianity, especially the Quakers, and Utilitarianism under the leadership of Bentham and others—were interested primarily in abolishing the more brutal methods of correcting prisoners. Their interest 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.[2]

Segregation as Classification

Traditionally, administrators of correctional agencies have taken the position that men and women and youths should be separated from each other. The "Standard Minimum Rules for the Treatment of Prisoners" adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, August 30, 1955, provides an example of an allocation scheme that is characteristic of what is normally accepted as classification.

> Separation of Categories. The different categories of prisoners shall be kept in separate institutions or parts of the institution, taking account of their sex, age, criminal record, the legal reasons for their detention, and the necessities of their treatment. Thus, (a) men and women shall so far as possible be detained in separate institutions. In an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate; (b) untried prisoners shall be kept separate from 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 prisoners shall be kept separate from adults.[3]

Specialization not Classification

One of the obvious trends in the history of American jails and prisons was the development of specialization as various groups of prisoners were withdrawn from the first penal institution, the jail, for incarceration in specialized institutions. Vagrants were placed in houses of correction. State institutions, under various names, were established for juvenile delinquents, insane offenders, young adults, women, Negroes, defective delinquents, misdemeanants, the sick, and others labeled as criminals.

In development of the specialized institution, the criteria for selecting inmates have included political status, seriousness of the crime, age, race, sex, and the offender's mental or physical condition. Supporters of specialization were motivated mainly by two principles: prevention of contamination of one type of offender by another; and adaptation of work methods and facilities to the characteristics of special offender groups.

Although the trend toward specialization may be desirable, the principle cannot go unquestioned because the most prevalent example is assignment of offenders on the basis of the seriousness of their offense rather than the availability of programs 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 offense is not a suitable index of an offender's character, dangerousness, or needs.

Rise of the Treatment Model

The adoption of the treatment model in corrections has been trenchantly described in *Struggle for Justice,* prepared for the American Friends Service Committee:

> . . . the concept of reformation as something achieved through penitence or the acquisition of working skills and habits has been de-emphasized because of developments in social and behavioral science. Varying scientific or pseudo-scientific approaches to crime, although in conflict with one another and unconfirmed by hard scientific data, view criminals as distinct biological, psychological, or social-cultural types.
>
> Such theories all share a more or less deterministic premise holding that man's behavior is caused by social or psychological forces located outside his consciousness and therefore beyond his control. Rehabilitation, therefore, is deemed to require expert help so as to provide the inmate with the understanding and guidance that it is assumed he cannot achieve on his own.
>
> The individualized treatment model, the outcome of this historical process, has for nearly a century been the ideological spring from which almost all actual and proposed reform in criminal justice has been derived. . . . Like other conceptions that become so entrenched that they slip imperceptibly into dogma, the treatment model has been assumed rather than analyzed, preached rather than evaluated.[4]

[1] Edwin H. Sutherland and Donald R. Cressey, *Principles of Criminology*, 6th ed. (Lippincott, 1960), p. 327.
[2] John P. Conrad, *Crime and Its Correction* (Berkeley: University of California Press, 1965), p. 17.
[3] United Nations Department of Economic and Social Affairs, *Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations* (New York: UN, 1958).
[4] *Struggle for Justice,* A Report on Crime and Punishment in America prepared for the American Friends Service Committee (Hill and Wang, 1971), pp. 36–37.

Adoption of the treatment model has had major implications for correctional operations. As it gained prominence, the stated purpose of classification moved from segregation of various categories of offenders from each other to that of implementing different rehabilitative strategies. Under the new model, prisoners are received in the correctional system, diagnosed, classified, and assigned to treatment based on their classification.

In the process of trying to implement this model, correctional 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 perceive that he has 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 result has been a treatment 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 set by correctional staff.

Although faced with an enormous and growing body of evidence of its ineffectiveness, corrections has refused to reexamine this mode of operation. Instead 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 offender in a "Catch 22" situation. 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. If you deny that you're sick, you're really sick. But if you acknowledge that you're sick, then you really must be sick or you wouldn't admit it."

The fact that there is so little knowledge about causes of criminal behavior and how to eliminate it means that systems of forced treatment based on that small amount of knowledge will necessarily be extremely subject to abuse. Furthermore, since 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 secondary objective becomes that of trying to figure out what he is supposed to do to obtain release and then do it, or appear to do it. Most get bogged down on 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 behavior than on his "attitude," his demeanor, his degree of "contrition," his "desire to change," or some other subjective factor.

In addition, "diagnosis" and "treatment" concepts tend to lead staff to focus on intrapsychic problems when most offenders' crimes are probably at least equally related to such 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 it.

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 advanced 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 preoccupation with administrative order and convenience. Organizationally, it is difficult for correctional programs responsible for offering services to many persons to individualize services for a specialized few. In public education, this problem frequently is expressed by the classroom teacher, who says he cannot deal with the disturbing or distracting child because he upsets 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 information about offenders have made it possible to view security requirements from a new perspective, but much more progress is needed if successful reintegration of offenders into the community is to be a realistic goal.

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 established by these goals, 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 support the goals.

Involving the Offender

Offenders should be involved in assessing their own problems and needs and 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; seldom is he given an opportunity to participate in assessing the problems he presents to himself and others. His conception of the classification process imposed on him greatly affects results of programs offered him. Whether or not correctional agencies see themselves as offering meaningful opportunities for offenders, the latter often view such opportunities as further actions of a vengeful society.

Even superficial analysis of most current classification programs in correctional services would indicate that decisions regarding offenders' needs are made on the basis of court policy, agency policy, and management convenience. So much emphasis is placed on the attitude of the committing court, the public relations of the agency, bedspace requirements, and release quotas that correctional staff seldom involve the offender in determining what might meet his needs for growth and development. These practices completely frustrate and nullify the purposes of classification and turn the entire process into an exercise concerned with form rather than substance.

Discriminatory Decisions

Discriminatory program decisions are made on the basis of ethnic background, offense pattern, and staff reactions to the offender's personality quirks. These discriminatory practices, planned or not, tend to be inimical 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 its employees.

A thorough analysis should be made of those factors that influence decisions affecting the offender. Subjective and irrational influences must be eliminated where possible. If subjectivism is the only available basis for action at the moment, it 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 this latitude the classification process frequently breaks down.

Correctional staff by necessity are concerned with making judgments as to appropriate levels of custody, needs for education or vocational training, suitability for counseling, and readiness for parole. In making these judgments, the staff plan the offender's education or training program on the basis of academic achievement scores, vocational preference inventories, and other devices that really provide little information on how to change an offender into a nonoffender. 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 proved a reliable indicator of the inmate's custody requirements or potential for future violence.

Amenability to a counseling program is determined by the availability of the program, the offender's willingness to participate, and the counselor's willingness to make his services available. In practice, it has been demonstrated that certain forms of counseling are of little value to some inmates and actually detrimental to others.

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 make reliable evaluations and program plans. Needs for staff training have taxed the capacity of correctional agencies. Additionally, many classification decisions at reception centers have not proved accurate or consistent from one center to another. Persons wishing to use a given classification system in another geographical area experience difficulty in arriving at meaningful program plans from interviews. Consequently, many correctional administrators and researchers are seeking ways to standardize and computerize the classification approach.

A uniformly applied classification system can lead to more effective management, assignment, and programming decisions. It can add precision to evaluative research in the corrections field. Current evidence indicates that the most efficient ways to combine data for making classification decisions and for predicting problems are based on actuarial or mechanical (computer-based) methods combined with sequential classification rules.[5]

Corrections personnel from necessity have become interested in the possibility of dealing with programs and persons simultaneously; that is, utilizing a classification system that would make it possible 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 direction and extent of his own program.

Ultimately, the full utilization of classification systems requires a better application of technology. For too long, the correctional system has maintained an archaic system of keeping offenders' records. This traditional paper system provides relatively little useful information on the offender but a great deal of information about the prejudices and perceptions of correctional workers. Effective utilization of objective data, made more usable by modern electronic data processing, could substantially move the art of classification to its next level, wherein the primitive art form is converted into a rudimentary science.

In considering the significance of classification systems, it is important to recognize that the process begins in the community and that judges, probation officials, and intake workers of voluntary social agencies make decisions important to classification every day. In most cases, these decisions are made on the basis of subjective data, formulated within a framework that has little consistency with or meaning to the total correctional system. Any classification system must consider influences and input from the entire justice system and not just a single component such as corrections.

A basic problem with classification procedures today is that usually they are not conducted until after an individual's basic dispositional and program assignments have been made. Persons assigned to an institution are classified among themselves; persons assigned to probation are classified among themselves, etc. Thus one of the most productive and relevant opportunities for use of a classification system has already been bypassed. For classification to have any real meaning, it should take place before the offender's commitment to a formal correctional agency.[6]

It is imperative that classification systems be developed for the whole of the correctional system. Classification systems that operate effectively at the community level will help select those offenders whose needs can be met best through specific programs in the community setting. They will allow only those who need 24-hour control to pass on to correctional institutions.

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 development of a language and a system by which problems are approached. In effect, it should render rational that which otherwise is a random operation.

Another advantage is that classification can make handling large numbers of offenders more efficient through a grouping process based on needs and problems. From an administrative standpoint, classification systems can provide for more orderly processing and handling of individuals. From a financial standpoint, classification schemes can enable administrators to make more efficient use of limited resources and to avoid providing resources for offenders who do not require them. From a research standpoint, they can permit comparative studies.

One of the basic characteristics of an effective classification system is its 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 an institution or parole operation. It is equally

[5] Carl F. Jesness, *Development of a Sequential I-Level Classification (Project SEQUIL)* (Sacramento: California Youth Authority, 1970).

[6] Allen F. Breed, "The Significance of Classification Procedures to the Field of Corrections," unpublished consultant's paper prepared for the President's Commission on Law Enforcement and Administration of Justice, 1967.

true of communication between probation departments 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 unrelated activities. When used properly, it can help overcome a tendency for various elements of the correctional bureaucracy to operate in a vacuum with little effort to unite independent but complementary components.

Organizationally, the classification system can be used to link administration, staff, and offender with a program providing planned experiences for the offender. These experiences must reinforce each other to move the client toward a planned program objective. This feat is not possible unless there is a basic theoretical plan that can be translated into program strategies and communicated in language common to all persons involved with the offender.

Essentially, classification should insure a more effective pooling of relevant knowledge about the offender and the development of a more efficient method by which all important decisions and activities affecting him may be coordinated.[7] Ideally, it should provide offenders with a means for changing themselves rather than subjecting them under coercion to so-called "treatment."

An ideal correctional system would match offender types successfully with program types. Society must be protected against incorrigible offenders, but it should not aggravate the problem by locking up those who would do better in the community. A need to isolate offender types works both ways. An effective classification process would identify offenders who must be kept out of community programs, as well as those who should be kept in them. It would acknowledge that a screening process is sufficient for the decisions needed for most offenders and that classification as theoretically conceived is needed only for a comparative few.

CLASSIFICATION FOR MANAGEMENT PURPOSES

Classification systems useful solely for management purposes are distinguishable from those designated as useful for treatment. The term "management" means effective control of offenders to avoid further law violations while the agency is responsible. In contrast to management, the term "treatment" refers to attempts to change the individual offender or aspects of his environment to assure long-term lawful behavior, beyond the period of direct agency responsibility. Most if not all classification schemes in use today are geared in actual practice chiefly to assessing risk and facilitating the management of offenders.

In a community setting, management primarily involves control of offenders to prevent further law violations while protecting society and the offender. This protection means, for example, that high surveillance should be employed only for those who require it to prevent further offenses, low surveillance for those who represent little or no threat to others. All these management decisions require an implicit or explicit classification system. The difficulty with an implicit classification system, of course, is that it offers no way of checking the system's accuracy. There is no built-in self-correcting process.

Prior probability (base expectancy) approaches are examples of classification systems useful for management purposes. Decisions on whether groups of offenders are to be handled in the community or in an institutional setting can be made most rationally by considering, among other things, the risk of further violation. Surveillance level on probation or parole and related aspects of caseload may be determined in part by knowledge of violation probability. Prior probability classification systems may be used not only as an aid to administrative decisionmaking but also as a check on whether or not management decisions have a desired effect.[8]

A number of studies using this approach in conjunction with psychiatrically oriented classification systems have implications for selection of settings in which various offender subgroups can be handled best. The Borstal studies described by Simon and the Highfields study[9] are examples of research testing the differential response of selected offenders exposed to different correctional settings.

Courts, like other components of the justice system, are reluctant to depend on assessment devices that may suggest action contrary to their own experiences and beliefs. Judges, like parole boards, correctional administrators, and caseworkers, continue to base decisions on hunch, prejudice, and personal belief rather than fact or the need of the offender.

Understandably, criminal justice workers need to be reassured that classification devices are reliable before they are willing to stake part of their success or professional status on how such devices work. Base expectancy (a probable success prediction device) is a classic example of increased mechanical efficiency for large numbers but has only marginal reliability for individual prediction.

The case management system (RAPS) used by the Federal Bureau of Prisons is a modified operational version of this classification approach, although not a prior probability approach in the pure sense.[10] RAPS was initiated several years ago in an effort to develop a descriptive method of classifying inmates in order to allocate resources rationally. Need assessment now is based on four coded elements. "R" is for rating and represents the professional opinion of staff; "A" refers to the age 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 change. The bases for these judgments were subjective and, predictably, there was considerable variation 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 revised system is designated to allocate available resources among offenders on the basis of objective assessment of relative need.

The bureau is developing a computer application using objective criteria for determining offender categories. Need assessment is based on the RAPS elements. Each element is given a numerical rating, and the ratings of the four 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 evolutionary development. Evaluation of its ultimate value as a correctional classification tool and means of allocating resources will require further testing and experimentation. RAPS is an example of a classification system elaborately designed for the management of offenders rather than for attempting to relate the causes of crime to treatment methods and resources.

Several of the social perception and interaction classification systems have been used in making management recommendations or decisions. Gibbons bases his typologies of juvenile and adult offenders on patterns of social roles as defined by offense, behavior, criminal career, and self-concept or attitude.

Using Warren's interpersonal maturity classification system for juveniles, Jesness conducted a study in which inmates of a boys' training school were assigned living units on the basis of delinquent subtype. An attempt was made to develop and describe the management techniques most useful in dealing with each subtype. Warren and the staff of the Community Treatment Project have developed a treatment model defining nine delinquent subtypes and prescribing both differential management and treatment techniques for various subtypes in the community.[11]

Classification for Risk

It is stated elsewhere in this report and in many other documents on corrections that perhaps the greatest contribution to corrections today would be development of a scheme or system that would effectively differentiate among offenders as to their risk of recidivism or their potential dangerousness to others. It is argued that such a scheme, applied at the time of sentencing, would greatly increase sentencing effectiveness, cost-effectiveness of correctional programs, and safety of the community.

Although this theory is basically sound, it presents a number of problems. Not the least of these is that sentencing decisions are not made solely on the basis of risk or a desire to protect others. Society also expects the courts to maintain individual liberties, satisfy a common notion of justice in the sense of equal and consistent treatment, maintain an image as "fair" institutions, maintain the declarative and condemnatory functions of the criminal law, seek a deterrent effect, and operate in ways that are reasonably cost-effective. Many of these goals are by no means fully consistent with the goals of protecting society and reducing recidivism. The dilemma created by these conflicting goals of the criminal sanctioning system has been well described in a recent article by Martin A. Levin.

> . . . from what we know about the type of offenders who are most likely to fall into the recidivating group, one clearly could derive the following policy to reduce recidivism: *Incarcerate for the longest terms the youngest offenders, especially if they are black or have a narcotics history.* But such a policy, however effective it might be in reducing recidivism, is obviously unacceptable if the court is to remain in our eyes a fair and nondiscriminatory institution which exercises a due regard for equality and individual liberties. Conversely, the same findings of social science with regard to reducing recidivism would dic-

[7] Breed, "The Significance of Classification Procedures."

[8] Francis H. Simon, *Prediction Methods in Criminology, Including a Prediction Study of Young Men on Probation* (London: H.M. Stationery Office, 1971.)

[9] H. Ashley Weeks, *Youthful Offenders at Highfields* (Ann Arbor: University of Michigan Press, 1963).

[10] U.S. Bureau of Prisons, Policy Statement, Dec. 16, 1969.

[11] Marguerite Q. Warren, *Interpersonal Maturity Level Classification: Juvenile Diagnosis and Treatment of Low, Middle, and High Maturity Delinquents* (Sacramento: California Youth Authority, 1966).

tate that judges *incarcerate for the shortest terms possible under the law whites over 40 who have committed murder or sex crimes!* These groups have extremely low recidivism rates, and such a policy would also save the state money in incarceration costs. But there is little doubt that most people would consider such a policy wrong—both because it discriminates against the young and the black and because it does not sufficiently express society's disapproval of such grave crimes as murder or rape.[12]

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 continue to incarcerate 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 imprisonment do not serve to deter or punish adequately, then new sanctions should be explored. Just as society devised use of imprisonment as a response to the ineffectiveness and brutality of cutting off the hands and feet of offenders, so 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 found. An institutionalized response to crime is a necessity; incarceration is not.

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 integrating and increasing knowledge in the corrections field. Currently, there is considerable interest in the possibility of systematically developing differential programming for various offender types.

The "treatment-relevant typologies" being investigated in the correctional world vary considerably in complexity. At the middle range of complexity are offender groupings based on causes of criminality and on attitude assessment. The British Home Office has been attempting to develop a typology based on the nature of offenders' problems. Probation officers 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 reconviction.[13]

O. S. Belle of Manitoba Penitentiary, Canada, is studying prosocial and antisocial inmates.[14] Several studies have been conducted utilizing the Schrag model, which includes grouping inmates into prosocial, antisocial, asocial, and pseudosocial types on the basis of their attitudes toward others. A number of studies have used the Quay classification of juvenile offenders into psychopathic, neurotic, subcultural, and immature-inadequate categories.

McCord, McCord, and Zola proposed six different treatment plans for six different offense types.[15] Gibbons suggested differential treatment methods for a variety of subtypes defined by their social role.[16] Freeman, Hildebrand, and Ayre describe a typology with corollary treatment techniques.[17] The underlying dimension of this classification scheme is a continuum of levels of emotional maturity or ego autonomy.

MacGregor develops a typology of family patterns that sets forth propositions by which families may be classified for treatment planning.[18] Hunt and Hardt relate developmental state to delinquent behavior and delinquency orientation.[19] The authors have made some specific speculations on the implications of their theoretical models for specific differential treatments for delinquents.

The work of Warren and her associates in the California Youth Authority's Community Treatment Project is based on the theory of levels of interpersonal maturity,[20] a formulation describing a sequence of personality integrations in normal childhood development. This classification system focuses on ways in which the individual is able to perceive himself and the world and understand what is happening among others, as well as between himself and others. The theory identifies seven successive stages of interpersonal maturity, characterized in terms of social and psychological development, ranging from the interpersonal reactions of a newborn infant to an ideal social maturity level.

There is no single obvious or proved way to classify offenders. The decisions to sort out deviance by means of Variable X rather than Variable Y can be made only in terms of some logic or rationale, some argument in defense of a particular choice of variables. It is not possible to be certain in advance of research that a particular system is causally significant. This aspect of classification or typology justifies the use of the term "calculated risk." It is out of this kind of risk-taking by social scientists, theoreticians, 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 hypothesizing programs 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.

Theoreticians, 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 to prediction that follows from understanding, (2) implications for efficient management, (3) effective differential programming strategies, and (4) greater precision for maximally effective research.[21]

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 decisionmaking 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 problems. The operational policy of each agency in the correctional continuum becomes in effect 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 care and services for its offender population fluctuates with its basic values, understanding of the problems, and leadership. Over the years, correctional programming has undergone radical changes 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 attitudes 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; reception-diagnosis 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-

[12] Martin A. Levin, "Crime and Punishment and Social Science," *The Public Interest*, 27 (Spring 1972).

[13] Home Office Research and Statistics Department, *Summary of Research* (London: H.M. Stationery Office, 1969).

[14] Described in Marguerite Q. Warren, *Correctional Treatment in Community Settings: A Report of Current Research*, paper prepared for the Sixth International Congress on Criminology, 1970.

[15] William McCord, Joan McCord, and Irving K. Zola, *Origins of Crime* (Columbia University Press, 1959).

[16] Don C. Gibbons, *Changing the Lawbreaker: The Treatment of Delinquents and Criminals* (Prentice-Hall, 1965), p. 39.

[17] Freeman et al., "A Classification System That Prescribes Treatment," *Social Casework*, 46 (1965), 423–429.

[18] R. MacGregor, "Developmental Considerations in Psychotherapy with Children and Youth," paper presented at the annual conference of the American Psychological Association, 1962.

[19] David E. Hunt and Robert H. Hardt, "Developmental Stage, Delinquency, and Differential Treatment," *Journal of Research in Crime and Delinquency*, 2 (1965), 20–31.

[20] Warren, *Interpersonal Maturity Level Classification.*

[21] Warren, *Correctional Treatment in Community Settings.*

tion from contagion through quarantine,[22] 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 treatment 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 enhancing utilization of available programs; 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 unit system suffers from a number of defects that virtually deprive it of usefulness. Reports typically 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 procedures take on the 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.[23]

Although the committee's composition may vary, it generally consists of individuals whose knowledge and skills are relevant to the offender's particular problem. It may include social workers or sociologists, the supervisor of education, a vocational supervisor, a recreational supervisor, a chaplain, a medical officer, a psychiatrist, or others. The committee determines inmate security ratings, assigns individuals to educational and vocational training programs, and decides where they will work in the institution.

Like other classification systems in use, the committee procedure becomes institutionalized, and decisions are made with little more consideration than the old deputy warden or yard captain used to give them when he alone had full authority over these matters. Since the classification committee processes all inmates, it works under the pressure of limited time and is necessarily 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. Therefore, their decisions are based primarily on information in case records.

The demands of time, program routine, and workload—and the institutionalization of personnel themselves—prevent effective performance of service. The result is that a large number of ranking institutional 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.

In concept, the effectiveness of a classification committee in carrying out its responsibilities presupposes considerable interaction with the offender, yet rarely does he have an opportunity to react meaningfully with the committee. Even when a brief interview between the inmate and the committee is permitted, the offender is asked to respond to a few perfunctory and ritualized questions and is given little if any opportunity to initiate questions that might reveal a great deal about the way the offender perceives the world and himself. 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.[24] 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 presupposes a plan and theory of classification consistent throughout the system. Such an approach places a major responsibility for collecting diagnostic information on one facility, thereby requiring a high degree of specialization.

While the reception center concept was progressive for its time, it has become obsolete. The system is administratively convenient and efficient in that a limited staff can provide services for a large number of offenders. However, this very administrative efficiency is largely accountable for its obsolescence.

Traditionally, the reception and diagnostic center has provided summary reports including information on social background, criminal history, initial adjustment to custody, medical examination, psychological assessment, vocational skills, educational level, religious background and attitudes, recreational interests and abilities, and psychiatric evaluation. Today, it is not necessary that any of these components of the diagnostic report be completed in a diagnostic or reception center. A number of the items usually are produced by probation and parole officers in the community. Although medical examinations and psychological and psychiatric evaluations require professional services, these services also are available in the local community through both contract and public agency programs.

The reception center, because of the ceaseless repetition in the nature of its work, becomes even more institutionalized than other forms of the classification process. Schedules are adhered to rigidly, and offenders are kept too long in the centers waiting for the diagnostic skills or services of a limited number of persons. The process itself is uniformly extensive and thorough for most offenders, and more information is produced than can be used effectively for classification purposes, considering the current lack of correctional knowledge and resources.

The futility of much of this work is evident in the separation of the study and diagnostic process from operational units. Independent institutions usually do not rely on information developed at the diagnostic center and may repeat clinical evaluations and studies.

The anonymity of inmates in the reception center is pervasive. The impersonality of the assembly 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 "rehabilitation" approach for a given offender. Typically, decisions are based on the recommendations of an intake worker who has subjectively weighed a collection of opinions and perhaps employed a few education, attitude, and aptitude tests. The basis of the intake worker's judgment may or may not be clear in his own mind. In any case, institution and personal bias are involved, because the worker rarely 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 able to check assumptions, 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 developing and programming correctional efforts at the community level. Many theorists in the field argue that a valid classification system, universally 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 involve a much wider range of personnel and resources than previously supposed. For instance, a classification team consisting of parole and probation 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 other members 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 or institution for review and study. The classification process itself can be adapted to the needs of offenders, most of whom, for the purposes of community-based programs, require little more than screening for risk and matching to resources.

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,

[22] American Prison Association, Committee on Classification Case and Case Work, *Handbook on Classification in Correctional Institutions* (New York: American Correctional Association, 1964.)

[23] Elliot Studt, Sheldon Messinger, and Thomas P. Wilson, *C-Unit: Search for Community in Prison* (New York: Russell Sage Foundation, 1968).

[24] William E. Amos and Raymond Manella, *Delinquent Children in Juvenile Correctional Institutions* (Springfield, Ill.: Thomas, 1966).

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 Borstal 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 types to conformity/non-conformity dichotomies represented by Roebuck; McCord, McCord, and Zola; Ohlin; and Reckless.

4. Psychiatrically oriented approaches represented by the works of Jenkins and Hewitt, Redl, Erickson, Aichhorn, Makkay, Reiss, Argyle, Bloch and Flynn, and the Illinois State Training School Treatment Committee.

5. Social perception and interaction classifications of Gough and Peterson, Hunt and Hardt, Sarbin, Peterson, Quay and Cameron, Gibbons, Studt, MacGregor, Sullivan, Grant and Grant, Warren, and Russon.

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 Hurwitz, Jesness, 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.[25]

[24] For publications see Bibliography at the end of this chapter.

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 intrapsychic factors. Nevertheless, a few investigators are attempting to link theoretically the sociological and psychological situational variables 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: asocial, conformist, antisocial manipulator, neurotic, subcultural identifier, and situational.[26]

It should be noted that most of the typologies discussed were based on studies of juvenile boys. Only Hunt, Schrag, and Warren [27] 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—theoretical formulations, empirical observation methods, and multivariate analysis procedures. Additionally, it is important 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 theoretician 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 conceptualizing, but it also appears that a time of consensus among typologists, in which a rational correctional model may be begun, is approaching.

Offender typologies represent an important method of integrating and increasing knowledge in the correctional field. Ultimately, typological approaches will flourish in relationship to their fruitfulness in producing improved management, differential programming, and schemes for crime prevention. In the last analysis, a good classification system is one that enables a correctional agency to utilize its limited manpower to maximize its impact on offenders.

Much more extensive research is needed to develop an effective and theoretically sound classification system for the small proportion of offenders who require more than basic screening and assessment. Corrections will have to depend on the behavioral sciences to produce a more consistent theoretical basis, and corrections itself will have to engage in research and experimentation to devise programs and resources that will be related directly to causation theory. Only with the successful outcome of such efforts will it be possible to develop a classification system that will dispel the present mythological character of correctional "treatment."

[26] Marguerite Q. Warren, "Classification of Offenders as an Aid to Efficient Management and Effective Treatment," *Journal of Criminal Law, Criminology and Police Science*, 62 (1971), 239.

[27] Warren, "Classification of Offenders."

Standard 6.1

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 and deficient resources, 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 practicable level and for realistic purposes, guided by the principle that:

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 under 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, demonstration, model building, intrasystem comparisons, and administrative decisionmaking.

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 by other than educated guesswork, and deficiencies in correctional resources and initiatives discourage 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 corrections system actually is experienced by him as a form 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 subjecting 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 advice—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 selection of 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 decisionmaking. 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 deemphasized.

References

1. American Prison Association, Committee on Classification and Case Work. *Handbook on Classification in Correctional Institutions.* rev.ed. New York: American Correctional Association, 1964.
2. Amos, William E., and Manella, Raymond. *Delinquent Children in Juvenile Correctional Institutions.* Springfield, Ill.: Charles C. Thomas, 1966.
3. Argyle, Michael. *A New Approach to the Classification of Delinquents with Implications for Treatment.* Sacramento: California State Board of Corrections, 1961.
4. Breed, Allen F. "The Significance of Classification Procedures to the Field of Corrections," consultant's paper prepared for the President's Commission on Law Enforcement and Administration of Justice, 1967.
5. Carney, F. "Research and Decision-Making," *Journal of Research in Crime and Delinquency,* 6(1969), 110-122.
6. Conrad, John P. *Crime and Its Correction.* Berkeley: University of California Press, 1965.
7. Doran, Robert E., "The Process of Organizational Stereotyping: The Case of the Adjustment Center Classification Committee," paper prepared for internal consumption in California Department of Corrections Classification Section, 1971.
8. Empey, LaMar T. *Studies in Delinquency: Alternatives to Incarceration.* Washington: U.S.

Department of Health, Education, and Welfare, 1967.
9. Glaser, Daniel. *The Effectiveness of a Prison and Parole System.* Indianapolis: Bobbs-Merrill, 1969.
10. Havel, Joan. *Special Intensive Parole Unit IV: The High Base Expectancy Study.* Research Report No. 10. Sacramento: California Department of Corrections, 1963.
11. Heaton, W. S., and Adams, S. *Community Performance of Three Categories of Institutional Releases.* Research Report No. 15. Sacramento: California Department of Corrections, 1969.

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

crime with any precision, or either knowledge or resources to relate correctional programs specifically to these causes. Under such circumstances the goal of classification is set realistically as the screening of inmates for risk and their appropriate placement in programs involving increasing degrees of community involvement.

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, corrections has the capability to screen offenders for risk and to place them appropriately in programs involving different degrees of risk and to use classification as a method for managing offender populations. 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 to be used for at least several more years will involve some variation or combination of these arrangements. However, their objectives should be set forth specifically and related directly to assessment for risk and appropriate program placement.

To reduce the unproductive expenditure of time on classification, the period allocated to this procedure should be reduced to a minimum, no longer than 24 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 the impact of research.

References

1. American Prison Association, Committee on Classification and Case Work. *Handbook on Classification in Correctional Institutions*. rev. ed. New York:American Correctional Association, 1964.
2. Amos, William E., and Manella, Raymond. *Delinquent Children in Juvenile Correctional Institutions*. Springfield, Ill.: Charles C. Thomas, 1966.
3. Argyle, Michael. *A New Approach to the Classification of Delinquents with Implications for Treatment*. Sacramento: California State Board of Corrections, 1961.
4. Breed, Allen F. "The Significance of Classification Procedures to the Field of Corrections," consultant's paper prepared for the President's Commission on Law Enforcement and Administration of Justice, 1967.
5. Conrad, John P. *Crime and Its Correction*. Berkeley:University of California Press, 1965.
6. Doran, Robert E. "The Process of Organizational Stereotyping: The Case of the Adjustment Center Classification Committee," paper prepared for internal consumption in California Department of Corrections Classification Section, 1971.
7. Glaser, Daniel. *The Effectiveness of a Prison and Parole System*. Indianapolis: Bobbs-Merrill, 1969.

Related 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 correctional 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.

c. The system to match client needs and strengths with department and community resources and specifically with the skills of those providing services.

6. The classification team should have a role in recommending the establishment of new community programs and the modification of existing programs to involve volunteers, ex-offenders, and paraprofessionals as discussed in Chapter 7 and elsewhere in this report (see Related Standards). It should also have an evaluative and advisory role in the operation of community programs as they affect the fulfillment of the needs of offenders assigned to them.

7. The organization of the classification team should be flexible and involve rotating membership and chairmen selected on an alternating basis among participating agencies.

Commentary

As they operate at present, most classification schemes are designed to decide what should be done with those persons who are committed to institutions. Few systems are intended to determine which offenders need not be processed into or through the existing correctional system, or what specifically should be done for those adjudicated or convicted and immediately or subsequently placed in community-based programs.

It is assumed that the present criminal justice system is so harmful that any alternative which diverts selected offenders from it is better than one which moves them farther into it. In the current literature and knowledge of the field there is more than ample evidence to support this assumption. However, a rational method is needed by which choices can be made to exclude offenders who do not need a correctional agency's services. As yet, no system has been devised to serve this purpose, except those described as prior probability theories (base expectancy approaches) or in connection with individual pretrial intervention programs.

Also, when an offender is placed on probation or eventually is paroled, it is left largely to the initiative and resources of the probation or parole officer to determine what should be done with him. Similarly, when institutionalized offenders in a preparole or prerelease status are placed in institutionally sponsored community-based programs, there usually is little coordination with other existing community-based programs. It is useful now to advocate a classification scheme that would assist all such efforts. The scheme should identify offenders who represent low risks to others and who do not require expensive custodial or correctional programs, following these principles:

1. No offender should receive more surveillance or "help" than he requires.
2. No offender should be kept in a more secure condition or status than his potential risk dictates.
3. Strategies should be developed by which traditional court, probation, and institutional decisions may be changed to accomplish correctional goals.
4. Training should be implemented to insure that correctional workers commit themselves to a planned correctional process based on the offender's needs and not on age, sex, race, or offense.
5. Consideration should be given to the real restrictions imposed by law, resources, or manpower.

As with other efforts involving the community, the planning and operation of community classification should be accomplished with the assistance of affected and interested groups—police, courts, and public. Their support is essential to the successful operation of community-based programs, and they can assist in opening the doors to further resources.

For full effectiveness, the teams should participate in all types of processes that channel offenders into community-based programs—diversion, sentencing and disposition, and placement decisions of correctional agencies. The program resources of a community need coordination and consistency in operation as well as the increased flexibility that a classification team would make possible.

For efficiency, and to avoid counterproductive and needless interference in the lives of offenders, the classification team should adopt realistic criteria to prevent allocation of resources to offenders who do not need them and to assure that expensive, inherently damaging institutional controls are imposed only upon those offenders who require them in the interest of public safety.

As with institutional classification, the community classification team is intended primarily as a means for screening offenders for risk, with appropriate placements, and for managing large groups of offenders. The objective is to give offenders opportunities to change themselves rather than to attempt, as has been done so unproductively in the past, to coerce behavioral changes.

In addition to its responsibility for assigning offenders to various community programs, the classification team should have a role in observing the operation of these programs and recommending new programs, changes, or innovations that may be more responsive to the needs of offenders. These programs are largely in the initial stages of development, and many adjustments should be anticipated as experience and research accumulate.

The membership of the classification team should not be fixed, but made up of changing representatives of the participating agencies. This arrangement would be a useful device in the training of agency personnel and in insuring wide participation in and the harmonious functioning of community classification and community-based programs.

References

1. Argyle, Michael. *A New Approach to the Classification of Delinquents with Implications for Treatment*. Sacramento: California State Board of Corrections, 1961.
2. Breed, Allen F. "The Significance of Classification Procedures to the Field of Corrections," consultant's paper prepared for the President's Commission on Law Enforcement and Administration of Justice, 1967.
3. Empey, LaMar T. *Studies in Delinquency: Alternatives to Incarceration*. Washington: U.S. Department of Health, Education, and Welfare, 1967.
4. Havel, Joan. *Special Intensive Parole Unit IV: The High Base Expectancy Study*. Research Report No. 10. Sacramento: California Department of Corrections, 1963.
5. Heaton, W. S., and Adams, S. *Community Performance of Three Categories of Institutional Releases*. Research Report No. 15. Sacramento: California Department of Corrections, 1969.

Related Standards

The following standards may be applicable in implementing Standard 6.3.

2.9 Rehabilitation.
3.1 Use of Diversion.
5.9 Continuing Jurisdiction 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 Parol
14.8 Redistribution of Correctional Manpower.
16.14 Community-Based Treatment Programs.

Selected Bibliography on Contemporary Classification Theory

Argyle, Michael. *A New Approach to the Classification of Delinquents with Implications for Treatment*. Sacramento: California State Board of Corrections, 1961.

Bloch, Herbert A., and Flynn, Frank L. *Delinquency*. New York: Random House, 1956.

Breed, Allen F. "The Significance of Classification Procedures to the Field of Corrections," unpublished consultant's paper prepared for the President's Commission on Law Enforcement and Administration of Justice, 1967.

California State Board of Corrections. *Interaction between Treatment Method and Offender Type*. Sacramento: 1960.

Erikson, Erik H. *Childhood and Society*. 2nd rev. ed. New York: Norton, 1963.

Freeman, Henry; Hildebrand, Catherine; and Ayre, Donald. "A Classification System That Prescribes Treatment," *Social Casework*, 46 (1965), 423-429.

Gibbons, Don C. *Changing the Lawbreaker: The Treatment of Delinquents and Criminals*. Englewood Cliffs, N.J.: Prentice-Hall, 1965.

Glaser, Daniel. *The Effectiveness of a Prison and Parole System*. Indianapolis: Bobbs-Merrill, 1969.

Glueck, Sheldon, and Glueck, Eleanor. "Varieties of Delinquent Types," *British Journal of Criminology*, 5 (1965), 236-248, 388-405.

Glueck, Sheldon, and Glueck, Eleanor. *Predicting Delinquency and Crime*. Cambridge: Harvard University Press, 1959.

Glueck, Sheldon, and Glueck, Eleanor. *Toward a Typology of Juvenile Offenders; Implications for Therapy and Prevention*. New York: Grune and Stratton, 1970.

Gough, Harrison G., and Peterson, Donald. "The Identification and Measurement of Predispositional Factors in Crime and Delinquency," *Journal of Consulting Psychology*, 16 (1952), 207-212.

Havel, Joan. *Special Intensive Parole Unit IV: The High Base Expectancy Study*. Research Report No. 10. Sacramento: California Department of Corrections, 1963.

Home Office Research and Statistics Department. *Summary of Research*. London: H. M. Stationery Office, 1969.

Hunt, David E., and Hardt, Robert H. "Developmental Stage, Delinquency and Differential Treatment," *Journal of Research in Crime and Delinquency*, 2 (1965), 20-31.

Hurwitz, Jacob I. "Three Delinquent Types: A Multivariate Analysis," *Journal of Criminal Law, Criminology and Police Science*, 56 (1965), 328-334.

Illinois Department of Corrections. *Classification Program, Sample Reports and Documents*. Springfield: 1970.

Jenkins, Richard L., and Hewitt, Lester. "Types of Personality Structure Encountered in Child Guidance Clinics," *American Journal of Orthopsychiatry*, 14 (1944), 84-94.

Jesness, Carl F. *Development of a Sequential I-Level Classification (Project SEQUIL)*. Sacramento: California Youth Authority, 1970.

Jesness, Carl F. *The Fricat Ranch Study*. Sacramento: California Youth Authority, 1965.

Jesness, Carl F. *The Preston Typology Study*. Sacramento: California Youth Authority, 1965.

McCord, William; McCord, Joan; and Zola, Irving K. *Origins of Crime*. New York: Columbia University Press, 1959.

Makkay, E., "Delinquency Considered as a Manifestation of 1) A Serious Disorder of Development in Early Childhood, and 2) Other Delinquency-Prone Disturbances of Emotional Development," unpublished manuscript, 1960.

Ohlin, Lloyd E. *Selection for Parole*. New York: Russell Sage Foundation, 1951.

Palmer, Ted. *Types of Probation Offenders and Types of Youth on Probation: Their Views and Interactions*. Sacramento: California Youth Authority, 1963.

Peterson, Donald R.; Quay, Herbert C.; and Cameron, Gordon R. "Personality and Background Factors in Juvenile Delinquency," *Journal of Consulting Psychology, 23 (1959), 395-399*.

Reckless, Walter C. *The Crime Problem*. 3rd ed. New York: Appleton-Century-Crofts, 1961.

Redl, Fritz. *New Perspectives for Research on Juvenile Delinquency*. H. Witmer and R. Kotinsky, eds. Washington: U.S. Children's Bureau, 1956.

Reiss, Albert J., Jr. "Social Correlates of Psychological Types of Delinquency," *American Sociological Review*, 17 (1952), 710-718.

Roebuck, Julian B., and Cadwallader, John. "The Negro Armed Robber As a Criminal Type: The Construction and Application of a Typology," *Pacific Sociological Review*, 4 (1961), 21–26.

Schrag, Clarence. "A Preliminary Criminal Typology," *Pacific Sociological Review*, 4 (1961), 11-16.

Simon, Frances H. *Prediction Methods in Criminology, Including a Prediction Study of Young Men on Probation*. London: H. M. Stationery Office, 1971.

Studt, Elliot; Messinger, Sheldon L.; and Wilson, Thomas P. *C-Unit: Search for Community in Prison*. New York: Russell Sage Foundation, 1968.

Sullivan, Clyde; Grant, Marguerite; and Grant, J. Douglas. "The Development of Interpersonal Maturity: Applications to Delinquency," *Psychiatry*, 20 (1957), 373-385.

Sykes, Gresham M. *The Society of Captives*. Princeton: Princeton University Press, 1958.

Warren, Marguerite Q. "Classification of Offenders as an Aid to Efficient Management and Effective Treatment," *Journal of Criminal Law, Criminology and Police Science*, 62 (1971), 239-258.

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 correctional system as well as they 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 preadjudication programs are discussed in Chapter 3.

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 probation 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-based programming core for offenders released from relatively lengthy custody.

This enumeration of major program components does not exhaust the potential of community correctional services, but the central principle of the definition is clear. Community-based correctional programs embrace any activity in the community directly addressed to the offender and aimed at helping him to become a law-abiding citizen. Such a program may be under official or private auspices. It may be administered by a correctional agency directly or by a noncorrectional service. It may be provided on direct referral from a correction agency or on referral from another element 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 law 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 policymakers and the public must understand 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 anyone to custodial coercion is to place him in physical jeopardy, to narrow drastically 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 assertion. The key question is the definition of necessity, which must be settled by the criterion of public protection.

The restorative aspect concerns measures expected to achieve for the offender a position in the community in which he does not violate the laws. These measures may be directed at change, control, or reintegration. The failure of offenders to achieve these goals can be measured by recidivism, and 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 is not fiscal. A major object of correctional 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 a public objective.

It is necessary here to note that public protection is not always the sole objective of correctional programming. 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 there predominantly 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.

RATIONALE FOR CORRECTIONS IN THE COMMUNITY

The movement toward community-based corrections is a move away from society's most ancient responses to the transgressor. For thousands of years, society relied mainly on banishment, physical punishment, or the death penalty to accomplish the goals of criminal justice. The world is now too small for any society to eject anyone. Our culture has so changed that we no longer consider imposing capital penalties on the sweeping 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 penitentiary have brought us to the realization that its benefits are transient at best. At its worst, the prison offers an insidiously false security as those who were banished return to the social scene of their former crimes. The former prisoner seldom comes back the 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 subtle. Attitudes are brutalized, 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.[1]

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 on probation 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 the belief that assistance of a parole officer will help them to choose a law-abiding course.

There has been a growing realization that prison commitments for most offenders can be avoided or at least abbreviated without significant loss of public protection.[2] If the committed offender eventually returns to the community, it is best that his commitment 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 erratic, and avoid openly reinforcing the intimidation that is latent in 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 response to the common-sense awareness that the unemployed offender is a probable recidivist.

But community-based corrections cannot be limited to the services of an employment office. A man who has committed a crime and been caught and convicted has suffered a blow to his self-esteem that may be masked by bravado or indifference. He has good reason to believe that conventional persons will reject him, and he therefore seeks out the unconventional. In the prison he has no choice; he must associate with the unconventional. 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 predicament stems from the combination 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

[1] Although these views are too well known to require detailed documentation, those seeking a recent and persuasive brief are referred to Hans W. Mattick, *The Prosaic of Prison Violence*, University of Chicago Law School Occasional Paper, 1972.

[2] See, for example, Heman 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. Schools must accept and help reintegrate the delinquent instead of exiling him to reform schools. Unions and employers must open doors to adult offenders instead of restricting their employment to the most menial and insecure labor.[3]

Corrections cannot continue to be all things to the offender. 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 service. 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 services where such services exist, or 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 may be legitimately argued that the milder punishment aspects of community-based programs will not sufficiently deter either the actual or potential offender.

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. But, regardless of this finding, no one should minimize the deterrent effect of noninstitutional control by the correctional system. Indeed, the deterrent effect of proper control within 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.[4] 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 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 swiftness and certainty have much greater deterrent effect than a long prison sentence.[5] 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 potentiality 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, his chances of 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. Available studies suggest strongly that jurisdictions making extensive use of probation instead of prison do not experience increased recidivism.[6]

Similarly, studies of confinement length do not establish that lengthier prison terms result in decreased recidivism.[7]

Secondary deterrence—the discouragement of first-time criminal behavior by persons who may fear punishment—is a more elusive subject. However, the available statistical studies and analyses on varying punishment and prison confinement practices in different localities offer some basis for comparison.

We can conclude that, at the least, there is no established statistical base relating crime rates to the severity of dispositions imposed by courts in different locales. Sophisticated studies of this problem are currently being conducted by Solomon Kobrin at the University of Southern California. Using complex mathematical models he has arrayed different jurisdictions according to the degrees of severity of criminal sanctions imposed. The studies also take cognizance of known variables that may be related and that otherwise could account for differences. In general, the summary of the study indicates that again there is no known relationship between severity of punishment and the deterrence of nonoffenders.[8]

ROLE OF THE COMMUNITY IN CORRECTIONS

The recent shift in our Nation's values—particularly in corrections' views of criminality—helps explain the rationale and current emphasis on citizen involvement and community programs. Within this general context, the various roles citizens play and corrections' responsibility to involve the public can be understood better.

Circumstances of the past decade have had dramatic impact on corrections. The poverty programs of the 1960's, which failed to win the war on poverty but made strong impressions on the Nation, are of particular import for corrections. The ideology underlying those programs suggested that persons of minority origin and low socioeconomic status systematically are denied access to higher status in American society. They thus are persistently overrepresented among those who experience mental and physical illness, educational failure, unemployment, and crime and delinquency.

Programs that attacked such systematic exclusion from higher status used varied techniques. Emphasis on cultural awareness attempted to promote dignity and pride among minority groups, inserted minority history into America's records, and resulted in new group cohesion, political clout, and often militant reactions with newly discovered strength. The "maximum feasible participation" emphasis of poverty programs, although ultimately failing to achieve what it called for, made official the acknowledged but often ignored rights of all Americans to have a say in their own destiny.

The disadvantaged began to assume positions on boards of public and private agencies designed to serve them but formerly run for them by persons of more affluent status. "New careers" provided alternative routes for low-income persons to social and economic mobility through revised employment and training schemes. The pervasive ideology proclaimed to the formerly powerless that "you, too, have power, if you choose to exercise it."

This trend, visible in civil rights concerns, in welfare activism, and in student unrest, has its counterpart in correctional systems, and for the first time the voices of the inmate and the 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 professionals in corrections choose to take that view instead of the frequent, defensive reaction to exclude.

Today American prisons contain, 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 correctional reform thus 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 group ex-offenders. The reforms they urge may be listened to with greater attention. But coalitions are to be expected. These young persons learn militant and disruptive techniques very quickly and will employ them if they observe that rational discussion does not accomplish the desired reform.

Corrections has 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. These citizens have political influence and know-how about influencing policy at local and State levels. The corrections system must design and implement public information systems to present facts and interpretations. If the potential of this group in aiding the correctional cause is to be realized, agencies must inform the public of their needs and welcome participation.[9]

Social Service Agencies

Other social services agencies also have an impact on corrections. As community-based treatment pro-

[3] See Jewett T. Flagg, "A Businessman's Interest in Corrections," *Crime and Delinquency*, 6 (1960), 351, for the employer's views.

[4] See District of Columbia Department of Corrections, *In-Program and Post-Release Performance of Work-Release Inmates: A Preliminary Assessment* (Washington, 1969); and Gordon P. Waldo, Theodore G. Chiricos, and Leonard E. Dobrin, "Community Contact and Inmate Attitudes," unpublished study, Florida State University, Tallahassee, c. 1970. For a tentative assessment of community-oriented programs, see LaMar T. Empey, *Alternatives to Incarceration* (Washington: U.S. Department of Health, Education, and Welfare, 1967).

[5] See Franklin E. Zimring, *Perspectives on Deterrence* (Rockville, Md.: National Institute of Mental Health, Center for Studies of Crime and Delinquency, 1971), p. 89.

[6] See Frank R. Scarpitti and Richard M. Stephenson, "A Study of Probation Effectiveness," *Journal of Criminal Law, Criminology, and Police Science*, 59 (1968), 361–369; and California Criminal Statistics Bureau, *Superior Court Probation and/or Jail Sample: One Year Followup for Selected Counties* (Sacramento: 1969).

[7] LaMar T. Empey, *Alternatives to Incarceration*, p. 2. See also Carol Crowther, "Crimes, Penalties, and Legislatures," *Annals of the American Academy of Political and Social Science*, 381 (1969), 147–158.

[8] Solomon Kubrin, "The Deterrent Effectiveness of Criminal Justice Sanctioning Strategies," unpublished paper, University of Southern California School of Public Administration, Los Angeles, 1972.

[9] This involvement has already begun on many fronts. For a typical report, see "Citizen Involvement." *Criminal Justice Newsletter*, March 13, 1972, p. 46.

grams increase in number and variety, correctional personnel and offenders will interact increasingly in formal and informal ways with professionals from other human service areas such as welfare, education, health, and employment. As institutional walls disintegrate, figuratively speaking, the boundaries between the various human service areas will disappear as well—and correctional problems will come to be the 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 corrections. While there has been some professional mobility between welfare and corrections, or corrections and rehabilitation work, such relationships will become closer and more common as community-based programs develop. Concerns for meeting human needs are shared; common problems are 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 correctional 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. Schools are a frequent point of contact for direct services, particularly with juveniles. Universities are training and recruiting grounds for future correctional personnel and increasingly are involved in in-service education. Various high school and college programs are part of the services offered in correctional settings. And, perhaps most importantly of all, the Nation's schools provide citizens with their basic knowledge of the community they live in: its problems, its government, its criminal justice concerns. Correctional personnel should make conscious attempts to relate effectively to educational personnel to insure that the public is informed fully about correctional issues. Such efforts will be repaid many times over.

A final word must be said about American citizens in general. The Nation recovered from the wartime traumas of the 1940's and entered the 1950's, an era of apathetic affluence, in which many persons thought America finally had realized her goals and could rest on her laurels in comfortable unconcern. The 1960's, however, challenged that assumption and generated a national concern with issues of race, poverty, violence, and international responsibilities. The Nation, now into the 1970's, is bruised and shaken in confidence but hopefully prepared to set its house in order in quieter, more rational ways than in the frenzied 1960's. Few houses require ordering more than the Nation's prisons.

Corrections and Correctional Personnel

In addition to increased public concern, corrections' view of how to solve the problem of criminal behavior has contributed to acceptance of citizen participation and community programs. Since the 1920's, research concerning 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 individual criminals from a social point of view in the 1920's and 1930's,[10] and Richard Cloward and Lloyd Ohlin, who provided a sophisticated theoretical framework for the understanding of crime causation in the 1960's,[11] illustrate this shift spanning the last 50 years.

In that period, the view of social as opposed to individual causation of human behavior has come to represent a majority opinion. Crime is conceived as linked more to social factors than to factors in the individual. This concept does not ignore psychological, physical, or other individual characteristics, but considers them as they occur in a particular setting.

This change in concept supports a somewhat different correctional thrust: if the social milieu to a substantial degree causes criminal behavior, the social milieu itself must be attacked and changed. This rationale suggests that the correctional system must involve itself in social reform to control and prevent crime. Further, it requires an understanding that, if behavior is related to events and circumstances in the offender's milieu, changing his behavior in isolation from that world will not solve the problem. Evidence of behavioral change in the isolation of the total institution is meaningless. It is behavior at home, on the job, and on the streets that matters.[12]

The shift in correctional thought that underlies the change to community-based correctional programming also can be understood by considering empirical evidence as to the effectiveness of current programs in controlling crime and the promise of new patterns. Corrections is a large, uncoordinated set of subsystems, with large gaps in service, irrational resource allocation, inadequate information, and a range of treatment modes that lacks a consistent and

[10] See, for example, Clifford R. Shaw, *The Natural History of a Delinquent Career* (University of Chicago Press, 1931).
[11] Richard A. Cloward and Lloyd E. Ohlin, *Delinquency and Opportunity* (Glencoe, Ill.: Free Press, 1960).
[12] A consideration of some of the issues raised here from the viewpoint of corrections may be found in Milton Burdman, "Realism in Community-Based Correctional Services," *Annals of the American Academy of Political and Social Sciences*, 381 (1969), 71.

workable rationale. The confusion about individual vs. social causation underlies some of the lack of coherence. Contemporary corrections has not integrated its theoretical base and its practice. Despite the shift in social science theory, notions of intervening in community circumstances have not been applied widely. Rather, the emphasis has been on changing the individual—on a "treatment" philosophy that largely ignores the enormous potential of the community as the place for reduction of criminal behavior.

It already seems clear that substantial numbers of offenders can be treated in the community safely, effectively, and at substantially lowered cost to the taxpayer.[13] These are sufficient reasons to justify use of community programs and facilities in preference to institutions with their well-documented personal costs to individuals and social and financial costs to communities. Experimentation accompanied by adequate research and documentation increasingly will aid correctional systems in allocating resources more effectively.

Many correctional leaders feel a sense of optimism regarding the future. Problems of the field are more visible than ever before instead of being hidden behind high walls and locked gates. Some correctional administrators may object to public airing of their problems, but they are aware that old programs are not working and that new insights and methods are needed.

Perhaps the greatest significance of the move toward community corrections is the implicit consequence that communities must assume responsibility for the problems they generate. The failure of prisons to rehabilitate was blamed unfairly on correctional personnel; responsibility for community programs is shared widely. Corrections must be increasingly conceived as part of the larger social system. Problem and person, crime and criminal, are imbedded in community life and must be dealt with there—this is the thrust of corrections for the future.

Community programs have two operating (as opposed to programmatic) objectives: to use and coordinate existing community service agencies offering resources in areas such as family planning, counseling, general social service, medical treatment, legal representation, and employment; and to involve other agencies in the mission of corrections. The varying and changing nature of communities limits the feasibility of setting precise standards for community participation. Implementation of community programs involves consideration of geographic area to be covered, number of individuals required from the community, which persons must become involved, availability of programs from other agencies, etc. A systematic procedure for making these decisions is outlined in Chapter 9, Local Adult Institutions. A general discussion of citizens' varied roles and the correctional administrator's responsibility for involving them should provide overall guidance in assessing what is available and possible.

[13] The final word on costs and effectiveness must await full implementation of community-based correctional variants. See, however, two publications of the District of Columbia Department of Corrections: "Costs, Benefits, Recidivism in Work Release, Prison College Program." *Newsletter*, January-February 1972, p. 2; and *Cost Analysis of the D.C. Work Release Program*.

RESPONSIBILITY OF CITIZENS

In a democratic nation, responsibility for provision of necessary public services is shared broadly by the citizenry. Decisions are made directly by public interest and demand for services, or indirectly by public neglect. In the case of correctional services, as with education, health care, and welfare needs, the decision regarding type and quality of service is determined ultimately by the public's will. An objective, therefore, in considering ways to improve criminal justice standards and goals must be attainment of an informed and concerned public, willing to insist on exercising its right to make informed decisions concerning correctional services.

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 of New England, with punishments of banishment, public pillories, and even executions; and the citizen posses of the frontier West, with their "out of town by sunset" sentence or execution by hanging. These are well-documented examples of citizens acting to maintain public order and safety.

As the Nation developed in size and complexity, these functions were delegated to public servants, supposed experts with specialized knowledge and certain personal characteristics. The sheriff's staff and the police force replaced the posse; the court system replaced church tribunals and posse justice; jails, workhouses, and prisons replaced the public pillory, banishments, and summary executions. A professional criminal justice system came into being.

Nowhere in modern times has a public information program to bring about citizen involvement in the criminal justice system been fully implemented and documented. In some areas, however, the involvement of citizens in correctional decisions and community-based experiments has been de-

scribed by the correctional unit responsible for recruiting and utilizing volunteers.[14]

Over the years, the public has 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 and opposed rather than a service controlled by and organized to serve the interests of individual citizens and the general public. One has only to listen as the young discuss the police and their elders 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 in the past, in determining the policies 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 consult 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 appearance, or confined to individuals and organizations representing a single community sector. It is especially important not to limit participation to persons associated with the power centers of the community or with whom corrections 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 any effort to offer services for convicted persons: the limit on innovation beyond existing 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 fears and wishes. Complex decisions are required—determinations of initial eligibility, conditions for participation, selection of activities, extent of custody and supervision, revocation proceedings, standards for evaluation, and program changes. These decisions must be made while keeping 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 never change. The ability of corrections to make an increasing impact on the problem of crime reduction must not be limited by unwillingness to risk uncharted territory, even when it appears potentially hostile 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 his understanding of the varying roles citizens play.

[14] See, for example, Bucks County (Pa.) Department of Corrections, *Citizen Volunteer Program*, Fact Sheet 1–72, p. 2.

The Community as Policy-Maker

A variety of specialized policymaking roles currently are undertaken by citizens, often at the request of criminal justice officials. In such situations, lay citizens function in task forces or study groups and serve a general advisory role to the government. A by-product, perhaps more important than this advisory objective, is the creation of an ever-larger pool of citizens who have in-depth knowledge of corrections issues. They provide much-needed feedback to corrections, especially regarding lay thought and opinion.

It is important that meaningful roles be assigned without expecting the advisory body merely to rubber stamp the decisions that the correctional administrator has made. Community involvement that is only a facade will be discovered quickly. Therefore, administrators should carefully analyze, in advance of creating citizen committees, the areas in which their input is desirable, if not essential. Decisions to be left to the agency should be specified and communicated to the committee.

Frequently, advisory bodies are comprised of "leading citizens" representing only one element of the community rather than a cross-section. In recent years, the necessity of broad representation has been recognized, and most groups seek appropriate membership of minorities, ex-offenders, women, and special community interest groups.

A somewhat different model is the citizen organization that is not sponsored governmentally but is a voluntary association of private citizens with shared concerns. The State citizen councils on crime and delinquency affiliated with the National Council on Crime and Delinquency are examples of this type of citizen participation. They are characterized frequently by "blue-ribbon" opinion leaders, wide membership, and support from voluntary contributions. They usually confront only problems of specifically local concern. Sometimes they provide service functions in the "prisoner's aid" tradition. Frequently such councils have strong, if informal, and mutually supportive links to State correctional systems.

In the past few years, all States have created instrumentalities of one kind or another for developing and administering State plans for utilization of funds from the Law Enforcement Assistance Administration. These agencies have taken a variety of forms, but invariably involve citizen participation, often 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 with advisory and policymaking objectives for subparts of the criminal justice 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 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 local community support.

The Citizen as Reformer

The penal and correctional reform groups springing up in recent years are yet another model of citizen participation. They may have no formal or informal links with the correctional system, may even be organized to oppose correctional programs and to attack current practices. Such 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 ex-inmate associations have taken up the cause of penal and correctional reform. The scope of this reformist movement is undocumented but represents a ground swell to be observed with interest by the public and by professionals in the criminal justice system. In the tradition of the great reform movements of American history, such as abolition of slavery and child labor, penal reform groups of today have ample evidence of wrongs to be righted, of underdogs to be aided, and of inequities to be restored to balance.

This involvement of many citizens in penal reform clearly is an important way in which citizens relate to policymaking for the criminal justice system. The correctional administrator—so long removed from any public scrutiny and vested with unquestioned discretion—probably has great difficulty in responding constructively to some of these groups. For example, some of them oppose any improvements in corrections in the belief that they will serve only to perpetuate an inherently bad system. Yet the goal of the administrator and penal reformer is the same: protection of society through protection of individual rights. With common cause, the efforts of both should be directed toward solution of problems rather than toward quarrels with each other. Professionals in corrections long have decried public apathy and lack of knowledge.

When the public cries out in protest against inadequacies of the system, expressing concern and seeking fuller knowledge, administrators have tended to close the doors more tightly, feeling that criticism reflects personally on them. Correctional personnel react with hostility to accusations, confrontations, and adverse publicity, despite the fact that the reformers are saying only what professionals have said to themselves for decades.

To be criticized publicly is painful. The challenge to correctional administrators is to utilize constructively the public concern lying behind the criticism. Appropriate strategies must be planned and implemented. The almost unprecedented public concern for improving correctional services can be put to constructive use. Dissipating energy and resources by reacting defensively can only delay progress. Courageous and enlightened correctional leaders (with very tough skin) are needed to accomplish this difficult task.

Citizens in Direct Service Roles

Involvement of citizens in direct service roles with correctional clientele is not a new phenomenon but a revived one. All students of elementary criminology and penology know of probation's origins in the goodhearted endeavors of the Boston shoemaker, John Augustus, in the mid-19th century. His willingness to take responsibility for an alcoholic who had been sentenced to incarceration and was released into his care was a first step. Gradually more citizens were enlisted to follow his example, but in time their work was assigned to hired professionals. In the century following Augustus' invention, use of the volunteer in direct service fell away, to be revived only in the mid-20th century.

Use of volunteers in corrections today is massive.

Estimates of the National Information Center on Volunteers in Courts suggest that citizen volunteers outnumber professionals four or five to one, and that, exclusive of law enforcement agencies and above the misdemeanant court level, approximately 70 percent of correctional agencies have some sort of volunteer program.[15] The varieties of such programs are impressive, including one-to-one big brothers, pen pals, aviation training for delinquent boys, group programs of many kinds, basic and continuing education offerings, and legal services.

Some of these roles supplement professional responsibilities (teaching services and supervisory roles), while others are roles unique to volunteers (friendship situations). Other citizens play less direct service roles, serving as fund raisers or organizers of needed services, goods, and facilities. In recent years, institution doors that were formerly closed have been opened to groups of citizens in volunteer roles, including Alcoholics 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.[16] They must recruit, train, and properly supervise volunteers across the entire range of programs, from intake to discharge, from highly skilled roles to simpler relationships, from group social events to intensive casework, including library work, teaching, legal service, and cultural activities. The range seems endless. It is a mistake to conclude that volunteer services are entirely free. Constructive use of volunteers requires careful analysis of needed tasks, exhaustive searching out of resources, and careful guidance.

Much attention in recent years has been given to the role of the volunteer, and a growing amount of literature is available to aid administrators. The National Information Center on Volunteers in Courts located at Boulder, Colorado; the National Council on Crime and Delinquency, Hackensack, N.J.; the Commission on Voluntary Service and Action, New York, N.Y.; and the National Center for Voluntary Action, Washington, D.C., all further volunteerism. Each has substantial material to assist correctional agencies, such as research information, organization and management aids, training guides, and audiovisual 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 discussion and listing of citizen-initiated and citizen-organized activities in preventing and reducing crime.

Volunteer roles increasingly are played by a wider range of citizens. Formerly a province of the middle- or upper-class person desiring to perform useful services for those less fortunate, volunteer services now are provided in increasing amounts by youths, minority groups, organized labor, university students and staff, and local community groups of all kinds.

There are many ways in which community involvement has been elicited or suggested. Some, such as tax credits for employers, require statutory authorization. Trade advisory councils have been formed to oversee training techniques, procure equipment, and establish links between corrections and the public in connection with industrial programs.[17] Volunteer counselors have been used successfully as institutional counselors and parole aides.

Professional persons in education, religion, medicine, psychology, law, and other fields have donated 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 specialized problems such as alcoholism, drug abuse, family breakdown, and prisoner rights have set up units within institutions.

The two main roles for citizen participation—policymaking and direct service—directly interact with one another, each making the other increasingly effective. The person who works as a volunteer can have a more effective voice in policymaking by his increased understanding, and the informed citizen will be more willing to undertake volunteer activities as he understands the need for bridges between community and correctional client.

RESPONSIBILITY OF CORRECTIONAL SYSTEMS FOR COMMUNITY PARTICIPATION

Correctional systems themselves must assume responsibility for enlisting broad community support for correctional programs. Despite the above descriptions, it still must be said that very little public involvement has yet been permitted or realized.

Agencies generally are responsible to administrative branches of government and only indirectly to the legislature and public. An unconcerned public has been relatively unaware of correctional issues. Correctional agencies have operated with little public scrutiny and in general have enjoyed that autonomy while simultaneously complaining about the lack of public support for their endeavors.

Given the realities of rising community concern and citizen involvement, these circumstances are likely to be altered drastically in the years ahead. It is in the general interest of correctional programs for citizens to exercise their prerogatives as participants in a democratic society. The correctional systems of today bear a heavy burden of responsibility for the lack of involvement with the community in past decades and should expend extra effort to make amends.

Corrections' Information and Change Agent Role

Correctional agencies must provide a continuous flow of information to the public concerning issues and alternatives involved in implementing correctional programs, so that citizens may participate intelligently in the major decisions involved. For example, a major difficulty in instituting various types of community-based treatment centers is communities' refusal to have centers located in their territory. Such resistance will not be overcome immediately, but involvement of many citizens can be expected to bring success eventually.[18]

Similarly, experience has shown that simply being able to prove that new techniques can be efficient in reducing crime or costs of crime control does not guarantee their acceptance. Bail reform measures, for example, have been carefully evaluated and have demonstrated beyond question that costs of jail incarceration can be reduced without increasing the risk to society.[19] In addition to such cost effectiveness, bail reform substantially reduces the inequities of a jailing system that systematically discriminates against the poor. Still, release on recognizance projects have been instituted in only a fraction of the Nation's courts.

The information program should go beyond the usual press releases and occasional public hearings. Corrections must assume an educational role, a change agent role, for it is clear that drastic changes are required to bring the community-based correctional process into being.

The change agent role also involves working with private agencies that too often have offered services in a way that favors other groups in the general population over inmates or former inmates. By selectively serving individual clients who are not as problem-ridden or difficult to deal with, these agencies have burdened governmental agencies with a disproportionate number of offenders. It is reasonable and appropriate to seek a redistribution of caseloads, so that the private sector assumes a greater share of responsibility for those with the major social disabilities of conviction and imprisonment.

It goes without saying that corrections officials should also work actively with private agencies and organizations that are concerned with such matters as prisoner aid, police, probation, or parole. These groups usually have specialized units that provide either direct services or access to sources for job placement, treatment for alcoholics and drug users, residential counseling facilities, foster homes, emergency housing, hospitalization, vocational and therapeutic counseling, and similar services.

The change agent model should include massive public education efforts through the communications media and intensive educational-organizational efforts with the many subcommunities—ethnic, racial, special interest groups—for support of general community corrections and specific projects. This concept of correctional responsibility to educate and serve as a catalyst for change requires a sophisticated understanding of society as a system and of criminal justice, including corrections, as an integral part of the larger society.

Perhaps most of all it involves commitment on the part of correctional personnel, from top administrator to line worker, to the new role of change agent. The commitment extends to efforts to change those aspects of society that are related to crime causation—poverty, racism, and other inequities.

However, the step from recognizing a problem to implementing its solution is difficult. For the most part, the community alternatives that have been developed to date simply are minor variations on some older ideas. For example, the phrase "alternatives to incarceration" still is used, reflecting corrections' preoccupation with institutions. As the National Council on Crime and Delinquency points out, the emphasis should be reversed—"imprisonment must

[15] Ivan H. Scheier et al. *Guidelines and Standards for the Use of Volunteers in Correctional Programs* (Washington: Law Enforcement Assistance Administration, 1972), pp. iii, 5.
[16] For one scheme of classifying these roles, see Vincent O'Leary, "Some Directions for Citizen Involvement in Corrections," *Annals of the American Academy of Political and Social Science*, 381 (1969), 99. The paper also presents possibilities for expanding these roles.
[17] Jude P. West and John R. Stratton, eds., *The Role of Correctional Industries* (Iowa City: University of Iowa, 1971), p. 3.
[18] See, for example, Marshall Fels, *The Community—Site and Source of Correctional Rehabilitation* (Olympia: Washington Department of Social and Health Services, 1971).
[19] See *The Manhattan Bail Project* (Criminal Justice Coordinating Council of New York City and Vera Institute of Justice, 1970); David McCarthy and Jeanne J. Wahl, "The District of Columbia Bail Project," *Georgetown Law Journal*, 53 (1965), 675; and Gerald Levin, "The San Francisco Bail Project," *American Bar Association Journal*, 55 (1969), 135.

be viewed as an alternative to community treatment."[20] Work-release usually is still limited to the last few weeks before release from an institution; some halfway houses resemble small penitentiaries rather than open community residences. Implementation of the fundamentally different set of assumptions implied 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 consistent with the safety of others should be made to reduce involvement of the individual offender with the institutional aspects of corrections. The alienation and dehumanization engendered in jails, workhouses, prisons, even probation services, is to be avoided wherever possible. The less penetration into the criminal justice system the better.

A second basic 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 inmates, staff, and citizens. This must be made explicit in altered job descriptions, new patterns of training, different performance expectations.

The principle implies changes in recruitment. Since corrections needs to relate increasingly with the various facets of the community, its work force must increasingly represent those facets. This means greatly expanded recruitment from minority and economically disadvantaged groups, with all that implies for location of services (such as prisons), for innovative training, and for new kinds of staffing patterns.

Community Alternatives to Confinement

Diversion, probation, and parole—the major community alternatives—and the use of community resources and services that should characterize these programs, are discussed in detail in Chapter 3, Diversion from the Criminal Justice Process, Chapter 10, Probation, and 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 necessity. The clients are persons who need more intensive services than probation usually can offer, yet are not in need of institutionalization. School and counseling programs, day treatment centers with vocational training, and guided group interaction programs are among the treatment modes used, many with related services to families.

Many such programs are described substantially in corrections literature.[21] Essexfields and Collegefields, community descendants of the Highfields residential program, were based on group dynamics theory and utilized peer group pressures to modify behavior. The Provo experiment in Utah used similar theoretical approaches. The programs, in brief, involved intensive daily programs of work or school and counseling sessions. Essexfields in Newark, N.J., used employment in a county mental hospital; Collegefields, a short-term project, used an academic program adapted for individual student needs, as the heart of the program.

Each of these projects has demonstrated success in treatment outcomes sufficient to warrant further experimentation. Each clearly showed that intensive programs in communities are at least as effective as, and usually somewhat better than, institutionalization and that offenders who otherwise would be in penal settings can be treated safely in the community. To date, these types of programs have been used most extensively with adolescent populations.

Foster and Group Homes

Juvenile judges frequently have felt it necessary to commit youngsters to an institution when circumstances in the parental home were totally unsuitable. Foster home development and more recently the group home, when used for aiding delinquent youths, are attempts to prevent unnecessary institutionalization.

Foster homes, also extensively used to meet child dependency needs, are operated under a range of administrative arrangements, public and private, State and local, court and correctional. A project conducted by the Merrill Palmer Institute [22] of Detroit sought information concerning the nature of supportive services required for successful foster home care of disturbed and delinquent young persons and applied the information on an experimental basis. Particular attention was given to the need for training foster parents, an area usually neglected, and appropriate psychiatric and educational support was developed.

In most jurisdictions, foster care has been far less intensively aided than in the Merrill Palmer experiments. Foster care appears to be considered a less useful tool than the more recently developed group homes. These quasi-institutions often are administered by agencies with house parents as paid staff, in contrast to foster homes where a monthly or daily room 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 less desirable than the semi-independence 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. Correctional agencies in Minnesota and Wisconsin use such group homes extensively. California has systematized the use of group homes through a classification related to particular types of youth. A group home variant in Boulder, Colorado, the Attention Home, is supported mainly by volunteer contributions of funds and personnel.[23]

Evaluation of such efforts generally is positive. Costs are high relative to nonresidential treatment, but not as high in most cases as institutional care and, in the case of Boulder where community resources are extensively used, considerably less.

The Community Correctional Center

The popularity of the "community correctional center" concept in recent years has led to a bandwagon effect with rapid growth of 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 offenders. 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 are blurring 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 lengthy study to develop a model community-based treatment program for young adults, with attention to architectural design as well as services and management concerns.[24] The project, originally planned to develop a model prison, eventually came to envision a blurring 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 shared 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 Law Enforcement Assistance Administration funds, has developed "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.

Many types of community correctional centers are in existence today, using such facilities as jails, parts or all of hotels or motels, floors or wings of YMCA's, surplus army barracks, and former fraternity houses. Some are used as alternatives to penal service, others as adjuncts to institutionalization. They serve many types of offenders, usually in separate facilities. An interesting variant in Minnesota is a "restitution" house where offenders live while working to earn funds to compensate victims.

---

[20] National Council on Crime and Delinquency, *Policies and Background Information* (Hackensack, N.J.: NCCD, 1972), p. 15.

[21] Saul Pilnick, Robert F. Allen, and Neale W. Clapp, "Adolescent Integrity from Highfields to Essexfields and Collegefields," paper presented to the National Conference on Social Work, 1966. See also LaMar T. Empey and Maynard L. Erickson, *The Provo Experiment* (Heath, 1972).

[22] "The Detroit Foster Homes Project of the Merrill Palmer Institute," unpublished report.

[23] See John E. Hargardine, *The Attention Home of Boulder, Colorado* (Washington: U.S. Department of Health, Education, and Welfare, 1968); Andrew W. Basinas, "Foster Care for Delinquents," *Social Service in Wisconsin* (1968), 7-9; Niels Christiansen, Jr. and William Nelson, *Juveniles in Group Homes* (Minneapolis: Minnesota Department of Corrections, 1969); John W. Pearson and Ted Palmer, *The Use of Group Homes for Delinquents* (Sacramento: California Youth Authority, 1968).

[24] See Harold B. Bradley et al., *The Non-Prison: New Approach to Treating Youthful Offenders* (Sacramento: Institute for the Study of Crime and Delinquency, 1970).

Community Adjuncts to Institutions

The program activities discussed so far have been designed generally to serve as alternatives to the use of the institution. A major assumption throughout this report is that most persons committed to correctional authority can be served effectively and economically in community settings. The implications require a brief review.

It seems obvious that institutional populations will be made up increasingly of hard-core 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 institutional 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.[25] Instead, as this report so often notes, prisons have proved to be criminogenic in 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 innovative character of what is offered.

Instead, the range of activities permitted in the larger community should be considered. For example, some offenders might participate with nonoffenders in private group therapy, consult with their own lawyers, conduct investigations in connection with their own trials, negotiate with community institutions, participate in school activities, attend social functions, and engage in athletics in the community.

Some of these ideas may seem unrealistic and foreign 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 measure of control over his own destiny will far outweigh administrative anxieties and burdens.

The institutional custodial climate 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 resources that can be developed for these 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 insulated 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 a measure of social and 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 decisionmaking. Greater public participation should result in increased understanding of and support for these programs. Such public involvement also will prepare communities for a certain amount of conflict and failure, for bridging concepts imply risk of an unassessed nature. Expectations of total success will lead only to disillusionment, but realistic optimism for potential gains 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, returning each night. Prisoner employment is not new; the work gang for hire is a well-known feature in penal history. The work-release concept differs markedly, however, in allowing regular civilian employment, under specified circumstances, for selected low-risk inmates. Initially used mainly with misdemeanants, work release now is used widely with felons and youthful offenders.[26] Other versions, similar in intent, provide for weekend sentences, furloughs, and release for vocational training or educational programs. All help to reestablish links to the community for the incarcerated.

In a few instances, commercial manufacturing operations have been introduced into prisons. Honeywell, Inc., has loaned a computer to 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 always has been allowed, frequently under less than favorable circumstances, with minimum opportunities for privacy and personal communication. Conjugal visits long have been the practice in Mississippi institutions[27] but have not been allowed elsewhere in this country until recently. A relatively new California scheme allows entire families to spend up to two days in cottage-like houses on prison grounds.[28]

Family counseling programs for inmates and families are available in many States. A family life education program in Hennepin County, Minnesota, is used with adult inmates, their families, and with juvenile probation caseloads.[29] Adlerian group counseling methods, with involvement of even very young children, underlie this attempt to assist the offender and his family.

Volunteers of America programs for youth involve families in somewhat similar ways, with special Sunday events such as picnics or parties to which families are invited for socializing.

In the Swedish penal system, where family visitation is taken for granted, some institutions even permit husband and wife to live together if both are institutionalized. Most interesting is their "holiday" policy—inmates, like other citizens, are entitled to a two week vacation at the beach accompanied by families.[30] Such programs seem startling to American observers but are sensible 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.[31] Each uses different procedures, but the common thread is use of education as the major tool.[32] Opportunities for continuation of college on release are arranged, and extensive support given. Evaluation evidence developed thus far is positive; a serious limitation of the program, however, is its very high cost.

Students from Augsburg College, Minneapolis, as part of their regular curriculum attend classes held in the penal institution with inmates and prison officers as fellow students.[33] While a range of courses are 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-

[24] For a history of this function of the institution, see David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Little, Brown, 1972).

[25] The problem of predictability in these endeavors may pose specific burdens on the administrator which are not posed by programs confined largely to institutions or others carried on in the community with more control and surveillance. However, some scientific certitude may be introduced into the selection process. See, for example, Isaac Fair, Inc., *Development of a Scoring System to Predict Success on Work Release: Final Report* (Washington: D.C. Department of Corrections, 1971).

[26] Described in Columbus B. Hopper, *Conjugal Visiting at the Mississippi State Penitentiary*, (privately printed), and Hopper, *Sex in Prison: The Mississippi Experiment with Conjugal Visiting* (Baton Rouge: Louisiana State University, 1969). See also *NCCD News*, April 1972, "Conjugal Visits: More to Them than Sex."

[27] See, for example, "The Family Visiting Program at the California Correctional Institute, Tehachapi, July 1968," in *Annual Research Review*, 1970 (Sacramento: California Department of Corrections, 1970), p. 43.

[28] See Richard E. Ericson and David O. Moberg, *The Rehabilitation of Parolees* (Minneapolis: Minnesota Department of Corrections, 1969), p. 42.

[29] *Kriminalvarden, 1968* (Stockholm: Swedish Correctional Administration 1969). Has summary in English.

[30] See William L. Claiborne, "Special Course at American University—Lorton Inmates Learn about Outside Life," *Washington Post*, February 19, 1972.

[31] There remains some disagreement among professionals as to the most effective approaches to be adopted in the educational area. See *New York Times*, March 26, 1972, p. 54, "Prison Officials Back Reform of Education for Inmates but Differ on Details."

[32] Connie Schoen, "Things Volunteers Do," *American Journal of Correction* (1969), 26–31.

ance 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 decisionmaking. 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 on 3-day passes to facilitate release plans, another way of easing into the often difficult postrelease period.[34]

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 breather, 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 returnees in California do as well on second release as those released after a long period of reimprisonment.[35]

[34] Norman Holt, *California Prerelease Furlough Program for State Prisoners: An Evaluation* (Sacramento: California Department of Corrections, 1969).
[35] California Department of Corrections, *Short-Term Return Unit Program* (Sacramento: 1968).

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 entire 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 insure 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, summons 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 (consent 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; 8, 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 aides, or similar service activity.

5. Prerelease programs including furloughs, work release, study release, halfway houses, or release to participate in other ongoing activities or programs such as those in Item 4.

6. Community facilities and programs for released offenders in the critical reentry and aftercare phase, with provision for short-term return rather than reincarceration.

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

1. Burdman, Milton, "Realism in Community-Based Correctional Services," *Annals of the American Academy of Political and Social Science*, 381 (1969), 71.
2. Fels, Marshall. *The Community—Site and Source of Correctional Rehabilitation*. Olympia: Washington Department of Social and Health Services, Special Projects Section, 1971. This publication relates to the training of personnel for community-based programming.
3. Moyer, Frederic D., and others. *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults*. Urbana: University of Illinois Department of Architecture, 1971. This document focuses on correctional centers but also contains much of more general interest in corrections planning for community programs.
4. National Institute of Mental Health, Center for Studies of Crime and Delinquency. *Community-Based Correctional Programs: Models and Practices*. Rockville, Md.: NIH, 1971.
5. Nelson, E. K. "Community-Based Correctional Treatment: Rationale and Problems," *Annals of the American Academy of Political and Social Science*, 374 (1967), 82-91.

Related Standards

The following standards may be applicable in implementing Standard 7.1.

3.1 Use of Diversion.
4.2 Construction Policy for Pretrial Detention Facilities.
4.4 Alternatives to Pretrial Detention.
6.3 Community Classification Teams.
8.2 Juvenile Intake Services.
9.1 Total System Planning.
9.4 Adult Intake Services.
10.2 Services to Probationers.
12.6 Community Services for Parolees.
13.2 Planning and Organization.
15.5 Evaluating the Performance of the Correctional System.
16.14 Community-Based Treatment Programs.

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 commercial 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 all can contribute to an offender's failure. Instead of hiring 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 mutally respectful coordinated procedures that diminish the possibilities of insensitive handling of offenders by the community and corrections.

References

1. Fels, Marshall. *The Community—Site and Source of Correctional Rehabilitation.* Olympia: Washington Department of Social and Health Services, Special Projects Section, 1971. This publication relates to the training of personnel for community-based programming.

2. Moyer, Frederic D., and others. *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults.* Urbana: University of Illinois Department of Architecture, 1971. This document focuses on correctional centers but also contains much of more general interest in corrections planning for community programs.

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 selection process, 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 clientele, 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 rewards.

3. The unit should be responsible for providing for 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 goal of an informed 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 the tasks for which they are responsible. 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 as aides to adjunct institutional programs, such as work release, 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 now are 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

1. Biderman, Albert, and others. *Report on a Pilot Study in the District of Columbia on Victimization and Attitudes towards Law Enforcement*, prepared for the President's Commission on Law Enforcement and Administration of Justice. Washington: Government Printing Office, 1967.
2. Chamber of Commerce of the United States. *Marshaling Citizen Power Against Crime*. Washington: CCUS, 1970. This handbook, aimed at the intelligent civic leader, devotes one chapter to corrections and is a reasoned and informed document.
3. Chamber of Commerce of the United States. *Marshaling Citizen Power to Modernize Corrections*. Washington: CCUS, 1972.
4. Luger, Milton. "Utilizing the Ex-Offender as a Staff Member: Community Attitudes and Acceptance" in *Offenders as a Correctional Manpower Resource*. Washington: Joint Commission on Correctional Manpower and Training, 1968.
5. McIntyre, Jennie. "Public Attitudes towards Law and Law Enforcement," *Annals of the American Academy of Political and Social Science*, 374 (1967), 34-46.
6. Morrison, June. *A Survey: The Use of Volunteers in Juvenile Courts in the United States*. Tucson: University of Arizona, 1971.
7. Scheier, 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.
8. Youth Development and Delinquency Prevention Administration. *Volunteers Help Youth*. Washington: U.S. Department of Health, Education, and Welfare, 1971.

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.

Standard 7.4

Inmate Involvement in Community Programs

Correctional agencies should begin immediately to develop arrangements and procedures for offenders sentenced to correctional 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 correctional institution, he should meet with the 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 or lack of progress, 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 noninstitutional 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 prison environment, inability to assess 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. They have tended to be inclined favorably toward offenders 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 more from concern with smooth operations than from belief about its relationship to outside adjustment.

Attempts to assess offenders' attitudes probably are even less successful than assessing behavior. Given the state of knowledge about causation, control of crime, and individual motivations, "evaluative assessments" 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 "faddism" 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 slight range of variation, offenders either are greatly restricted (incarcerated) or have few restrictions (probation and parole) in their opportunity 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 on how to avoid extended periods of incarceration followed by an abrupt transition to community living. The book presents a model for rapid transition of a cohort of offenders and staff through a community correctional center, using a group 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 process a group of offenders through the residential portion in a few months. While this model was designed for youthful offenders meeting certain criteria, 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 correctional programs, including institutional 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 follow a regular schedule and participate in an educational and training aptitude and interest program. Depending on the individual's preferences, he also might agree to accept responsibility for part of a certain recreational activity, observing inmate 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 the 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, his allowable 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 local school, eligibility for furlough, and continuation of the activities begun in the third phase.

A possible next step would be reassignment to a halfway house 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 had 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 worthiness as an individual reintegrated into society.

References

1. Bradley, Hal. *Design for Change: A Program for Correctional Management.* Sacramento: Institute for the Study of Crime and Delinquency, 1968.
2. Bradley, Harold B., et al. *The Non-Prison: A New Approach to Treating Youthful Offenders.* Sacramento: Institute for the Study of Crime and Delinquency, 1970.
3. Institute for the Study of Crime and Delinquency. *Model Community Correctional Programs.* 3 vols. Sacramento: Institute for the Study of Crime and Delinquency, 1969.
4. Titmuss, Richard. *The Gift Relationship: From Human Blood to Social Policy.* New York: Random House, 1970.

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.
8.5 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.[1]

Moreover, youth crime appears to be increasing faster than total crime. The National Commission on the Causes and Prevention of Violence found that from 1964 to 1967, 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.[2]

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 juvenile delinquency tends to be handled on an informal basis and not recorded in official statistics. Furthermore, recent population changes indicating an increase in the number of persons aged 10 to 24, which are the most crime-prone ages, may well be reflected in the overall increase in juvenile crime. In other words, there may be more delinquency because there are more young people.

It can be said with some assurance that the statistics do not show an increasingly violent and vicious juvenile population. In 1971, 22.8 percent of all

[1] Federal Bureau of Investigation, *Crime in the United States: Uniform Crime Report, 1971* (Washington: Government Printing Office, 1971), pp. 34, 120. Referred to hereinafter as UCR with appropriate date.

[2] National Commission on the Causes and Prevention of Violence, *Crimes of Violence* (Washington: Government Printing Office), vol. II, pp. 181–182.

persons arrested for the four major violent crimes were under the age of 18. The corresponding figure for 1970 was 22.6 percent.[3]

A fact of major significance to this report on corrections is that young recidivists commit more serious offenses than one-time delinquents. Because most youngsters mature out of delinquent behavior on their own and because present intervention programs are admittedly inadequate, a recent study suggests, it may be more effective to leave the first offenders alone.[4] 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 widely 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, resource investment 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.

Thus this report will focus on the first stages of juvenile involvement with the justice system—those that occur prior to adjudication. Specifically, the focus of this chapter will be on mechanisms that move juveniles away from official processing (use of discretion by police, intake screening, 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-thirds of the States include children under 18; the others also include youngsters between the ages of 18 and 21.

"Adjudicatory hearing": A hearing to determine whether the allegations of a petition are supported by the evidence beyond a reasonable doubt or by a preponderance of the evidence.

"Adjustment": The term refers to matters which are settled or brought to a satisfactory state so that parties are agreed 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 or those in need of supervision.

"Delinquent act": An act that if committed by an adult would be called a crime. In this chapter the term "delinquent acts" will not include such ambiguities and noncrimes as "being ungovernable," "truancy," "incorrigibility," 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 secure 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 determine what order of disposition should be made concerning 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 court or for some other judicial action. Hence, a "delinquency petition" is an application for the court to act in the matter of a juvenile apprehended for a delinquent act.

"Shelter": Temporary care of a child in physically unrestricting facilities pending court disposition or execution of a court order 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 private 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.

[3] UCR 1970, p. 128; UCR 1971, p. 124.
[4] Marvin E. Wolfgang, *Youth and Violence* (Washington, Government Printing Office, 1970), pp. 27–50.

Juveniles and the Law Enforcement Process

There is evidence that the police handling of juvenile offenders is more a function of informal police-community relations, the nature of the community, and its geographical location than observance of abstract principles of law enforcement.[5] For example, it has been found that the proportion of juveniles arrested who are referred to court depends 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 impersonality 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 in urban areas where the population is heterogeneous and therefore perceptions of the citizenry are likewise varied.[6]

Some empirical indices, however, show that even in high-density metropolitan settings police exercise considerable discretion. Most large police departments have specialized divisions for handling juveniles. Officers of these divisions often deal only with youths who are referred to them by patrol officers. Most police-juvenile arrests in the field (i.e., on the street) are made by patrol officers.[7] It is up to the patrolman to decide whether or not to arrest a particular suspect and to refer him to the youth division for a potential referral to the court having jurisdiction over juvenile matters.

While most available research on juvenile justice tends to focus on events occurring after the police field encounter, a recent exploratory study of police control of juveniles in Boston, Chicago, and Washington, D.C., showed that only a small fraction of the legally liable juvenile suspects are arrested.[8] A second significant finding corroborated earlier evidence that most police work with juveniles stems from citizen complaints. Of a total of 281 juvenile-police encounters studied, 72 percent were citizen-initiated. Only 28 percent were initiated by police on patrol. In view of this evidence, police work with juveniles should be regarded more as responding to citizen requests than as being initiated by police.

While discretion not to arrest in the field is vital to the successful and equitable operation of law enforcement, discretion to release is equally vital after a child has been arrested and brought to the police station. At the present time, police "station adjustments" (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.[9] A study of Washington, D.C., juvenile detention 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.[10] Finally, an analysis of national data on juvenile dispositions found that 46 to 50 percent of juveniles arrested were referred to the court, with considerable variations depending on community size and, to some extent, on geographical region.[11]

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 the Criminal Justice Process.

While some have criticized police discretionary 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. Police should be allowed to exercise as much discretion in the use of informal disposition as the safety of the community permits. Jurisdictions that lack enabling legislation should seek to establish it in order to facilitate early police screening techniques and to develop criteria and programs for their use.

The judiciary often vests law enforcement agencies with responsibility for controlling admissions to detention centers when court or probation office services are not available. Police frequently have complete control of intake on weekends, during night

[5] William J. Chambliss and John T. Liell, "The Legal Process in the Community Setting," *Crime and Delinquency*, 12 (1966), 310–317.
[6] Nathan Goldman, *The Differential Selection of Juvenile Offenders for Court Appearance* (New York: National Council on Crime and Delinquency, 1963), p. 129.
[7] An exception to this situation is the active "youth patrol" established in some cities in recent years, whose function is to police juveniles and prevent delinquency.
[8] Donald J. Black and Albert J. Reiss, Jr., "Police Control of Juveniles," *American Sociological Review*, 13 (1970), 63–77. It should be noted that the authors define arrest as transportation of a suspect to a police station, not as the formal booking or charging of a subject with a crime.
[9] National Institute of Mental Health, Center for Studies of Crime and Delinquency, *Diversion from the Criminal Justice System*, (1971), p. 22.
[10] National Council on Crime and Delinquency, *Regional Detention* (Austin, Texas: NCCD, 1971).
[11] Thomas P. Monahan, "National Data on Police Dispositions of Juvenile Offenders," *Police*, 14 (1969), 36–45.

hours, and on holidays—periods during which most detention decisions have to be made. Theoretically, the judiciary should specify the rules and regulations for control of detention admission, but few jurisdictions have exercised this judicial prerogative, most leaving intake control to police discretion.

The detention decision should not be made by law enforcement officers, whose professional backgrounds and missions may differ considerably from those of court or social service personnel.[12] Since the ultimate responsibility for detention of children rests with the court, it will need to assume full responsibility over juvenile detention and admission control on a 24-hour basis. The objective is to separate the "detecting and catching" function from the "detaining, adjudicating, and correcting" function.

The Juvenile Court Process

In 1971 1,125,000 juvenile delinquency cases, excluding traffic offenses, were handled by more than 2,900 juvenile courts.[13] 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 semiurban 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 increased concern with due process as a result of the *Gault* decision, 387 U.S. 1 (1967), may contribute to a concomitant emphasis on formality, or that recent emphasis on diversion techniques and community-based programs affects mostly those cases that never reach the courts. The question remains as to why so many youngsters are brought before the court when informal community alternatives have been recognized as more desirable for most juveniles.[14]

The juvenile court proceeding is not a criminal proceeding. It is a special statutory proceeding involving civil and criminal principles and specifically designed to determine what is in the best interests of the child brought before the court under the principle of parens patriae. Juveniles frequently come in contact with the courts for behavior that would not bring them before the law if they were adults. Offenses such as truancy, curfew violations, running away, teenage drinking and smoking are cases in point. Dependency and neglect by parents also can bring a child into juvenile court jurisdiction, and 130,900 cases in these categories were reported in the United States in 1971.[15] It should be noted that dependency and neglect cases will not be considered in this chapter.

The juvenile court's location in the judicial structure varies considerably among the States. It may be a division of the circuit court, the probate court, or the family court system, or it may constitute a separate system. Depending on the caseload, its judges may be assigned only to juvenile proceedings, or they may have additional functions. The location is less important than the purpose: to provide the court system that addresses delinquency with separate facilities and personnel to perform its special functions.

Two crucial issues in regard to juvenile court jurisdiction are the upper age limit of persons who may be brought before it (usually 16, 17, 18, or 21) 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 the juvenile court grants waiver and a juvenile is acquitted by a criminal court, the juvenile court should not be able to reassert jurisdiction on the basis of the same conduct. California has avoided this issue by providing concurrent jurisdiction over an alleged juvenile offender with the qualification that the juvenile court must first hear waiver arguments. If it grants a waiver, the criminal court asserts its jurisdiction, but the juvenile court is precluded from ever reasserting jurisdiction on the same alleged offense. If the juvenile court denies waiver, then the criminal court's jurisdiction is forever terminated on the particular alleged offense.[16]

[12] U.S. Department of Health, Education, and Welfare, Youth Development and Delinquency Prevention Administration, *Diverting Youth from the Correctional System*, (1971), p. 45.
[13] U.S. Department of Health, Education, and Welfare, *Juvenile Court Statistics 1971* (1972), pp. 2, 6. Cited hereinafter by title.
[14] U.S. Children's Bureau, *Standards for Juvenile and Family Courts* (1970), p. 5.
[15] *Juvenile Court Statistics 1971*, p. 5.
[16] Waiver is defined here as the process by which a prosecutor files a petition asking the court with jurisdiction over juvenile delinquency matters to waive its jurisdiction, so that the juvenile may be tried as an adult in a criminal proceeding.

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 divert as many youngsters as possible from the juvenile justice system and refer for court action only those for whom such action is deemed necessary. Court referral on a delinquency petition should not involve youngsters who have committed acts that would not be considered crimes if committed by adults.

Intake services should function in close cooperation with other private and public agencies, such as youth service bureaus and family and mental health services, toward the goals 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.[17] While smaller courts sometimes rely on "good primary screening" by police, schools, and other agencies and may have no intake personnel at all, most larger court systems have separate intake sections or departments with specially trained staff.[18]

Practically all jurisdictions require that the decision to adjudicate be based on an intake report, but there are few indications as to who shall conduct the study. Ten States have no specification at all; in 10 others this responsibility is given to "the court"; and in the remaining States the responsibility is given to probation officers.

There is considerable conflict about when referring a case for judicial hearing is in the best interests of the public and the child.[19] Since individual statutes provide little guidance, the concept of "best interests" is so vague and inclusive that it may be conducive to subjective, arbitrary, or irrational choices in determination of whether to file a petition. In an effort to remedy the problem, clearer definitions of intake criteria are needed. Also needed is a closer analysis of the central figure in the process—the probation officer—and his role in the judicial system.

[17] Elyce Z. Ferster, Thomas F. Courtless, and Edith N. Snethan, "Separating Official and Unofficial Delinquents: Juvenile Court Intake," *Iowa Law Review*, 55 (1970), 873.
[18] W. Sheridan, *Standards for Juvenile and Family Courts*, Children's Bureau Publication 437, 1966, p. 139.
[19] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime*, 1967, p. 21.

In all but the smallest jurisdictions, intake services should be provided by specialized staff who are assigned only to intake functions. Other staff members should be assigned to prepare social study reports, to represent the child in court, and to be responsible for supervision.

Intake personnel should have the following responsibilities:

1. They should make a determination of whether the matter in question falls within the delinquency jurisdiction of the court.
2. If the matter is not within the delinquency jurisdiction of the court, the juvenile should be released to his parents. In some cases, intake staff may assist the youngster and his parents by making a voluntary referral to another section of the court (that handles dependency, neglect, etc.) or a service program such as a family or mental health service, a public welfare agency, or a youth service bureau.
3. If the matter appears to be within the delinquency jurisdiction of the court, intake staff should make an assessment of what action is appropriate, in the following order of priority:
   a. Dismissal of the complaint as too minor or otherwise so circumstanced as to warrant dismissal.
   b. Referral to a nonjudicial agency for services.
   c. Utilization of any of the other formal or informal dispositions available to the court other than a delinquency petition. Among them might be participation in a formally organized diversion program, a consent decree, or informal probation.
   d. A decision that a formal court hearing is required and subsequent filing of a delinquency petition. As a general rule, formal proceedings appear appropriate where:

   Accusations are in dispute, and, if borne out, court-ordered disposition and treatment appear desirable.

   Detention or removal from the home is indicated.

   The nature or gravity of the offense warrants official judicial attention.

   The juvenile or the parents request formal adjudication.
4. Screening of children for whom a delinquency petition is filed to place as many in their parental homes, a shelter, or nonsecure residential care as is consistent with the safety of others.
5. If no other alternative can be achieved for a child for whom a delinquency petition is filed, placement of the individual in detention pending a detention hearing.

6. Preparation of a report for the court to be used at the detention hearing, presenting the reasons why detention was deemed necessary.

The probation officer may be charged with gathering and presenting evidence in an adjudicatory hearing and at the same time be expected to develop the child's confidence and cooperation. While States vary on views, statutes, and practices as to the degree to which a probation officer should assume responsibility in evidence gathering, he usually is asked to function in contradictory capacities.[20] This situation should not be perpetuated.

Because the intake services personnel would be involved in many informal dispositions, a built-in review requirement should be developed to provide a check on the system. Such a mechanism could effectively limit unwarranted uses of discretion, in which considerations of institutional or other requirements rather than the needs of the individual youngster are the determining factor in the decisionmaking process. The specific nature of this authority, which could take the form of an advisory or review board appointed by the respective State agency or department, is less important than the fact that, in the interest 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 differs from his role in adult courts in that most juvenile cases come to his attention through the juvenile intake worker instead of by direct referral from police.

Under this arrangement, if the intake officer thinks the case should be referred to court, the prosecutor determines whether there is a legal basis on which to file a petition. If there is not, the child should be diverted from the system.

The prosecutor's role in the adjudicatory process for delinquency matters is discussed in the Commission's report on Courts.

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 those who are not accused of any offense. The latter category can be further differentiated into those who have broken certain rules applicable only to children—such as running away, truancy, curfew violations, and teenage drinking or smoking—and those who have violated neither laws nor rules but who are labeled for various reasons as "persons in need of supervision" (PINS), "minors in need of supervision" (MINS), "incorrigible and beyond control," or found to have been living in an "injurious environment" or in "situations dangerous to their morals or those of others."

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 separation of the nondelinquent child from those who have violated the law, by requiring that the former not be placed in institutions primarily designed for the treatment of delinquents, continued indiscriminate grouping constitutes a national disgrace. Even if great care were taken to provide separate legal categories by statute, it is doubtful that such differentiated labeling as PINS or MINS would be any less stigmatizing or injurious than being adjudicated delinquent because, in most States, they are detained and institutionalized together.

For this reason, statutory changes totally removing the nondelinquent child from the court's jurisdiction in its quasi-criminal role should be sought.

In defense of maintaining the status quo, it could be argued that certain youngsters require authoritative handling by the court because, without its firm guidance, many might turn to a career in delinquency and crime. It could be said further that absence of "MINS provisions" could conceivably result in more children being charged with violations of the law, much as adult alcoholics are now being charged with disorderly conduct because alcoholism has been removed from the statutes as an offense.

While these arguments seem plausible enough, they mask a number of disconcerting truths. First, there is no empirical evidence of the beneficial effect of authoritarian handling of juveniles by the courts and very little knowledge about the effectiveness of any particular program. Second, there is ample evidence to demonstrate an inverse relationship between age and recidivism and to show that the younger a person is when he first experiences official contact with authorities (arrest, detention, or conviction for any offense), the more likely he is to continue on a path of delinquency and crime.[21] Third, it is common practice in 90 percent of this country's juvenile court jurisdictions to detain children in jail in the absence of special detention facilities,[22] and most existing detention facilities look more like maximum security institutions than places conducive to the social and physical well-being of youngsters. The conclusion is inescapable that society does not have the right to inflict such dispositions on its nondelinquent children.

There is another persuasive legal reason for excluding the nondelinquent child from court jurisdiction. The *Gault* ruling grants such safeguards as the right to notice, counsel, and confrontation, and protection against self-incrimination to any delinquent in danger of incarceration or loss of liberty. Even though in Arizona, where *Gault* occurred, the delinquency label includes the incorrigible or truant child, court actions have not consistently required the same protection for nondelinquent children as for delinquents. However, since nondelinquent minors at present share the same risk of confinement, particularly at the preadjudication detention level, such safeguards conceivably will be afforded in the future. Such a turn of events, however, might involve legal difficulties in light of due process standards and the constitutional vulnerability of such concepts as "incorrigibility." [23]

Immediate statutory changes must be sought, so that children accused of noncriminal offenses no longer come under the court's delinquency jurisdiction. Further, detention of such children in jail should be prohibited under penalty of law.

Analyses of current practices would indicate that taking no action with nondelinquent children may be preferable to taking any action. Clear-cut policies must be established that would result in automatic referral of those nondelinquent children who are deemed to require service to the appropriate private and public human resources agencies. Some such agencies already exist and need to be expanded; for example, mental health and family services, public welfare, and a number of private organizations. Others are emerging, such as youth service bureaus that can function as service brokers, resource developers, and intervening agents on behalf of the children.

The role of intake services in this process is clear. They provide a vital link in the chain of human services by providing for reception, screening, and referral. Intake services should have full authority to screen out all nondelinquent children to more appropriate programs, and as many quasi-delinquent children as may be feasible. Since intake services should be available around the clock, the majority of referrals and dispositions should be resolved on the day or evening of intake.

How often and how appropriately youngsters are screened out of the juvenile justice process will depend largely on whether suitable services and other options are actually available in the community. A major concern of those who favor retaining court jurisdiction over nondelinquent children is the need for "protective custody" in many cases in which delinquency is not at issue. This is particularly true in regard to runaways and other youth who are having problems in their relationships with their own families.

While the number of community services and agencies providing alternatives to detention still 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. Further, public and private agencies functioning as shelters for runaway juveniles provide short-term living accommodations and offer juveniles and their parents counseling which may lead toward the child's successful return to his home. Finally, programs conducted at a community's YMCA and similar agencies can furnish low-security residential centers for youngsters lacking adequate parental supervision.

Without the existence of such programs, neglected youth surely 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 with the juvenile justice system.

Pre-Judicial Dispositions

After court intake personnel have sifted out nondelinquent and social problem cases that can be served better in other programs, a number of other avenues to minimize penetration into the justice system should be explored. Since more than half of all juvenile cases presently referred to the courts are being handled nonjudicially (without formal hearings), it is estimated that improved intake services could substantially reduce the number of cases referred for adjudication by increased use of nonjudicial alternatives.

Through this process, inappropriate complaints would be kept from the courts, fewer children would experience the official or informal sanctioning process of the judicial system, and more children would be diverted into delinquency 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

[20] Idaho charges complainants with the responsibility of gathering evidence to support allegations. Nevada has a third person investigate the facts. Six States require an investigation of the circumstances of the offense by the intake officer.

[21] Daniel Glaser, *The Effectiveness of a Prison and Parole System* (Bobbs-Merrill, 1964), p. 37.

[22] Sherwood Norman, *The Youth Services Bureau* (Paramus, N.J.: National Council on Crime and Delinquency, 1972), p. 132.

[23] *Juvenile Court Statistics*, 1970, p. 5.

concerned primarily with an assessment of whether a particular complaint should be dismissed or referred for adjudication and whether any of the other formal or informal dispositions available to the court might be applicable.

Informal Service

Analysis of existing legal provisions for informal adjustment yields a bewildering array of terms used to denote similar processes: informal adjustment, informal probation, informal disposition, informal supervision, unofficial probation, counsel and advice, and consent decree. The term "informal service" will be used here to denote any provisions for continuing efforts of the court to provide informal adjustment without the filing of a petition.[24] The consent decree represents a more formalized order for casework supervision, which would be included as "informal service" because a formal determination of fact is not involved.

Informal Adjustment

Most jurisdictions empower intake staff to "adjust" at intake certain cases that in their judgment do not warrant official action by the court. Minor first offenses or trivial cases would be suitable for such informal disposition. Only three States (Illinois, New Mexico, and New York) specifically permit complainants to overrule a probation officer's recommendations by giving them the right to file petitions. However, the courts' responsiveness to citizen complaints undoubtedly results in filing of unnecessary petitions solely to placate the complainants.[25] Therefore, it would be advantageous if, as already has occurred in many States, intake staff were officially vested with the power to dismiss complaints that seem arbitrary, vindictive, out of proportion, or against the best interests of the child.

The built-in reviewing body suggested above could be particularly useful as a check on arbitrary or unwarranted discretionary decisions. In some jurisdictions this authority is vested in court "referees," who periodically review informal decisions and function as a recourse for legitimate complainants.[26] Informal adjustments are generally arrived at through a conference with voluntary participation of all parties. Statements made during the conference are excluded from any subsequent adjudication proceedings, and there is reasonable time limit between date of complaint and date of the conference.[27]

Fifteen States provide statutory authority for adjustment proceedings. The Illinois Juvenile Court Act (Ill. Ann. Stat., Ch. 37, para. 703-8, Smith-Hurd Supp. 1967) provides an excellent example of this approach:

> (1) The court may authorize the probation officer to confer in a preliminary conference with any person seeking to file a petition under Section 4–1, the prospective respondents and other interested persons concerning the advisability of filing the petition, with a view to adjusting suitable cases without the filing of a petition.
>
> (2) In any case of a minor who is in temporary custody, the holding of preliminary conferences does not operate to prolong temporary custody beyond the period permitted by Section 3–5.
>
> (3) The probation officer may not prevent the filing of a petition by any person who wishes to file a petition under this Act.
>
> (4) This Section does not authorize any probation officer to compel any person to appear at any conference, produce any papers, or visit any place.
>
> (5) No statement made during a preliminary conference may be admitted into evidence at an adjudicatory hearing or at any proceeding against the minor under the criminal laws of this State prior to his conviction thereunder.
>
> (6) Efforts at adjustment pursuant to rules or orders of court under this Section may not extend for a period of more than 3 months.

Little is known about the success or failure of informal adjustments, and no definite criteria are available for assessing the eligibility of youngsters. Most recommendations are rather vague and permit the probation officer considerable latitude. Seriousness of the act, prior police and court encounters, parental and child attitudes, and age of the child are commonly listed as factors for consideration. One recent analysis of the juvenile intake process indicates that more than half the juvenile cases in a sample of 170 handled on an informal basis were closed at intake. 17 percent were closed after a short period of informal handling, and 13 percent were placed on informal probation.[28] Among the major reasons for case closure at intake were: family able to cope with the problem (20.4 percent); no further difficulties since referral (11.8 percent); child a nonresident (8 percent); and offense being minor (6.6 percent). An analysis of the major reasons for closing cases after a period of informal handling revealed that about half of them experienced no further difficulties. Petitions for formal court action were filed on the other half.

[24] See Aidan R. Gough, "Consent Decrees and Informal Service in the Juvenile Court: Excursions toward Balance," *University of Kansas Law Review*, 19 (1971), 740ff.

[25] Elyce Z. Ferster and Thomas F. Courtless, "The Intake Process in the Affluent County Juvenile Court," *Hastings Law Journal*, 22 (1971), 1127.

[26] The referee system is currently being used with success in a number of jurisdictions, among them the Court of Common Pleas, Division of Domestic Relations, Toledo, Ohio, and Pima County, Arizona.

[27] W. Sheridan, *Legislative Guides for Drafting Family and Juvenile Court Acts* (U.S. Department of Health, Education and Welfare, 1969), paragraph 13(d).

[28] Ferster and Courtless, "The Intake Process in the Affluent County Juvenile Court."

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 necessity for filing a petition until after a child has had the opportunity for some informal treatment. There are several recognized advantages to this type of disposition:

- 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 denotes some kind of brief "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 probationary period.

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 activation of formal adjudication proceedings.[29]

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 informal probation disposition.[30]

2. The juvenile and his parents should be advised of their right to formal adjudication procedures, should they so desire.

3. Self-incriminating statements made during the informal process should not be used if formal adjudication procedures ensue after the informal settlement attempt.[31]

4. A reasonable time limit (between 3 and 6 months) should be placed on the informal probation period.[32]

5. A petition on the original complaint should not be allowed after an agreement has been worked out with all parties involved.[33]

Consent Decrees

A consent decree is a more formal order for casework supervision or treatment to be provided either by the court staff or another agency. It is approved by the judge with consent of the parents and child. The court does not make a formal determination of 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 youngster and eliminates the stigma associated with findings of delinquency.[34]

Official responses to certain types of behavior initiate processes that may well lead juveniles to further delinquent conduct. Youngsters often simply outgrow delinquent behavior patterns.[35] 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 charge be given at the earliest 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 beyond those available through other informal adjustments appear desirable.

[29] National Council on Crime and Delinquency, Council of Judges. *Model Rules for Juvenile Court* (New York: NCCD, 1969), p. 15.

[30] *Model Rules*, p. 40.

[31] Sheridan, *Legislative Guides*, paragraph 26.

[32] Uniform Juvenile Court Act, paragraph 10(b); National Council on Crime and Delinquency, Council of Judges, *Guides for Juvenile Court Judges* (New York: NCCD, 1963), pp. 40–41.

[33] *Model Rules*, p. 15.

[34] Sheridan, *Legislative Guides*, paragraph 13.

[35] Recent relevant works include: J. Martin, *Toward a Political Definition of Juvenile Delinquency* (Washington: Department of Health, Education and Welfare, 1970); Eliot Freidson, "Disability as Social Deviance," in Marvin B. Sussman, ed., *Sociology and Rehabilitation* (Washington: American Sociological Association and Vocational Rehabilitation Administration, 1965); John I. Kitsuse, "Societal Reaction to Deviant Behavior Problems of Theory and Method," in Howard S. Becker, ed., *The Other Side: Perspectives on Deviance* (Free Press of Glencoe, 1964); Jackson Toby, "An Evaluation of Early Identification and Intensive Treatment Programs for Predelinquents," *Social Problems*, 13 (1965), 160–175; Edwin M. Lemert, *Human Deviance, Social Problems and Social Control* (Prentice-Hall, 1967), p. 42.

• 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: [36]

• 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 never be used by the State 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 specify clearly 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 and never 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 juvenile, and in that event the fact of noncompliance should not be relevant to the question of adjudication.[37]
• Decrees should explicitly preclude the filing of petitions, since the latter negate the goal of removing juveniles from the adjudicative system.[38]

Use of consent decrees has not been without its critics.[39] It is argued, for example, that stigmatization is possible as long as records on the transactions are maintained. Statutory provisions to destroy such records would eliminate this problem. The objection is made that unofficial 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, more serious criticism regarding the use of consent decrees: being a relatively informal procedure, the consent decree can lend itself to unwarranted uses of discretion in which considerations of the court rather than the needs of the individual youngster may be the determining factor in the decision. To insure 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 the 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 by the *Miranda* decision, 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 remain silent while under questioning. Special care needs to be taken that the child understands these rights. Juveniles are under great pressure to cooperate when in custody, even after *Miranda* warnings, and they may need adult advice from unbiased sources. In addition, parental interests sometimes may be different from the child's, so that their advice as 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 National Council on Crime and Delinquency, recommend that all extrajudicial statements to peace and court officers not made in the presence of parents or counsel be rendered inadmissible in juvenile court.[40]

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 intake services and the entire preadjudication 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 child's liberty 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.[41] 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 a version of *Miranda* that, it is hoped, he can understand. 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 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 proceeding. The moment this option 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 proceedings, he should be informed that he can, at any time, terminate such a disposition and request formal adjudication. The restraints placed on his freedom as a result of such disposition should be minimal, since no adjudication has actually occurred. Obviously, such dispositions can be used only where both parents and child are willing to cooperate.

As a general rule, formal proceedings appear appropriate where:

• Accusations are in dispute, and, if borne out, court-ordered disposition and treatment appear desirable.
• Detention or removal from the home is indicated.
• The nature or gravity of the offense warrants official judicial attention.
• The juvenile or the parents request formal adjudication.

To avoid arbitrary decisions, general criteria should be specified by State statute, with authority being granted to intake personnel to set more specific criteria as experience dictates.

OVERVIEW OF CURRENT DETENTION PROBLEMS

Many agencies have advocated that detention be limited to alleged delinquent offenders who require secure custody for the protection of others. However, as noted earlier in this chapter, most jurisdictions use detention not only for juveniles who have committed delinquent acts that would be considered crimes if committed by adults, but also for children who have committed acts deemed by the court to be conducive to crime (truancy, disobedience, incorrigibility and the like), who are frequently categorized as "persons in need of supervision" (PINS), or "minors in need of supervision" (MINS).

Although data on the extent of this problem are scarce, indications are that youth in the PINS group comprise at least 50 percent of most detention home populations.[42] This estimate does not include the number of children detained in jails or other holding facilities in areas not having detention centers. This situation is now increasingly recognized by correctional administrators, the judiciary, and behavioral scientists as detrimental to the goals of delinquency prevention and as a major obstacle in implementation of intake services planning.

Residential detention care should be a service exclusively for the court in its delinquency jurisdiction and should never be utilized for dependent or neglected children or those in need of supervision. Shelter care serves the court as needed, and it presents more options by providing access to a wide range of private and public child welfare services and family agencies.

It is essential to change current detention practices in many jurisdictions—use of detention in the absence of other suitable community services and facilities (foster family, group homes, or boarding houses) and its application for punishment purposes without court referral.

In 1969, a nationwide survey identified 288 detention homes throughout the country, which admitted approximately 488,800 per year.[43] While the latter number may not be precise, it nevertheless represents a considerable increase over the 317,860 reported for 1965.[44] The estimated average daily

[36] Gough, *Consent Decrees*, contains an excellent assessment of current practice in the U.S.
[37] W. Sheridan, *Legislative Guides*, paragraph 33(d) provides that in cases in which children violate consent decrees, the original charge may be petitioned to the court "just as if the consent decree had never been entered."
[38] Gough, *Consent Decrees*, p. 738.
[39] Ferster, Courtless, and Snethen, "Separating Official and Unofficial Delinquents," p. 885.
[40] NCCD Council of Judges, *Model Rules*, p. 82.
[41] This recommendation is supported by Section 19 of the Standard Juvenile and Family Court Act, as well as the recent juvenile court legislation in Alaska, California, Illinois, New York, and Utah. See *Model Rules*, p. 82.
[42] Working figures from National Clearinghouse for Correctional Programming and Architecture.
[43] Nicholas A. Reuterman, *A National Survey of Juvenile Detention Facilities* (Edwardsville, Ill.: Southern Illinois University, 1970), p. 39.
[44] National Council on Crime and Delinquency, *Correction in the United States* (New York: NCCD, 1966), p. 15.

population of 13,567 in 1969 also was slightly higher than the 1965 estimate of 13,000. The nearly half-million children believed to have been admitted to detention homes in 1969 represent approximately two-thirds of all juveniles taken into custody in that year. Since nine out of ten of the juvenile court jurisdictions in this country detain too few children to warrant construction of detention homes, it is estimated that at least 50,000 and possibly more than 100,000 children of juvenile court age are held in jails and police lockups each year.[46] 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.[47]

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, Connecticut, Delaware, Rhode Island, and Puerto Rico do not keep juveniles in jails. Nine States have statutory or administrative prohibitions against keeping juveniles in jails, but these prohibitions often are violated.

About half of the 288 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.[48] Administrators reportedly were more concerned about custody than any other goal. A comparative analysis of the homes' capacities and their average daily population indicates that larger homes tend to be overcrowded, while smaller ones are not.

Analyzing staff patterns, the survey reveals that 37 percent of the homes with a capacity greater than 20 persons do not meet recommended minimum staff requirements.[49]

Only 44 percent of detention home workers meet the recommended minimum of a college degree in social work, psychology, or education.[49] The annual salary is between $4,692 and $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 means of personnel advancement, such as a civil service or merit system.

Very few detention homes even approach the recommended standards of providing recreation, education, group discussion, individual guidance, constructive work activities, and voluntary religious services. Four out of five have education programs that are part of the public school system, as recommended by most standards. Only one out of three conduct education programs on a year-round basis, contrary to most recommendations.[50]

Considering the known deleterious effects of incarcerating juveniles in jails and lockups, it is shocking that 60 percent of the homes indicate that juveniles are placed into such facilities in their jurisdictions. However, a total of 23.6 percent of detention centers reported that they serve as regional detention facilities for juveniles, an increase over a previously reported 6.9 percent.

The most recent survey of youth detention homes constructed in the last 10 years is currently being completed by the American Foundation Institute of Corrections. Preliminary findings of the study (which attempts to assess how well physical facilities meet program needs) corroborate earlier reports of administrative preoccupation with security, which is complemented by high-security physical settings. Officials account for this emphasis by citing severity of discipline problems, seriousness of the charges, and expectations of the public. Since many of the detention centers are located in urban areas, walls are used to provide perimeter security, and all outdoor areas are fenced off or walled in.

Major activity areas within the homes—such as reception and diagnosis, housing, community contact (legal services, family visiting), and resident activities (counseling, recreation, education)—are separated from each other. Precautions are taken to insure that disturbances within intake areas and housing units do not hinder other activities, and circulation spaces are defined to facilitate safe movement of detainees and close supervision from control centers.

Young persons are housed in dormitories and in multiple and single occupancy rooms. Individual rooms range from bedrooms to cells similar to those found in prison; i.e., grilled or solid steel doors, fixed furniture, toilet-sinks, and barred windows. Dormitories range from double bunk beds along wide corridors to cages. Housing usually is arranged in units holding 12 to 24 youths each. Dayrooms tend to be located next to sleeping areas, and they may be equipped with television sets, lounging areas, and table games. In some detention homes, the day room doubles as dining room, with furnishings being limited to a few fixed table-chairs and a television set. As a rule, girls are kept separate from boys. However, a few more innovative centers permit joint use of dayrooms on the premise that mixed relationships 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.

In summary, it is obvious that juvenile intake and detention practices throughout this country are characterized by great disparity or even an absence of service. The need to organize and integrate the multitude of programs and activities into a coherent and integrated whole is great, particularly if the goal of crime reduction is to be achieved. The prevailing concept of the detention center, with its overemphasis on secure custody and neglect of its other purported objectives, such as programs and guidance, is counterproductive.

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 be limited to those juveniles who commit acts that if committed by an adult would be criminal, and that juveniles accused of delinquent conduct should not under any circumstances be detained in facilities for housing adults accused or convicted of crime. The decision to detain prior to adjudication of delinquency should be based on the following criteria.

- Detention should be considered as a last resort where no other reasonable alternative is available.
- 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 to assure his presence at subsequent judicial hearings.
- Detention decisions should be made only by the court or intake personnel, not police officers.
- Juveniles should not be detained in jails, lockups, or other facilities used for adults.

Thus in the predetention screening process, the following priorities should be favored over detention:

- Release of as many children as possible to their parents or guardians.
- Release to a third party with the consent of the parent or guardian and the child.
- Diversion into temporary nonresidential programs or placement into physically unrestricted residential care of all children who need shelter but not secure custody.

Further, the intake services staff should be given sufficient authority and funding to enter into agreements with other social service agencies for appropriate services.

While empirical studies on this topic are few, there are indications that appropriate predetention screening available on a 24-hour basis could effectively reduce use of detention by at least 25 percent.[51]

The Question of Bail

Intake processes in many jurisdictions prior to *Gault* reflected indifference and perfunctory rubber-stamping of police decisions. While a number of jurisdictions have found the *Gault* guidelines reasonable and workable and have extended their application to the preadjudication stage, unacceptable practices still predominate throughout the country.[52] For example, in some instances court orders to detain juveniles still can be obtained by telephone calls. Further, individual States are divided on whether or not juveniles should be entitled to bail. Since *Gault*, however, juveniles are entitled to due process, and all safeguards should be provided through a formal hearing. Furthermore, in view of the recognized disruptive experience of detention, counsel should insist on a formal detention hearing.

The right to bail has plagued the adult criminal justice system for decades. Few have realized that the same issue is involved with the detention of juveniles.[53] In view of the recognized inadequacies of the bail system as it is now generally practiced for adults, it would be more prudent in juvenile justice to pursue some of the new developments in the area of bail program alternatives such as release on own recognizance, or release to a third party, than to impose an essentially faulty and discriminatory system on the juvenile process.

---

[46] National Council on Crime and Delinquency, *Directory of Juvenile Detention Centers in the United States* (New York: NCCD, 1968), p. iii.

[47] Law Enforcement Assistance Administration, *1970 National Jail Census*, 1971, p. 2.

[48] Reuterman, *National Survey*, p. 87.

[49] Depending on the source, a range of 13–20 staff members is recommended for homes with a 20-bed capacity. See J. J. Downey, *Detention Care in Rural Areas* (Washington: Government Printing Office 1964); National Council on Crime and Delinquency, *Standards and Guides for the Detention of Children and Youth* (New York: NCCD, 1961), and J. J. Downey and G. D. Nelson, "Detention and Reception Centers" in *A Study of the Division of Youth Service and Youth Service Board, Commonwealth of Massachusetts* (Washington: Government Printing Office, 1966).

[50] NCCD, *Standards and Guides for Detention*, pp. 48–49.

[51] A. J. Kahn, *Planning Community Services for Children in Trouble* (Columbia University Press, 1963), p. 289.

[51] National Council on Crime and Delinquency, *Regional Detention*, pp. 2, 13.

[52] William H. Ralston, Jr., "Intake: Informal Disposition or Adversary Proceedings?" *Crime and Delinquency*, 17 (1971), 160–167.

[53] Nine States expressly allow bail for children, and three have provisions that imply that bail is applicable to children. In three States bail is expressly denied to children, and eight States do so by implication. Provisions of the remaining States and the District of Columbia are silent on this point.

Finally, in the interest of a fair and speedy process, detention hearings always should be separate from the adjudicatory 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 recommendation should pose no particular problems in 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" or other irregular basis, will need to realign judicial officers so that detention hearings can be held at any time during the work week, even though other juvenile cases are not heard. Current discriminatory practices resulting from the happenstance of geographical location should be discontinued.

Whenever court is not in session within the 24-hour period, the child ordinarily should be released from detention.

The need for speedy hearing makes it all the more essential that intake personnel notify court personnel promptly whenever children are being detained. According to the Model Rules of Juvenile Courts, they should also obtain scheduling of the detention hearing and notify the parents and the child.

DETENTION

Most correctional administrators agree that there are too many maximum security facilities for juveniles and adults alike on State and local levels. Many urge a halt to the building of massive 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 out of sight and mind.[54]

It is particularly important for jurisdictions to think twice before building or enlarging juvenile detention centers [55] because of an unfortunate but verified tendency, where new detention space is constructed, to detain more children and to keep them confined longer. Another tendency in detention center planning and construction, hitherto accepted without question, is the assumption that security can be obtained only through hardware. Whenever security is achieved primarily by physical means, the options for individualized treatment and flexibility decrease proportionately.

Practical experience and cost considerations indicate that the problem of security can be resolved best by an open system of communication and a combination of adequate staffing patterns, selected technological components, and physical means. A range of physical restrictions should be available, so that assignments can be based on individual characteristics and needs in clear recognition of the fact that very few youngsters require detention in the physical equivalent of a maximum security prison.

Appropriate environmental settings are perhaps even more important for juvenile offenders than for adults. Because of the youngster's sensitivity to external stimuli, consideration of the environment becomes especially important. Detained children may already have had difficulty in coping with their social and physical environment. Subjecting them to a foreign world of barbed wire, steel bars, and inflexible brick and mortar can serve only to alienate them even more from society.

Ideally, facilities should be located in a child's community and provide as nearly as possible a home environment. Architectural planning and design features can provide meaningful cues to both children and staff in this respect.

In view of the dynamic relationship between programs and physical environment, physical design must be flexible, permitting adaptability to program change. Physical design also must proceed on the premise that the child and his relationship to staff are the primary determinants of facility planning.

Criteria for evaluation and planning of juvenile detention centers and such supportive facilities as group and shelter homes need to be based on an assessment of the total needs of a service planning area and its capacity to provide required services. (See Standard 9.1, Total System Planning.)

[54] George Saleebey, "Youth Correctional Centers: A New Dimension in Rehabilitation," *California Youth Authority Quarterly*, 22 (1969), 26–30.

[55] Sherwood Norman, *Think Twice before You Build or Enlarge a Detention Center* (New York: National Council on Crime and Delinquency, 1968).

Facility Planning

Location

Detention centers should be near juvenile court and probation facilities. The optimal solution will depend on an analysis of a service area's needs. Centers should be close to the residential areas from which the youngsters come, in order to facilitate family visiting, community support, and maximum utilization of community resources. Ease of access is also important for both full- and part-time professional staff; thus, centers should be located near junior colleges, 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 reintegrative 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 must 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 and the sense of normality or abnormality that accompany the juvenile program will, in large measure, be communicated by physical planning and design features.

Living Area, Modules, and Sleeping Spaces

Residential programming should be supported by arranging individual sleeping spaces in "clusters," thus establishing small groups. Counselors 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 juvenile detention centers. The single room is favored by many administrators 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 programming 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 bent 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. Steel doors or bars, tile walls, single unit toilets, and small windows are prototypes of maximum security penitentiaries. They have no place in a juvenile detention 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 should be as unobtrusive as possible. Security glass, for example, is preferable to steel bars.
- Entrances and exits should be monitored without resort to guard stations.
- Entry spaces should welcome visitors and residents rather than repel them.
- The need for security hardware decreases in proportion to staff increases and interaction.

Use of Existing Facilities and Resources

Facility planning should take into account existing residential facilities in the community. Such facilities can serve as group or shelter homes or as small residential detention centers. Among the many advantages is the fact that these facilities are already residential 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 full investigation of community resources. In program

planning, priority should be given to provision of educational, medical, counseling, and other services from the normal range 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), multipurpose activity rooms, and ample 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. Facility 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 quality.

Primary consideration should be given to providing spaces conducive to individual and small group activity and a number of large group functions. Selectivity 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. The 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.[56]

[56] Working figures from National Clearinghouse for Correctional Programming and Architecture.

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 speak plainly for the need to detain only those youngsters who really need detention, for the use of suitable existing facilities rather than building new ones, and finally 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 committees include representatives of community leadership and a broad cross-section of the citizenry, including ex-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 required 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 jobs, stipends, 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 1969, 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.

Stringent standards for hiring 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 the directors, should be hired without regard to political affiliation and promoted on the basis of well-defined merit systems. Job functions and spheres of competency 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-echelon 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 social service agencies. Too often, the effectiveness of juvenile corrections has been 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, so that 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 staff.[57] Those with capacities less than 20 tended to provide no training at all. In 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, sabbaticals for promising employees, or other contractual training programs. 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 nonresident staff to meet maximum capacity needs of detention homes and a total staff-child ratio of 3 to 4, if not 4 to 4, depending on the size and nature of the facility.[58]

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 on Courts. The post-adjudication disposition of juveniles is discussed in this report in Chapter 5, Sentencing, and in Standard 16.9, Detention and Disposition of Juveniles.

[57] Reuterman, *National Survey*, p. 145.
[58] NCCD, *Standards and Guides*, p. 52.

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 point 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 the 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 2 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.

2. The second act after apprehending a minor should be the notification of his parents.

3. Extrajudicial statements to police or court officers not made in the presence of parents or counsel should be inadmissible in court.

4. Juveniles should not be fingerprinted or photographed or otherwise routed through the usual adult booking process.

5. 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 this 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

1. Aaron, Thomas J. *The Control of Police Discretion*. Springfield, Illinois: Thomas, 1966.
2. Brandstatter, A. F., and Radelet, Louis A. *Police and Community Relations: A Sourcebook*. Beverly Hills, Calif.: Glencoe Press, 1968.
3. Coffey, Alan R.; Eldefonso, Edward; and Hartinger, Walter. *Police-Community Relations*. Englewood Cliffs, N.J.: Prentice-Hall, 1971.
4. Eldefonso, Edward. *Law Enforcement and the Youthful Offender: Juvenile Procedures*. New York: Wiley, 1967.
5. Hewitt, William H. *A Bibliography of Police Administration, Public Safety and Criminology*. Springfield, Ill.: Thomas, 1967.
6. Kenney, John P., and Pursuit, Dan G. *Police Work with Juveniles and the Administration of Juvenile Justice*. Springfield, Ill.: Thomas, 1954.
7. King, Everett M. *The Auxiliary Police Unit*. Springfield, Ill.: Thomas, 1960.
8. Shimeta, Kenneth L. "The Wisconsin Juvenile Law Enforcement Consultation Program," *Police*, (1964-65), 9.
9. Watson, Nelson A. *Police and the Changing Community*. Washington: International Association of Chiefs of Police, 1965.
10. Wilson, O.W., and McLaren, Roy Clinton. *Police Administration*. New York: McGraw-Hill, 1963.

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 where 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 another appropriate section of the court or to alternative programs such as mental health and family services, public welfare agencies, youth service bureaus, and similar public and private agencies.

2. Intake personnel should seek informal service dispositions for as many cases as possible, provided the safety of the child and of 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. Restraints 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. Consummation 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.

   e. 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 hearing should be kept, and the court in issuing the decree should state in writing the reasons for the decree and the factual information on which it is based.

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 attention 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.

Under the supervision of the court, review and monitoring 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.

7. Predetention 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 programs, 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 be 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 also should avoid the detention of children whenever possible, and the cri-

teria set forth in this standard should be used for this purpose.

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 decrees 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 decrees.

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

1. Boches, Ralph E., and Goldfarb, Joel. *California Juvenile Court Practice*. Los Angeles: The University of California Press, 1968.
2. Breed, Allen F. *Standards and Guidelines for Youth Service Bureaus*. Sacramento: California Delinquency Prevention Commission, 1968.
3. Cavenaugh, W. E. *Juvenile Courts, the Child and the Law*. Bungay, England: Chaucer Press, 1967.
4. Colorado Department of Institutions, Division of Youth Services. *Colorado's Children's Code*. Denver, 1970.
5. Empey, LaMar T. *Alternatives to Incarceration*. Washington: Government Printing Office, 1966.
6. Fox, Sanford J. *The Law of Juvenile Courts in a Nutshell*. St. Paul: West, 1971.
7. George, B. James, Jr. *Gault and the Juvenile Court Revolution*. Ann Arbor, Mich.: Institute of Continuing Legal Education, 1968.
8. National Council on Crime and Delinquency. *Guides for Juvenile Court Judges*. New York: NCCD, 1963.
9. National Council on Crime and Delinquency. *Model Rules for Juvenile Courts*. New York: NCCD, 1969.
10. Mumford, Gilbert H. F. *A Guide to Juvenile Court Law*. London: Jordan, 1968.
11. Stark, H. G., "Alternatives to Institutionalization," *Crime and Delinquency*, 13 (April 1967).

Related Standards

The following standards may be applicable in implementing Standard 8.2.

3.1 Use of Diversion.
5.2 Sentencing 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.

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 homelike 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 investigation 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.

10. Planning should comply with pertinent State and Federal regulations and the Environmental Policy Act of 1969.

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 fully assessing the total service needs for the predelinquent 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 corrections 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 resocialization 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, unobtrusive 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, adherence to the principles set forth in this standard should prevent difficulties in obtaining clearance for construction.

References

1. California Department of the Youth Authority. *Guidelines for Inspecting Juvenile Halls.* Sacramento: 1969.
2. "Designing Facilities—The Detention Center" (Philadelphia: University of Pennsylvania, 1971, unpublished.)
3. National Council on Crime and Delinquency. *Standards and Guides for the Detention of Children and Youth.* New York: NCCD, 1961.
4. *Planning and Designing for Juvenile Justice,* report prepared by the Management and Behavioral Sciences Center, Wharton School, University of Pennsylvania. Washington: Law Enforcement Assistance Administration, 1972.
5. U.S. Department of Health, Education and Welfare, Youth Development and Delinquency Prevention Administration. *State Responsibility for Juvenile Detention Care.* Washington: Government Printing Office, 1970.

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 a merit system.

4. Job specifications should call for experienced, specialized professionals, 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 counselors.

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

or failure always will be the staff. To obtain qualified and motivated staff, the standards set forth in Chapter 14, Manpower, should be observed. This standard cites only those considerations that are particularly important for juvenile intake and detention personnel.

Because referrals to juvenile court typically include large numbers of minority group youngsters, staffing patterns should be reasonably representative of those groups. It also is critically important to have a good balance of male and female staff members as a part of normalizing intake procedures and detention. Selection criteria should include ability to develop constructive relationships with juveniles and to work on a cooperative basis with other community agencies.

In view of a tradition of neglect in the area of staff training, particular emphasis should be placed on the development of training programs for all juvenile intake and detention personnel. Wherever possible, outside resources such as community colleges and universities should be used.

References

1. Brown, Barry S., and Sisson, John W., Jr. "The Training Program as a Correctional Change Agent," *Crime and Delinquency*, 17 (1971), 302-309.
2. Empey, LaMar T. "Staff-Inmate Collaboration, A Study of Critical Incidents and Consequences in the Silverlake Experiment," *Journal of Research in Crime and Delinquency*, (1968), 1–17.
3. Institute for the Study of Crime and Delinquency. *Training Staff for Program Development in Youth Correctional Institutions*. Sacramento: ISCD, 1965.
4. Luger, Milton. "Selection Issues in Implementing the Use of the Offender as a Correctional Manpower Resource," an abstract from: *The Offender: An Answer to the Correctional Manpower Crisis*. Proceedings of a Workshop on The Offender as a Correctional Manpower Resource: Its Implementation. Institute for the Study of Crime and Delinquency, Asilomar, California, September 8-10, 1966.
5. Luger, Milton. "Utilizing the Ex-Offender as a Staff Member: Community Attitudes and Acceptance," in *Offenders as a Correctional Manpower Resource*. Washington: Joint Commission on Correctional Manpower and Training, 1968.
6. Mandell, Wallace. "Making Correction a Community Agency," *Crime and Delinquency*, 17 (1971), 281-288.
7. National Council on Crime and Delinquency. *Standards and Guides for the Detention of Children and Youth*. New York: NCCD, 1961.
8. Nelson, Elmer K., and Lovell, Catherine H. *Developing Correctional Administrators*. Washington: Joint Commission on Correctional Manpower and Training, 1969.
9. Shavlik, Frank. *Institutional Community Interpersonal Relations Project: Final Report*. El Reno, Okla.: Federal Reformatory, 1970.

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.
14.9 A State Coordinating Agency for Criminal Justice Education.
14.10 Intern and Work-Study Programs.
14.11 Staff Development.

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 concept of the jail as an instrument of confinement, coercion, 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 punitive 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] But 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." In an observation that should have served as a warning, they said:

> There is evidently a deficiency in a prison system which offers anomalies of this kind. These shocking contradictions proceed chiefly from the want of unison in the various parts of government in the United States.[2]

By and large, the deficiencies the two travellers found remain today, the intervening decades having brought only the deterioration 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 social problems of each locality. Thus, "the poor, the sick, the morally deviant, and the merely unaesthetic, in addition to the truly criminal—all end in jail."[3]

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 misdemeanant punishment. The most conspicuous additions to the jail's function have been the homeless

[1] For an account of this development, see David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Little, Brown, 1971).

[2] Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System of the United States and Its Application in France*, H. R. Lantz, ed. (Southern Illinois University Press, 1964), p. 49.

[3] Hans W. Mattick and Alexander Aikman, "The Cloacal Region of American Corrections," *Annals of the American Academy of Political and Social Science*, 381 (1969), p. 114.

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 and scope of the burden 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 not be so. For the first time 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 "any facility operated by a unit of local government for the detention or correction of adults suspected or convicted of a crime and which has authority to detain longer than 48 hours."[1] These institutions ranged from New York City's festering "Tombs" to the infrequently utilized small municipal lockup.

With more than 4,000 jails, 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 local area has neither the necessary tax base from which to finance a jail adequately nor sufficient size to justify even the most rudimentary correctional programs. Local control inevitably has meant involvement with local politics. Jails are left in a paradoxical situation: localities cling tenaciously to them but are unwilling or unable to meet even minimal standards. "The problem of American jails, put most concisely, is the problem of local control."[5]

Beyond their formally acknowledged tasks of correction and detention, jails have been adapted to perform a variety of "social welfare" tasks and provide easy answers to law enforcement problems. For example, Stuart Queen, a jail critic of 50 years ago, noted the "floater custom" in California counties by which transients were arrested, brought to the jail, and from there "ordered to disappear."[6] Similarly, Sutherland and Cressey observed the "Golden Rule disposition" of misdemeanant arrest 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.).[7] Such uses, as well as detention of suspects and witnesses, are understandable responses to difficulties encountered by law enforcement personnel. They are, however, short-term expedients that rarely solve anything.

Because of their multiple uses, jails house a population more diverse than any other correctional institutions. The 1970 jail census found that, of 160,863 persons held on the census date, 27,460 had not been arraigned, 8,688 were awaiting some postconviction legal action, 69,096 were serving sentences (10,496 for more than a year), and 7,800 were juveniles.[8] Thus accused felons and misdemeanants and juveniles all are found in American jails, often unsegregated from each other.

However, jail populations do share common socioeconomic characteristics. Inmates are typically poor, undereducated, and unemployed. Minority groups are greatly overrepresented. Fifty-two percent (83,079) of the inmates in the 1970 census were unconvicted, awaiting arraignment or trial.

It is crucial to note that the population of a jail bears no necessary or logical relationship to the size of the general population it serves. A study of Nebraska's county jails found that counties with the largest populations do not necessarily have the largest number of jail inmates.[9] The National Council on Crime and Delinquency recently advised that area population growth is not a suitable basis for projecting future jail population. "Jail populations are controlled more by statute and court practices than they are by population growth."[10] Variations in law enforcement practices, availability of alternatives (detoxification centers, State misdemeanant institutions, etc.), and attitudes of the local citizenry also affect jail admissions. It is doubtful that variations in crime rates cause the large disparities in jail population among localities. These facts require considerable flexibility in planning for the future.

For the most part, jails are not places of final deposition. In Illinois, an estimated 169,192 jail confinements occurred during 1967.[11] Extrapolating from these and other States' figures, an estimated 1.5 to 5.5 million jail commitments occur in this country annually.[12] The obvious result is a highly transient jail population. Yet the Illinois survey found that pretrial detention can stretch into years through legal maneuvering by both prosecution and defense. In general, the processing rate of any given jail depends on local practices and on availability of alternative placements for certain population groups.

In many of the jail riots in recent years, a trial has been a major, if not the only, demand by inmates. Nor is this demand surprising. The great number of men who spend months and even years in jail awaiting trial exacerbates miserable jail conditions. In the District of Columbia Jail in the spring of 1971, 80 percent of the inmates were there awaiting trial. At the same time, the jail was housing 1,100 inmates in a facility designed to hold 550.[13]

JAIL CONDITIONS TODAY

In addition to the problem of local control, the principal problems facing the Nation's jails today are condition of physical facilities, inadequate personnel, poor administration, and underutilization of alternative programs and dispositions.

A study of conditions in the District of Columbia Jail which was undertaken for the American Civil Liberties Union by volunteer lawyers and law students documents 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 overcrowded. It offers inferior medical attention to its inmates, when it offers any at all. It chains sick men to beds. It allows—forces—men to live in crowded cells with rodents and roaches, vomit and excreta. It is the scene of arbitrary and capricious punishment and discipline. While there is little evidence of racial discrimination (the Jail "serves" the male population of the District of Columbia and is, therefore, virtually an all-black institution), there are some categories of prisoners who 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 over which it presides. This, they say, is the job society wants them to do. The facilities and amounts of time available for recreation and exercise are limited, sometimes by a guard's whim. Except for a few privileged prisoners on various details, there is no means by which an inmate may combat idleness—certainly nothing that could be called education, counselling or self-help.[14]

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 1920.[15] 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 repeatedly push their equipment and fixtures beyond the breaking point. Given the fact that most jails are either overutilized, 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.

The National Jail Census found 5 percent of jails included in their survey overcrowded, with the propensity to be overcrowded increasing with design capacity.[16] On the other hand, on four census dates, a survey found 35 percent to 45 percent of Idaho's jails unoccupied.[17] Neither the situation of the overcrowded urban jail nor that of the underutilized rural facility will be ameliorated merely by constructing new buildings. The means of delivering detention and correctional services must be reexamined. Otherwise, the new will merely repeat and perpetuate mistakes of the old.

In nearly all jails, the available space is divided into inflexible cells or cage-like day rooms. Rows of cells compose self-contained cellblocks that face a large cage or "bullpen." The arrangement is designed "so that a relatively small number of staff can insure the secure confinement of a comparatively large number of inmates."[18] Items are passed into the bullpens through slotted doors, largely preventing contact between staff and inmates.

Many jail cells have neither toilets nor wash basins. The majority of inmates have access to shower facilities less than once a day. These inadequacies,

---

[1] Law Enforcement Assistance Administration, *National Jail Census, 1970: A Report on the Nation's Local Jails and Types of Inmates* (Government Printing Office, 1970), pp. 6–7.

[5] Hans W. Mattick, "Contemporary Jails in the United States: An Unknown and Neglected Area of Justice," in Daniel Glaser, ed., *Handbook of Corrections* (Rand McNally, forthcoming), draft page 144.

[6] Stuart A. Queen, *The Passing of the County Jail* (Banta, 1920), p. 7.

[7] Edwin Sutherland and Donald Cressey, *Principles of Criminology*, 6th ed. (Lippincott, 1960), p. 364.

[8] *National Jail Census, 1970*, pp. 10–11.

[9] Nebraska Commission on Law Enforcement and Criminal Justice, *For Better or For Worse? Nebraska's Misdemeanant Correctional System* (Lincoln, 1970), pp. 97–105.

[10] National Council on Crime and Delinquency, *A Regional Approach to Jail Improvement in South Mississippi: A Plan—Maybe a Dream* (New York: NCCD, 1971), p. 40.

[11] Hans W. Mattick and Ronald Sweet, *Illinois Jails: Challenge and Opportunity for the 1970's* (Washington: Law Enforcement Assistance Administration, 1970), p. 49.

[12] Mattick, "Contemporary Jails," draft p. 47.

[13] American Civil Liberties Union, *The Seeds of Anguish: An ACLU Study of the D.C. Jail* (Washington: ACLU, 1972), pp. 3, 5.

[14] *The Seeds of Anguish*, p. 1.

[15] *National Jail Census, 1970*, p. 4.

[16] *National Jail Census, 1970*, pp. 4–5.

[17] Idaho Law Enforcement Planning Commission, *State of Idaho Jail Survey of City and County Law Enforcement Agencies* (Boise, 1969), pp. 12–13.

[18] Daniel Glaser, "Some Notes on Urban Jails" in Daniel Glaser, ed., *Crime in the City* (Harper and Row, 1971), p. 238.

combined with the short supply or complete lack of such items as soap, towels, toothbrushes, safety razors, clean bedding, and toilet paper, create a clear public health problem, not to mention the depressing psychological effects on inmates. Mattick declares that, "If cleanliness is next to godliness, most jails lie securely in the province of hell." He points out further disheartening physical conditions in jails:

> Considering that sanitary fixtures are a necessity, yet are often absent, it is not too surprising to find that other facilities for handling and treating prisoners, some of which are not as indispensable, are also lacking. Only the largest jails have such luxuries as classrooms, an adequate infirmary, a laundry, a separate dining area, recreation space, and a chapel.[19]

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 second-level victims of the societal arrangements that perpetuate the jail.[20]

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.[21] Although these are full-time employees, assignment to the jail frequently is only one of several roles they must perform. Moreover, "the law enforcement psychology of a policeman is to arrest offenders and see to it that they get *into* jail; the rehabilitative psychology of a correctional worker should be to prepare an inmate to get *out* of jail and take his place in the free community as a law-abiding citizen."[22] 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 many employees' duties must be considered in interpreting such figures. Nationally, there were 5.6 inmates per full-time equivalent employee in 1970. State ratios ranged from 1.3 to 11.4.[23] Interpreting these ratios on the basis of a 24-hour, 7-day operation gives an average of 1⅔ full-time workers per shift with an average of 40 inmates.[24] Given the nature of jail architecture and the numerous duties the employees must perform both inside and outside the facility, these staffing levels are simply 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.[25] During the night, lack of supervision becomes more acute. In Idaho, for example, only 32 percent of the jails had a full-time staff member present at night.[26]

Professional workers, too often missing from jail staffs, are necessary for the initiation and operation of any reintegration or referral program and for training other staff members. A 1965 survey by the National Council on Crime and Delinquency ferreted out only 501 professional jail employees in the Nation. These employees were primarily social workers and vocational and academic instructors, with a scattering of psychologists and psychiatrists.[27] All of these professionals were working in the larger urban jails.

This should not be construed as an argument for jails staffed by psychologists and social workers. The skills involved in relating to another human being are inexact, and professionals do not monopolize them, although training provided by the professional staff to fellow jail employees can be helpful. The need is to break the now-ancient pattern of uninterested and reluctant jail employees who lack the minimal training needed for the efficient performance of an extraordinarily difficult task.

Administration by "Custodial Convenience"

The fundamental principle underlying the relationship between jailers and inmates is that of "custodial convenience," in which "everyone who can, takes the easy way out and makes only the minimal effort."[28] Because of insufficient staffing and funding and the lack of effective screening for incoming inmates, the population is separated into several large groups and placed in specific cell blocks. Each division represents an attempt to replace continuous, or even frequent, staff supervision with a maximum security setting. With such an arrangement, jailers effectively abandon their control and concentrate solely on any untoward occurrences.

Thus the inmates are left to work out their own internal order. For this reason, "control over inmate behavior usually can be achieved by other inmates more immediately, directly, and completely in jails than in other types of confinement institutions, such as penitentiaries or State hospitals."[29] In past eras, kangaroo courts flourished in many jails and still do in some.

While most such "judicial" trappings have gone the way of many traditions, the basic features remain in force. Jail inmates face many uncertainties arising from a threatening environment and an ambiguous relationship to the machinery of the criminal justice system. Under these conditions, individuals experienced in crime and accustomed to life in State penitentiaries assume positions of leadership and control.

The "custodial convenience" philosophy 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 frequently to the outside as well. All too often, the result is a jail run by its inmates. In most instances, trusties, or at least their "barn boss" or foreman, are well schooled in prison life, and jailers must offer them privileges in return for cooperation.

"Custodial convenience" also dictates a solution for the multitude of social and medical problems entering the jail. Here too, inmates are left to solve their mutual problems, with the elderly, sick, intoxicated, suicide-prone, and addicted all thrown together. The assumption is that they somehow will arrange to take care of each other.

Jail inmates do not have the opportunity for even the momentary or limited privacy available to most prison inmates. Participation and conformity to the prevailing expectations of the jailhouse subculture are mandatory for all.[30] The daily routine generally is one of unrelieved idleness. Card playing, conversations, meditation, and occasionally television viewing are the only options available. In the Nation as a whole, 86 percent of all jails counted in 1970 had no recreational facilities, and 89 percent had no educational facilities.[31]

Even acknowledging the resource limitations, such solutions produce reprehensible results. When the police department and the district attorney's office studied sexual assaults in the Philadelphia jail system during 1968, they found that such assaults were epidemic. "As Superintendent Hendrick and three of the wardens admitted, virtually every slightly built young man committed by the courts is sexually approached within a day or two after his admission to prison. Many of these young men are repeatedly raped by gangs of inmates."[32]

Daniel Glaser has captured the overall effect of current jail conditions as follows:

> The major costs to society from jail conditions probably stem not from the clear violations of moral norms that the inmates suffer there, but rather, from the prolonged idleness of the inmates in highly diverse groups cut off from much communication with outsiders. In this inactivity and crowdedness day after day, those inmates most committed to crime "brainwash" the inexperienced to convert initial feelings of guilt or shame into smug rationalizations for crime. Also, jail prisoners become extremely habituated to "killing time," especially during pretrial confinement. Thus, deficiencies of ability to support themselves in legitimate employment, which may have contributed to their criminality, are enhanced at their release. While reformatories and prisons are often called "schools for crime," it is a far more fitting label for the typical urban jail.[33]

SHORTCOMINGS OF STATE SUPERVISION

In addressing the needs presented by current jail conditions, the trend toward seeking change through State-set standards and inspections of local jails is open to question. *The Passing of the County Jail,* published 50 years ago, was no isolated utopian exercise but the product of an era of jail reform, written by an experienced and tough-minded practitioner. The book assessed the growing State involvement in local correctional efforts that had occurred in the preceding two decades. State boards of charities and corrections had been established in several States and charged with inspection of jails. Results of inspection surveys were published in California and Illinois. In Alabama, a State prison inspector was 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 Criminal Justice Planning and Architecture attempted to assess the status of current State inspection efforts. Letters sent to the 50 State agencies responsible for corrections requested them to send a copy of any jail standards in use or to notify the clearinghouse if no standards existed. Twenty States replied that they had no responsibility for local jails and no statewide standards were in force. Three States provided standards governing planning and construction but not operation. Two States replied that, while minimal standards existed, they were old and, in one instance, were about to be replaced by pending legislation. (See Figure 9.1.)

[19] Mattick, "Contemporary Jails," draft page 67.
[20] Mattick and Sweet, *Illinois Jails*, p. 368.
[21] California Board of Corrections, *A Study of California County Jails* (California Council on Criminal Justice, 1970), p. 102.
[22] Mattick and Sweet, *Illinois Jails*, pp. 255–256.
[23] *National Jail Census, 1970*, p. 9.
[24] Mattick, "Contemporary Jails," draft page 74.
[25] Nebraska Commission on Law Enforcement and Criminal Justice, *For Better or for Worse?*, p. 27.
[26] Idaho Law Enforcement Planning Commission, *Idaho Jail Survey*, p. 9.
[27] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections* (Washington: Government Printing Office, 1967), p. 164.
[28] Mattick, "Contemporary Jails," draft page 88.
[29] Glaser, "Some Notes on Urban Jails," p. 239.
[30] John R. Kimberly and David B. Rottman, "Patterns of Behavior in Isolating Organizations: An Examination of Three County Jails," (University of Illinois Department of Sociology, 1972).
[31] *National Jail Census, 1970*, p. 191.
[32] Allan J. Davis, "Sexual Assaults in the Philadelphia Prison Systems and Sheriff's Vans," *Trans-Action*, 6 (1968), p. 9.
[33] Glaser, "Some Notes on Urban Jails," p. 241.

FIGURE 9.1. EXISTING STATE JAIL STANDARDS*

	OPERATIONAL STANDARDS		FACILITY PLANNING AND CONSTRUCTION	
	YES	NO	YES	NO
Alabama				
Alaska				
Arizona		●		●
Arkansas		●		●
California	●		●	
Colorado		●		●
Connecticut		●		
Delaware		●		●
Dist. of Columbia		●		●
Florida	●		●	
Georgia		●		●
Hawaii		●		●
Idaho	●			●
Illinois	●		●	
Indiana	●			●
Iowa	●		●	
Kansas		●		●
Kentucky				
Louisiana		●		●
Maine	●		●	
Maryland	●		●	
Massachusetts	●			●
Michigan	●		●	
Minnesota	●		●	
Mississippi				
Missouri	●			●
Montana		●		●
Nebraska		●		●
Nevada				
New Hampshire				
New Jersey				
New Mexico		●		●
New York	●		●	
North Carolina	●		●	
North Dakota	●			●
Ohio		●		●
Oklahoma	●			●
Oregon		●	●	
Pennsylvania	●		●	
Rhode Island				●
South Carolina	●		●	
South Dakota	●			●
Tennessee		●		●
Texas	●		●	
Utah	●			●
Vermont	●		●	
Virginia	●		●	
Washington	●		●	
West Virginia				
Wisconsin	●		●	
Wyoming				●

*Survey conducted by National Clearinghouse for Criminal Justice Planning and Architecture, Fall 1971.

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.[34]

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 regionalization of jails, would require fewer jails and fewer, but better qualified and trained, jail personnel.[35]

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

[34] National Clearinghouse for Criminal Justice Planning, "Spring 1972 Survey of State Jail Standards," unpublished source documents, Urbana, Ill., 1972.

[35] Mattick, "Contemporary Jails," draft page 147.

improved. New jails have been built, but they now present the same problems as those they were built to replace. History shows clearly that only a different attack on the problem holds real promise. The new approach must involve all components of the criminal justice system.

TOTAL SYSTEM PLANNING

As indicated earlier, the composition of jail populations varies widely, depending on law enforcement practices and community values. If, as this report recommends, confinement is an alternative of last resort and is limited to offenders representing a threat to 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 some purposes, the scope may be limited to a State *corrections* system; for others, to the State *criminal justice* system. Throughout this discussion, corrections will be considered a subsystem 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 or a related system will affect all other components. For example, arraignment scheduling directly affects the number of persons awaiting trial and consequently the detention capacity required. Similarly, jail population may be reduced by diverting alcoholics from the criminal justice system to a detoxification center that is a component of a health services system. The system resulting from the planning process must be open to link offenders' needs with definitive solutions.

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 previously were considered a constraint on reducing jail populations. Feedback emphasizes that planning is a process, not a discrete event.

Functional integration, at least within a geographic area, is required to implement the results of the planning process. Part of solving a *corrections* problem (e.g., overcrowding) may involve changing a *court* procedure (e.g., rescheduling arraignments). A crime prevention program operated by a criminal justice system component may involve certain activities of the education, housing, and employment systems. Different systems and subsystems often must work together to attain a solution to a common problem. Thus their functions will overlap or be complementary.

Coordination 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 used intentionally 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 decides to defer prosecution of narcotics-related offenses and supply treatment programs, but a contiguous jurisdiction continues to prosecute them aggressively. To decrease the likelihood of getting caught, the addict has only to move to the jurisdiction that does not prosecute, and drug treatment programs there quickly become overloaded.

The planning process should consider the consistency of related practices between jurisdictions, even though changing them may be unlikely. This aspect of an open system adds an intergovernmental complication to an intragovernmental operation.

The service area concept is basic to total system planning. Service areas are demarcated by the scope of a particular problem that frequently crosses jurisdictions. Underlying the concept is the realization that social problems and their solutions do not confine themselves to geopolitical boundaries. Each service area may have distinct problems and resources, but there is sufficient commonality to warrant subsystem coordination.

In the simplest case, an agricultural economy and low population density may be conducive to regionalized correctional services. The multistate Standard Metropolitan Statistical Area (SMSA) represents the other extreme. The SMSA is an integrated economic and social unit containing several distinct but interdependent communities or cities. Total system planning for an SMSA is indeed possible. "Local" criminal justice problems can be related conceptually and operational coordination developed. But the difficulty of interjurisdictional planning is added to the difficulty of functional integration (police, courts, corrections, health, welfare).

Steps in Planning

The process of total system planning for a corrections service area is summarized in Figure 9.2. There are six phases:

Problem definition.
Survey.
Analysis.
Program linkage.
System concept.
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).

Identifying 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, on which subsequent decisions regarding planning, program development, and construction are dependent. Lack of objectives and use of obsolete planning standards will perpetuate ineffective programs and inflexible facilities. 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 practices 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.

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 community alternatives to incarceration should be examined, including summons 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 element in a 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 continuing 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 place. 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 separate rehabilitation programs, localities 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.[36] The report recommends building a new facility in one of the service area's five counties. The host county maintains jur-

[36] National Council on Crime and Delinquency, *A Regional Approach: A Plan—Maybe a Dream* (New York: NCCD, 1971).

isdictional control, and the other counties contract with it for their correctional services. The Liberty County, Georgia, Regional Detention Center is another example of planning a regional facility under difficult conditions. This center will provide correctional and staff training services to 14 primarily rural counties.[37] In numerous States, a statutory authority for multijurisdictional jails currently is in force. In North Carolina, for example, such authority has been available since 1933 but has never been used.[38]

To encompass the planning required in such an approach and to provide the resources it requires, governmental responsibilities for local corrections must be redistributed. At the two extremes, the underutilized rural facility and the crowded urban facility clearly are incapable of furnishing the services required. However, regionalization is not without complications.

In some respects, a regional community correctional center is a contradiction 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 community, boarding 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 corrections to provide all rehabilitation services in 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 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 (Phase 6, shown in Figure 9.2.) The facilities planning process will not be discussed in detail, but the essential components are summarized in Figure 9.2. For details, reference is made to the University of Illinois publication, *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults*.[39]

FUNCTIONS OF COMMUNITY CORRECTIONAL CENTERS

Whether an area develops a regional or network service delivery system, a number of functions need to be served. It should be stressed again that the center concept is not suggested as a rigid formula for all communities but rather as an approach to meeting existing and projected needs, a way to structure the diverse activities now operating there.

Court Intake Services

Where at all possible, court intake personnel should be located in a community correctional center. Such an arrangement will facilitate communication between court and corrections staff by virtue of proximity and functional relationships that must be developed to attain an integrated local adult corrections system.

Screening is the initial phase of intake services. Both diversion from the criminal justice system and referral to appropriate community resources are predicated on an effective screening process. An increasing body of experience shows that in many instances it is neither desirable nor necessary to process certain types of persons through the criminal justice system. Alternative dispositions must be developed at the local level so that as many offenders as possible may be diverted. Chapter 3, Diversion from the Criminal Justice Process, discusses programs that avoid criminal processing at the commun-

[37] "Liberty County, Georgia's Regional Detention Center Lightens Burdens on Area Jails," *American County*, 36 (1971), 9–11.

[38] Allan Ashman, *North Carolina Jails* (Chapel Hill: University of North Carolina Institute of Government, 1967), p. 17.

[39] Frederic D. Moyer et al., *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults* (Urbana: University of Illinois Press, 1971).

FIGURE 9.2

PHASE	1 PROBLEM DEFINITION	2 SURVEY	3 ANALYSIS	4 PROGRAM LINKAGE
CONTEXT	SERVICE AREA • administrative • political • physical NEED • jurisdictional coordination • systems integration • program analysis • master planning • other	CRIMINAL JUSTICE SYSTEM • law enforcement • courts • corrections practices and trends COMMUNITY • social services • community agencies • resources SOCIO-CULTURAL • demographic composition • demographic distribution • jurisdictional PHYSICAL • urbanization pattern • transportation • geographic • system component proximities • facilities	JUDICIAL PRACTICES • courts • corrections • law enforcement POPULATION PROJECTION • arrest • offender categories COMMUNITY RESOURCE POTENTIAL • agencies • programs PHYSICAL FEATURES (SERVICE AREA) • limitations • potentials	DIVERSIONS • social • medical NONFACILITY • pretrial release • nonresidential treatment • probation • conditional release FACILITY-BASED • pretrial • postadjudication COMMUNITY INTERFACE • functions • agencies • volunteers
PROCESS FLOW → ← FEEDBACK →				
OUTPUT	PRELIMINARY PROBLEM STATEMENT • background • goals • scope	DATA TABULATION • tables • charts • graphs • maps • diagrams	PLANNING PARAMETERS • restrictions • limitations • alternatives	PROGRAM ALTERNATIVES • relationships • design implications • operational implications
ACTION	STRATEGY FORMULATION • planning coordination • allocation of planning funds	DATA ANALYSIS • public participation • interagency participation	DATA SYNTHESIS • program definition	ASSESSMENT OF ALTERNATIVES • public response • agency response
TOTAL SYSTEMS PLANNING PROCESS				

FIGURE 9.2

PHASE	5 SYSTEM CONCEPT	6 PHYSICAL TRANSLATION	7 PROGRAM INTERPRETATION	8 PROGRAM ANALYSIS
CONTEXT	PROGRAM • facility • nonfacility SYSTEMS COMPONENTS • facilities type scale location SYSTEM CONFIGURATION • network • regional • composite	SYSTEM DEVELOPMENT • programs • facilities • administration • funding • operational • implementation	INTERPRETATION • system plan • facility descriptions • operational system • treatment programs/ alternatives	RESEARCH • staff/manpower needs • operational relationships interfacility intrafacility • alternatives to detention • facility alternatives new existing (remodel) • shared use agencies • client needs characteristics types numbers • budget sources limits facilities operations
PROCESS FLOW →				
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
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	

9 PROGRAM SYNTHESIS	10 DESIGN DEVELOPMENT •PRELIMINARY•	11 DESIGN DEVELOPMENT •DEFINITIVE•	12 PHYSICAL IMPLEMENTATION
DESIGN DETERMINANTS SITE • location-site selection • site development • resource proximities FACILITY • space requirements • functional relationships • scale • image character compatibility • accessibility • combined use • economics site facility	PRELIMINARY DESIGN • spatial activity design • functional optimization • security/detention (secondary priority) • community interaction • normative environment • range of security provisions (zone control) • residential clusters • individual occupancy • flexibility internal change external change • budget analysis • environmental impact	DEFINITIVE DESIGN • input analysis public review agency review budget review • alternative selection • final design development structural • engineering development H.V.A.C. electricity plumbing transportation fire security	FINAL DEVELOPMENT • production working drawings specifications final cost estimates • bidding documents • construction scheduling demolition remodeling renovation
← FEEDBACK ←			
DEVELOP DESIGN (CONCEPTS) • functional relationships • spatial relationships • structure • site development	DEVELOP DESIGN (SOLUTIONS) • alternatives • schematics • recommendations • costs • phasing	DEVELOP DESIGN (TRANSLATION) • budget analysis • presentation documents models graphics	FINAL CONSTRUCTION DOCUMENTS • plan • specifications • scheduling
EVALUATION • feasibility APPROVAL (CONCEPTS) SITE ACQUISITION	REVIEW • public review • agency review • evaluation • approval • modification • funding applications	REVIEW • evaluation • feasibility analysis • budget analysis • approval	BIDDING-AWARD • construction • occupancy

ity and police levels as well as court-based diversion programs. The latter involve suspensions or holding of criminal charges while an individual participates in a specified program such as job training. If the individual completes the program successfully, a recommendation is made to the court that charges be dismissed. New York City's Court Employment Project [40] and similar programs elsewhere demonstrate the feasibility of increasing alternatives to confinement without a concomitant increase in danger to the community.

In other cases, an individual may be referred to non-criminal justice agencies when it appears that their services would be more appropriate. For example, alcoholics, addicts, and the mentally ill should be referred to health or social service agencies.

Both referral and more formalized diversion programs offer the opportunity for utilizing resources that appear more likely to be successful in meeting an individual's needs than the resources of the criminal justice system. Such programs help him to avoid the interruption of life patterns and the stigmatization associated with criminal proceedings and conviction.

Intake personnel also serve an important function in providing services to the courts for cases in which there will be criminal proceedings. After the decision has been made to press criminal charges, intake staff perform social investigations to aid the court in making pretrial release decisions. The role of intake staff and procedures used to increase use of release on recognizance, police summons release, supervised release, bail, and other pretrial release programs are discussed in Chapter 4, Pretrial Release and Detention.

After arranging for the pretrial release of all persons possible, intake staff must provide services to those for whom pretrial detention has been deemed necessary. At this point, the desirability of locating intake services within a community correctional center becomes obvious, since the moment the decision to detain is made, intake staff should begin to work with other personnel at the community correctional center. Typically, those brought to local correctional facilities bring with them unresolved problems that demand immediate attention. The very fact of their arrest may have created problems. The staff of the community correctional center must deal with them. Beginning with intake staff, the community correctional center should serve as a crisis intervention resource. While such services should be available to anyone reaching court intake, persons being detained are particularly likely to need assistance.

Court intake personnel also provide presentence investigation reports to the courts as discussed in Chapter 5, Sentencing, and should be involved in community classification teams for the State correctional system, as discussed in Chapter 6, Offender Classification. Again, these functions require cooperation and assistance from other personnel of the community correctional center.

[40] See Court Employment Project, *Quarterly Report: December 1, 1970–February 28, 1971* (New York, 1971).

Residential Care

Community correctional centers will provide four types of residential care: services to persons awaiting trial; services to persons serving sentences; prerelease services 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 procedures 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 Courts.)

Those detained should be housed separately from convicted offenders. Females and juveniles should be separated in housing from adult males. Anyone received for detention who is mentally or physically ill or is an alcoholic or drug addict should be routed to more appropriate facilities.

Every effort must be made to insure 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 reserve confinement for the fewest 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. With increasing use of dispositional alternatives, local correctional facilities may be able 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 house mostly 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" sentences, and similar programs that take advantage of community resources.

States should adopt work-release statutes such as Wisconsin's pioneer Huber Law, which authorizes daytime 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 support of his dependents, with any remainder 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 need not be authorized by statute, although 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 protracted 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 to assure that sentenced offenders are not worse off when leaving than upon arrival.

Prerelease from State Institutions

As jails evolve into community correctional centers, serving as a coordinating point for community correctional services, their desirability as a prerelease resource will increase accordingly. Individuals originally assigned to State institutions should be transferred to the community correctional center in their own community to facilitate the reintegration process. All of the partial release programs described above should be available to such offenders.

Short-Term Returnees

The remaining type of person for whom the community correctional center should be a residential option is an offender in the community who needs a short period of support, structure, or supervision. Parole boards should view a short return to a community correctional center as a desirable alternative to recommitment to a State institution in many cases of parole violation. Ideally, this option 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 option is also fully consistent with 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 would not duplicate services already available from government or private sources. Psychotherapy, education, and skills training can be brought to the center, or residents can participate in programs being operated at other locations. Increased community participation would improve the potential for reintegrating inmates.

Confined 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 center would also coordinate the various correctional services now based in the community. A classification committee would include center staff, parole and probation officers, and representatives of volunteer groups and relevant government agencies. In this way, the various organizations working with the inmate could meet as a group and make joint decisions. This type of classification committee is used in the Vermont community correctional centers [41] and is recommended in the California jail standards.[42]

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 emphasis is not on traditional training, instruction, or adjustment to institutional requirements but rather on:

- Accurate observation of the individual.
- Intensive staff-client interaction.
- Opportunities for reality confrontation and reality testing.

[41] See Vermont Department of Corrections, *Biennial Report for the Two Years Ending June 30, 1970* (Montpelier, 1970), pp. 15–16.

[42] California Board of Corrections, *Minimum Jail Standards* (Sacramento, 1971), pp. 18–20.

- Discussions.
- Choice.
- Positive leisure-time options.
- Optimal living and constructive learning situations.
- Community and group interaction.

There is one additional function that community correctional centers should perform. Numerous observers have commented that—more often than not—time, rather than need, is the factor which signals the end of correctional service. Thus, many individuals may be released from correctional custody or supervision with no provisions being made to help them in any way after their sentence has expired. 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 correctional centers should be authorized to offer services to ex-offenders for at least one year after the expiration of their sentences. Employment assistance, family counseling, aid in finding housing, or help in overcoming 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 program areas would not achieve program goals, and design based mainly on security controls and surveillance functions is inappropriate and counterproductive. The physical setting supportive of contemporary program activities will not be found by examining past models. Replicating such models has only produced failure and will continue to do so.

The physical environment is of profound significance 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 cooperative 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 particular 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 problem.

b. Data survey and analysis designed to obtain comprehensive information on population trends and demography, judicial practices, offender profiles, service area resources, geographic and physical characteristics, and political and governmental composition. Such information is needed to assess service area needs and capability and to determine priorities.

c. A program linkage phase involving examination of various ways to meet the problems identified. The linkages should emphasize service area resources that can be used to provide community-based correctional programs as alternatives to incarceration. Identification and development of diversion programs by program linkage will have significant implications for a service area's detention capacity and program requirements.

d. A definition and description of the correctional delivery system for the service area developed on the basis of results of the previous phases. Facility and nonfacility program requirements should be included.

e. Program and facility design, which proceed from delivery system definition. The resulting 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 system should be developed for urban service areas with large offender populations. This system should have dispersed components (programs and facilities) that are integrated operationally and administratively. The network should include all components necessary to meet the needs of clientele 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 include 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, pretrial and posttrial 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.

2. All correctional planning should include consideration of the physical, social, and aesthetic impact imposed by any facility or network. Such consideration should be based on the National Environmental Policy Act of 1969.

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.

Clearly, a logical, systematic planning approach is needed, one that recognizes changing concepts and changing priorities and provides a means for developing more effective programs and facilities. Total system planning should be undertaken to encompass the entire scope of an area's needs and resources.

The objective of community corrections 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 service area) and coordination with other social service delivery systems.

This new focus has significant implications for environmental planning and the resulting correctional facilities. The physical environment contributes to program effectiveness and therefore should be adaptable to changing needs and flexible enough to accept innovation. Stereotyped or standardized institutions isolated from society and emphasizing security 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 interrelated 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.*

References

1. Broward County (Florida) Board of Commissioners. *Broward County Community Correction Center: Feasibility Study.* Fort Lauderdale, Fla.: Anson, Grove, Haack and Associates, 1972.
2. Hawaii State Law Enforcement and Juvenile Planning Agency. *Correctional Master Plan.* Honolulu: 1972.
3. Law Enforcement Assistance Administration. *Outside Looking In: A Series of Monographs Assessing the Effectiveness of Corrections.* Washington: Government Printing Office, 1970.
4. Minnesota Department of Corrections. *Comprehensive Plan for Regional Jailing and Juvenile Detention in Minnesota.* St. Paul: 1971.
5. Morris, Norval E. *The Honest Politician's Guide to Crime Control.* Chicago: University of Chicago Press, 1970.
6. Moyer, Frederic D., et al. *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults.* Urbana: University of Illinois, 1971.

Related Standards

The following standards may be applicable in implementing Standard 9.1.

3.1 Use of Diversion.
6.1 Comprehensive Classification Systems.
6.2 Classification for Inmate Management.
6.3 Community Classification Teams.
7.1 Development Plan for Community-Based Alternatives to Confinement.
8.3 Juvenile Detention Center Planning.
9.10 Local Facility Evaluation and Planning.
10.4 Probation Manpower.
11.1 Planning New Correctional Institutions.
13.2 Planning and Organization.
15.1 State Correctional Information Systems.
15.5 Evaluating the Performance of the Correctional System.
16.1 Comprehensive Correctional Legislation.
16.4 Unifying Correctional Programs.
16.6 Regional Cooperation.
16.14 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 assumed responsibility for operating locally based correctional institutions. The impact of this development should be major and far-reaching. The larger, more urbanized States, may encounter greater difficulty in achieving State control of correctional services, but coordination among all components of the local criminal justice system and various levels of government and the development of needed resources can occur in no other way.

Until State control is achieved, increased State participation in funding, inspection, and standard-setting will provide for the transition. Staff training, sponsorship of special programs, and supervision of all planning activities should be immediate State responsibilities.

References

1. Advisory Commission on Intergovernmental Relations. *State-Local Relations in the Criminal Justice System*. Washington: Government Printing Office, 1971.
2. Alexander, Myrl E. "Jail: History, Significance" in *Proceedings of the American Correctional Association: 1967*. Baltimore: ACA, 1967.

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.

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 informed in writing of the existing conditions and deficiencies. The 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 relocated 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

1. Advisory Commission on Intergovernmental Relations. *State-Local Relations in the Criminal Justice System.* Washington: Government Printing Office, 1971.

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 adults:

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 better be 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. Misdemeanant 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

1. American Bar Association. *Standards Relating to Speedy Trial.* New York: Office of the Criminal Justice Project, 1967.
2. American Bar Association. *Standards Relating to Pretrial Release.* New York: Office of the Criminal Justice Project, 1968.
3. Ares, Charles E.; Rankin, Anne; and Sturz, Herbert. "The Manhattan Bail Project: An Interim Report on the Use of Pretrial Parole," *New York University Law Review,* 38 (1963), 67.
4. Hawaii State Law Enforcement and Juvenile Delinquency Planning Agency. *Correctional Master Plan.* Honolulu: 1972.
5. Moyer, Frederic D., et al. *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults.* Urbana: University of Illinois, Department of Architecture, 1971.
6. St. Louis Metropolitan Police Department. *The St. Louis Detoxification and Diagnostic Evaluation Center.* Washington: Government Printing Office, 1970.

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

A review of prevailing practices, present facilities, and resources to meet contemporary processing needs for pretrial residential care reveals an appalling weakness of services. Admission processing standards today are a vestige of practices of the past. They have developed from lack of techniques, inadequate or nonexistent resources, and indifference. This sadly neglected but critically important area requires immediate and drastic reform.

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 ills 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 collects 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. Postarrest 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

1. Moyer, Frederic D., et al. *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults*. Urbana: University of Illinois, 1971.
2. Richmond, Mark. *Classification of Jail Prisoners*. Washington: U.S. Bureau of Prisons, 1971.

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.

Standard 9.6

Staffing Patterns

Every jurisdiction operating locally based correctional institutions and programs should immediately establish these criteria for staff:

1. All personnel should be placed on a merit or civil service status, with all employees except as noted below assigned to the facility on a full-time basis.

2. Correctional personnel should receive salaries equal to those of persons with comparable qualifications and seniority in the jurisdiction's police and fire departments.

3. Law enforcement personnel should not be assigned to the staffs of local correctional centers.

4. Qualifications for correctional staff members should be set at the State level and include requirement of a high school diploma.

5. A program of preservice and inservice training and staff development should be given all personnel. Provision of such a program should be a responsibility of the State government. New correctional workers should receive preservice training in the fundamentals of facility operation, correctional programming, and their role in the correctional process. With all workers, responsibilities and salaries should increase with training and experience.

6. Correctional personnel should be responsible for maintenance and security operations as well as for the bulk of the facility's in-house correctional programming for residents.

7. In all 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 on the staff for every six inmates in the average daily population, with the specific number on duty adjusted to fit the relative requirements for three shifts.

Commentary

"Of all the essentials for the operation of a jail, none is more important than personnel." The perceptiveness of this observation by the National Sheriffs' Association *Manual on Jail Administration,* (p. 8) 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 programs.

Those persons in the most frequent contact with inmates have a significant impact on the nature and effects of incarceration. A new and significant treatment role for the correctional workers who will replace traditional jailers is envisioned. Working under the supervision and with the advice of appropriate professionals, the correctional worker will be engaged not only in housekeeping and security tasks but also in inmate counseling and in operating programs both internal and external to the center proper. Truax and Carkhuff have demonstrated that individuals with no professional or college-level education can be developed as competent counselors with approximately 100 hours of training. Many variations on this training format have emerged, especially for the development of personnel to operate telephone-based crisis centers and residential drug abuse treatment centers.

The correctional workers should be supported by administrators, secretarial and maintenance personnel, volunteer workers, and a variety of professionals who supervise and counsel correctional workers as well as provide direct services when needed. Such an arrangement will maximize interaction between correctional workers and residents not requiring traditional psychological and casework service. Staff members of both sexes should be utilized to meet privacy requirements and make the institution as normal as possible.

Where the various capabilities of the community corrections program are scattered among several locations, staff provisions should be matched to the needs of each component.

In choosing staff members, the objectives of the community corrections concept 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 a locus for activities aimed at providing services to residents and nonresidents.

The State should establish employment qualifications and provide for pretraining and inservice training programs.

References

1. Maryland Community Correctional Center. *Architectural Program for the Urban Model.* Baltimore: 1972.
2. Truax, C. B., and Carkhuff, R. B. *Toward Effective Counseling and Psychotherapy.* Chicago: Aldine, 1967.
3. National Sheriffs' Association. *Manual on Jail Administration.* Washington: NSA, 1970.

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 program planning for individuals. Segregation of diverse 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 every alternative is being used to reduce pretrial detention.

2. Detention rules and regulations should be provided each new admission and posted in each separate area of the facility. These regulations should cover items discussed in Chapter 2, Rights of Offenders.

3. 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.

4. 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. 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.

b. 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.

c. Every facility should be able to provide the services of a qualified dentist. Eyeglass fitting and other special services such as provision of prosthetic devices should be made available.

d. 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.

e. All personnel should be trained to administer first aid.

5. 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.

6. 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.

7. Each detention facility should have written provisions that deal with its management and administration. Proper legal authority, legal custody and charge of the facility, commitment and confinement rules, transfer and transportation of inmates, and emergency procedures are among the topics that should be covered.

8. 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.

Both pretrial detainees and convicted offenders are entitled to the same rights and privileges as ordinary citizens, except those necessarily limited by virtue of their confinement and safety of others. Concomitantly, the exercise of those rights limited by virtue of confinement becomes the responsibility of the center to provide: i.e., access to medical and dental care, counseling and welfare services, food, clothing, shelter, recreation, education, safety, and pursuit of family and social relationships.

The system of using trusties is long outmoded. Those inmates most likely to be selected as trusties may also be those with the greatest potential for reintegration. If a man merits the confidence traditionally given to jail trusties, he belongs in a release program.

Elimination of the use of trusties will require adoption of more modern operational procedures. Meals, for example, can be prepared through a central food service, with only the minimal preparations involved being performed at the center itself. Such a program has been successfully implemented in Vermont and ought to be followed and extended to other aspects of facility operations.

References

1. Ashman, Allan. *Legal Aspects of Jail and Detention Services.* Chapel Hill: University of North Carolina Institute of Government, 1968.
2. California Sheriffs' Association. *Jail Manual.* Rev. ed. Los Angeles: Los Angeles County Sheriff's Department, 1968.
3. Moyer, Frederic D., et al. *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults.* Urbana: University of Illinois, 1971.
4. National Sheriffs' Association. *Manual on Jail Administration; A Handbook Designed to Ease the Difficult Task of the Jail Administrator.* Washington: NSA, 1970.
5. Pappas, Nick (ed). *The Jail: Its Operation and Management.* Washington: U.S. Bureau of Prisons, 1970.

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.

Standard 9.8

Local Correctional Facility Programing

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 institution or with its residents, and inmates. This body should serve as a central information-gathering point. It should discuss with an individual inmate all major decisions pertaining to him.

2. Educational programs should be available to all residents in cooperation with the local school district. Particular emphasis should be given to self-pacing learning programs, packaged instructional materials, and utilization of volunteers and paraprofessionals as instructors.

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 problems 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 leisure 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 unable 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 decisionmaking 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, alcoholic rehabilitation, and employment security.
>
> In coordination with the superintendent and officers at the center, the probation-parole officer who later will be responsible for street supervision if the inmate is released on 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-pacing 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 and academic education programs to ameliorate deficiencies in educational, occupational, and social skills. 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

1. Hawaii State Law Enforcement and Juvenile Delinquency Planning Agency. *Correctional Master Plan.* Honolulu: 1972.
2. Institute for the Study of Crime and Delinquency. *Design for Change: A Program for Correctional Management: Final Report—Model Treatment Program.* Sacramento: ISCD, 1968.
3. Maryland Community Correctional Center. *Architectural Program for the County Model.* Baltimore: 1972.
4. Moyer, Frederic D., et al. *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults.* Urbana: University of Illinois Department of Architecture, 1971.
5. Vermont Department of Corrections. *Biennial Report for the Two Years Ending June 30, 1970.* Montpelier: 1970, pp. 15–16.

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 cost, 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 the 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

1. Case, John D. "Problems of Corrections" in Hearings before Subcommittee No. 3 of the Committee on the Judiciary, House of Representatives, 92nd Cong., 1st Sess., on Corrections. Part I: *Corrections Practices, Their Faults and Shortcomings*. June 23, 1971.
2. National Sheriffs' Association. *Three Papers on Modern Corrections in an Old Jail*. Washington: NSA, 1971.
3. South Carolina Department of Corrections. *An Outline of the Community Pre-Release Programs*. Columbia: 1970.

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.

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 postadjudication 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, presentence investigations, postsentence 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 provisions should not dominate facility design.

a. Appropriate levels of security should be achieved through a range of unobtrusive 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.

c. All inmates should be accommodated in individual rooms arranged in residential clusters of 8 to 24 rooms to achieve separation of accused and sentenced persons, male and female offenders, and varying security levels and to reduce the depersonalization of institutional living.

d. A range of facility types and the quality and kinds of spaces comprising them should be developed to provide for sequential movement of inmates through different programs and physical spaces consistent with their progress.

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 not conventionally associated with corrections should be investigated.

d. Facility design should emphasize flexibility and amenability to change in anticipation of fluctuating conditions and needs and to achieve highest return on capital investment.

7. 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. 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.

b. Individual residence space should provide sensory stimulation and opportunity for self-expression and personalizing the environment.

8. Existing community facilities should be explored as potential replacement for, or adjuncts to, a proposed facility.

9. Planning for network facilities should include no 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 tradition throughout the country. Outmoded and archaic, lacking the most basic comforts, totally inadequate for any program encouraging socialization, jails 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 routine 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 postadjudication level, a broad range of alternative programs offers the potential for expanded noninstitutional treatment 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

1. Britt, Benjamin E. "A Case to Illustrate the Need for Single Cells in Prison Correctional Programs," *Popular Government*, 2 (1966), 2–4.

2. Collins, John Bunting. *Perceptual Dimensions of Architectural Space Validated Against Behavioral Criteria.* Salt Lake City: University of Utah Press, 1970.

3. Hall, Edward. *The Hidden Dimension.* New York: Anchor, 1966.

4. Lynch, Kevin. *Site Planning.* 2d ed. Cambridge: M.I.T. Press, 1971.
5. Menninger, Karl. *The Crime of Punishment.* New York: Viking, 1968.
6. Mitchell, William J., ed. *Environmental Design: Research and Practice.* Proceedings of the E.D.R.A. 3/ar 8 Conference. Los Angeles: University of California, 1972.
7. Moyer, Frederic D. et al. *Guidelines for the Planning and Design of Regional and Community Correctional Centers for Adults.* Urbana: University of Illinois, 1971.
8. Moyer, Frederic D., and Flynn, Edith E., eds. *Correctional Environments.* Urbana: University of Illinois, 1971.
9. Perin, Constance. *With Man in Mind: An Interdisciplinary Prospectus for Environmental Design.* Cambridge: M.I.T. Press, 1970.
10. Proshansky, Harold M.; Ittelson, William H.; and Rivlin, Leanna G., eds. *Environmental Psychology; Man and His Physical Setting.* New York: Holt, Rinehart and Winston, 1970.
11. Sommer, Robert. *Personal Space: The Behavioral Basis of Design.* Englewood Cliffs, N.J.: Prentice-Hall, 1969.

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.

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 as good, if not better, than those of incarceration.[1]

[1]See National Council on Crime and Delinquency, *Policies and Background Information* (Hackensack, N.J.: NCCD, 1972), pp. 14–15.

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.

DEFINITIONS

In corrections, the word "probation" is used in four ways. It can refer to a disposition, a status, a system or subsystem, and a process.

Probation as a court disposition was first used as a suspension of sentence. Under probation, a convicted offender's freedom in the community was continued, subject to supervision and certain conditions established by the court. A shift now is occurring, and probation is being used increasingly as a sentence in itself. The American Bar Association Project on Standards for Criminal Justice defines probation as:

> A sentence not involving confinement which imposes conditions and retains authority in the sentencing court to modify the conditions of sentence or to re-sentence the offender if he violates the conditions. Such a sentence should not involve or require suspension of the imposition or execution of any other sentence. . . .
>
> A sentence to probation should be treated as a final judgment for purposes of appeal and similar procedural purposes.[2]

Probation as a status reflects the position of an offender sentenced to probation. For the offender, probation status has implications different from the status of either free citizen or confined offender.

Probation is a subsystem of corrections, itself a subsystem of the criminal and juvenile justice system. Unless otherwise specified, "probation" will be used throughout this chapter to refer to the probation subsystem. When used in this context, probation refers to the agency or organization that administers the probation process for juveniles and adults.

The probation process refers to the set of functions, activities, and services that characterize the system's transactions with the courts, the offender, and the community. The process includes preparation of reports for the court, supervision of probationers, and obtaining or providing services for them.

The terms written report or "report" will be used to denote both presentence investigation reports and social studies prepared for the courts. The term "presentence investigation report" is used for those dealing with adults and "social study" for those dealing with juveniles.

"Intake" refers to the process of screening cases prior to court appearance, in order to take or recommend a course of action. It involves discretion to resolve a matter informally, to arrange court-based diversion services, or to proceed with a court hearing. It also may include investigative or assessment activities and pretrial release or detention decisions.

[2] American Bar Association Project on Standards for Criminal Justice, *Standards Relating to Probation* (New York: Institute of Judicial Administration, 1970), p. 9.

EVOLUTION OF PROBATION

Probation's origins go back to English common law and the efforts to alleviate the severity of criminal sanctions. The earliest probation device appears to have been "benefit of clergy," which was used originally to release clergymen from criminal court on the theory that only church courts had jurisdiction over their personnel. Later, "benefit of the clergy" was extended to include anyone who could read.

Judicial reprieve, another device used in the Middle Ages, was the precedent for the practice of suspension of sentence, which was brought to America from England. Recognizance practice also was developed in England, apparently in the 14th century, involving release with some type of surety or bail to assure good behavior.

John Augustus, a Boston shoemaker, is recognized as the father of probation in this country. As a volunteer, he asked the court to release certain offenders he thought he could assist. Practices he began using in 1841 have stood the test of time: investigation and screening, interviewing, supervision of those released, and services such as employment, relief, and education. His efforts were so successful that legislation formally establishing probation and providing for paid staff was enacted in Massachusetts in 1878. By 1900, six States had enacted probation legislation; four dealt with adult probation and two related only to children.

Probation as a disposition and a system is essentially a development of the 20th century. The first directory of probation officers in the United States, published in 1907, identified 795 probation officers, mostly serving juvenile courts. Some were volunteers, some welfare workers, some attached to courts, and some employed part-time. By 1937 more than 3,800 persons were identified as probation officers, of whom 80 percent worked full-time and the rest had additional duties such as sheriff, welfare worker, minister, attendance officer, or attorney. In 1947, the directories began to include both probation and parole. In 1970, nearly 25,000 persons were identified as probation and parole personnel, and only 2 percent had other duties such as county welfare worker or sheriff.

As probation use increased, growing interest in its effectiveness developed. One demonstration of its effectiveness was the Saginaw Project conducted in Michigan between 1957 and 1962. The project, staffed by trained workers with manageable workloads, had three objectives. First, probation should be used for 70 to 75 percent of convicted offenders. Second, there should be no increased risk to community safety. Third, actual tax dollar savings should be achieved by reduced construction and maintenance of institutions. All objectives were accomplished.[3]

Followup studies of probation elsewhere indicated that failure rates of persons on probation were relatively low.[4] Although many of these studies were not conducted under controlled conditions, with definitive information about variables such as service rendered and matched groups of offenders, the gross evidence 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.

Variations in the way probation has been organized and placed within the government framework have created differences between States as well as [illegible] States. Ohio provides an example of the complicated arrangements that have developed. There, juvenile probation is a local function in the judicial branch, but the State aid program is in the executive branch. Adult probation can be either a State or local function. A State agency in the executive branch can provide probation service to local courts, or they may establish their own. Where local probation exists, the control may be shared by both branches in an arrangement under which the county commissioners and judges of the court of common pleas must concur on appointments.

In New York State the State Division of Probation is in the executive branch as are all local probation agencies except those in New York City, which are in the judicial branch.

Such variations appear to have arisen as emphasis was given to one or the other of the two traditional functions of probation officers: to provide presentence reports and other services for the courts; and to supervise and provide services for probationers. These are different tasks with different objectives.

Variations occur within probation itself. There may be one agency for all offenders or separate agencies for juveniles and adults. Adult probation may be divided into one agency for felons and another for misdemeanants.

The question of where probation should be placed in the framework of government becomes more critical as its use expands and staff numbers increase. It is time to take a serious look at where probation could function most effectively, rather than using chance and history to support the status quo.

Judicial vs. Executive Branch

In the debate over the appropriate governmental branch for the probation system, those who favor the judicial branch give the following rationale.

1. Probation would be more responsive to court direction. Throughout the probation process, the court could provide guidance to probation workers and take corrective action when policies were not followed or proved ineffective.
2. This arrangement would provide the judiciary with an automatic feedback mechanism on effectiveness of dispositions through reports filed by probation staff. Judges, it is urged, may place more trust in reports from their own staff than in those from an outside agency.
3. Courts have a greater awareness of needed resources and may become advocates for their staffs in obtaining better services.
4. Increased use of pretrial diversion may be furthered by placing probation in the judicial branch. Courts have not been inclined to transfer authority and therefore may set more stringent limitations on the discretion of nonjudicial personnel to release or divert than on judicial staff.

The arguments for keeping probation in the judicial branch, which center around the direct relationship between the courts and probation, are not persuasive. 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 judiciary argue that:

[3] National Probation and Parole Association, Michigan Council, *The Saginaw Probation Demonstration Project* (New York: National Council on Crime and Delinquency, 1963).

[4] See Robert L. Smith, *A Quiet Revolution* (Washington: U.S. Department of Health, Education, and Welfare, 1972).

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 administrators 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 to probationers.

3. Probation staff may be assigned functions that serve legal processes of the court and are unrelated to probation, such as issuing summonses, serving subpenas, 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 are in the executive branch. Closer coordination and functional integration with other corrections personnel could be achieved by a common organizational placement, particularly as community-based corrections programs increase. Furthermore, job mobility would be enhanced if related functions are administratively tied.

2. The executive branch contains the allied human service agencies including social and rehabilitation services, medical services, employment services, education, and housing. Where probation also is in the executive branch, opportunities are increased for coordination, cooperative endeavors, and comprehensive planning.

3. Decisions involving resource allocations and establishment of priorities are made by the executive branch. It initiates requests to the legislative bodies, either local or State, for appropriation of funds, and by so doing sets priorities for allocating limited tax dollars. When probation is included in the total corrections system, more rational decisions about the best distribution of resources can be made.

4. Probation administrators are in position to negotiate and present their case more strongly, if they are in the executive branch. When probation is part of the court system the judge, not the probation administrator, is responsible for presenting the budget request and acting as negotiator. The latter is not a role traditionally undertaken by the judiciary.

On balance, the arguments for placement of probation in the executive branch of government are more persuasive. Such placement would facilitate a more rational allocation of probation staff services, increase interaction and administrative coordination with corrections and allied human services, increase access to the budget process and establishment of priorities, and remove the courts from an inappropriate role.

For these reasons, this report calls for inclusion of probation departments within unified State correctional systems. (See Chapter 16, Statutory Framework of Corrections.) Moreover the chapters which deal with intake services (Chapter 8 for juveniles and Chapter 9 for adults) recommend that staff performing services for the courts (as against services to pretrial releasees and probationers) should be under the administrative control of the courts.

This is, in the Commission's view, the proper long-range objective. It would do away with the current duality of roles for probation staff. However, in view of the current variety of local arrangements, it may for the present be appropriate for personnel carrying out services to the courts to be employed by the probation division of a unified State corrections system but detailed to perform court services. It would be essential in such an arrangement that probation staff take direction from the court and the court administration in establishment of policies, procedures, and performance standards for carrying out their tasks and that the probation division be responsive to the needs of the courts. Where such an arrangement appears to be desirable, written agreements setting out and defining the relationship between the court and the corrections system should be developed and agreed to by both.

State vs. Local Administration

Few States in which probation is a local function have provided any leadership or supervision for probation agencies. Tremendous variations are likely to exist within a State in terms of number of staff employed in counties of similar size, qualifications of personnel employed, and relative emphasis on services to courts and probationers. County probation agencies often are small and lack resources for staff training and development, research and program planning, and, more basically, services to the probationers.

State Efforts to Set Standards

Attempts to bring about some degree of uniformity have been limited. In a few States where probation is a local function, standards are set by the State in either the judicial or executive branch. For example, in New Jersey the judicial branch is responsible for setting standards for its local probation systems, while in California the responsibility is placed in the executive branch.

The degree to which local probation systems comply with State standards is dependent upon the rewards and sanctions used. As a reward for meeting specified standards, the State may provide either revenue or manpower. Michigan assigns State-paid probation officers to work alongside local probation officers. The more common practice, however, is direct payment by the State to local governments 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 6 years and has resulted in an increase of probation staff in the State from 1,527 in 1965 to 1,956 in 1972.[5]

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 sent to correctional institutions, these are usually administered and financed by the State. A consequence often is the shifting of financial responsibility from the local government to the State government by sentences of incarceration rather than probation.

California and Washington have developed probation subsidy programs in which counties are reimbursed in proportion to the number of individuals that remain in the community rather than being sent to State institutions. The subsidy program in California was developed as a result of a study that indicated that some individuals eligible for commitment to State correctional institutions could safely be retained on probation and that with good probation supervision, they could make a satisfactory adjustment. It was estimated that at least 25 percent of the new admissions to State correctional institutions could remain in the community with good probation supervision.

The California Probation Subsidy Program was instituted in 1966 by the State's youth authority. The youth authority was authorized to pay up to $4,000 to each county for every adult and juvenile offender not committed to a State correctional institution. The counties were required to demonstrate a commitment to improved probation services, including employment of additional probation workers and reduction of caseloads. In addition, each county had to demonstrate innovative approaches to probation, such as intensive care probation units for dealing with hard-core adult and juvenile offenders.

California estimates that, even with expanded probation services, the cost of probation runs little more than one-tenth of the cost of incarceration, approximately $600 per person annually for probation, compared to $5,000 annually for institutionalization. In all, the program has resulted in substantial savings to taxpayers. In the six years between 1966 and 1972, California canceled planned construction, closed existing institutions, and abandoned new institutions that had been constructed. Almost $186 million was saved in these ways, while probation subsidy expenditures came to about $60 million. Furthermore, although there has been a general decrease in commitments to State institutions throughout the United States, the decrease is sharper in those counties in California that participate in the subsidy program. The decrease in those counties almost doubles that of California counties not participating in the subsidy program.[6]

The State of Washington 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 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.[7]

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

[5] Information supplied by the New York State Division of Probation.

[6] Smith, *A Quiet Revolution*, gives the background of and experience under California's probation subsidy plan.

[7] Information supplied by the Washington State Department of Social and Health Services.

State employees and a larger agency can make more flexible use of manpower, funds, and other resources.

When it is simply not possible for a State to administer a probation system, the State, through a designated agency in the executive branch, should be responsible for developing standards for local probation systems that provide for a minimum acceptable level of functioning. State standards have a greater chance of being implemented if the State indicates a willingness to share the costs with local governments when standards are met and maintained.

In addition to setting standards for local jurisdictions, the State agency should be responsible for establishing policies, defining statewide goals, providing staff training, assisting in fiscal planning and implementation, collecting statistics and data to monitor the operations of local probation agencies, and enforcing change when necessary. Through these means, a state-supervised program can bring about some degree of uniformity in operations throughout the State, but not to the same degree as a State-administered program.

PROBATION ADMINISTRATION

The complexities of administering a probation system have been reflected in several studies. A poll conducted for the Joint Commission on Correctional Manpower and Training indicated that administrators felt the need for more training, especially in public administration.[8] Another study revealed support for two different types of education for administrators. One group advocated social work education, apparently representing a concern for substantive practice matters. The others advocated public administration because of a concern about managerial responsibilities.[9]

Need for Administrators to Formulate Goals

The administrator is expected to formulate goals and basic policies that give direction and meaning to the agency. If these goals are not formulated specifically, they are made by default, for staff will create their own framework. Should policies and goals not be developed quickly or well enough, persons outside the agency may determine policies, with or without consideration of long-range goals.

[8] Joint Commission on Correctional Manpower and Training, *Corrections 1968: A Climate for Change* (Washington: JCCMT, 1968), p. 30.

[9] Herman Piven and Abraham Alcabes, *The Crisis of Qualified Manpower for Criminal Justice: An Analytic Assessment with Guidelines for New Policy* (Washington: Government Printing Office, 1969), vol. 1.

Unfortunately, clearly defined objectives for probation systems rarely are set forth. 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 backgrounds and the beliefs 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 dysfunctioning 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. Such a thrust created a staff expectation that they would have opportunity to use the increased knowledge and skills. However, as probation systems grow in size, agencies tend to develop 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 fulfill any commitment made to secure the education. Such workers are likely to express their reason for leaving as 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 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 administrator. Many staff members are promoted 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 promotion 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 by concentrating on internal matters. Support and supervision of staff may consist of nothing more than shuffling papers, reporting statistics, and giving basic training to probation officers.

SERVICES TO PROBATIONERS

The Current Service System

Many problems have prevented development of a system 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 court. Generally, both services are provided by the same staff members, who place more emphasis on services to the court 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 and ways of achieving them for various target groups have not been specified. Moreover, monitoring and evaluation of services have been almost nonexistent.

Another problem is the lack of differentiation between services that should 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 unenthusiastic 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 and services. This leads to two results, both undesirable: identical services are duplicated by probation and one or more other public service agencies, and 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 the child welfare or other public agencies. Probation also has attempted to deal directly with such problems as alcoholism, drug addiction, and mental illness, which ought to 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 guidance clinics in the 1920's and 1930's influenced particularly the juvenile courts and their probation staff.

The terms "diagnosis" and "treatment" began to appear in social work literature and not long after in corrections literature. Those terms come 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 overlooked any connection between crime and such factors as poverty, unemployment, poor housing, poor health, and lack of education.

A review of the literature of the 1930's, 1940's, and 1950's indicates that the casework method became equated with social work, and in turn, casework for probation became equated with a therapeutic relationship with a probationer. A study manual published by the National Probation and Parole Association in 1942 reflects this equation in the table of contents. The titles of three of the chapters are: "Social Casework," "Case Study and Diagnosis," and "Casework as a Means of Treatment." [10]

The literature discussed the development of social work skills in interviewing, 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

[10] Helen D. Pigeon, *Probation and Parole in Theory and Practice* (New York: National Probation and Parole Association, 1942).

rather than workers going into the homes and the communities.

Although 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 probation officer and probationer. Indeed, if probation staff members see casework as their model, it may well be asked how much contact and what 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 curriculum 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:

"The social task 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 is characteristic of many social work jobs." [11]

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 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—from which they could draw on appropriate occasions to meet the offender's needs and the goals of the probation system.[12]

When casework was applied to probation, a blurring of roles occurred between the probation officer and the probation agency. When each probation officer is assigned a certain number of cases, it is 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 to have all the necessary knowledge and skills. The role of the agency in this arrangement is unclear.

No one person can possess all the skills needed to deal with the variety of complicated 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 degrees. Requirements for prior experience may be nonexistent or extensive.

Furthermore, few criteria exist as to what is acceptable performance.This deficiency makes it necessary for individual probation officers to set their own standards and gives them a great deal of latitude in working with probationers. Therefore it is 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 probation officer is expected to account for what is known, or more specifically for what is not known, about the probationer's activities. One consequence is that a probation officer quickly learns that he must protect himself. The system demands accountability when probationers get into the public view through alleged violations or new crimes. Probation staff members recognize that a high level of visibility exists, that they are answerable for their decisions, 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 probation administrators and was never validated. 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 agencies have been known to attempt to increase their staff and reduce the size of the caseload without making any effort to define what needs to be done and what tasks must be performed. Caseload reduction has become an end unto itself.

When caseloads alone have been reduced, results have been disappointing. In some cases, an increase in probation violations resulted, undoubtedly due to increased surveillance or overreaction of well-meaning probation officers. Some gains were made when staff members were given special training in case 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 subsequent section challenged the assumption of a caseload standard. Four levels of workloads were established: (1) ideal (50 cases); (2) intensive (25, i.e., half the ideal); (3) normal (100, twice the ideal); and (4) minimum supervision (with a ceiling of 250 cases). Persons in minimum supervision caseloads were required only to submit a monthly written report; no contacts occurred except when requested by the probationer. It was found that offenders in minimum caseloads performed as well as those under normal supervision. The minimum and ideal caseloads had almost identical violation rates. In the intensive caseloads, the violation rate did not decline, but technical violations increased.

The study indicated that the number of contacts between probationer and staff appeared to have little relationship to success or failure on probation. The conclusion was that the concept of a caseload is meaningless without some type of classification and matching of offender type, service to be offered, and staff.[13]

But the caseload standard remained unchanged until the President's Commission on Law Enforcement and Administration of Justice (the Crime Commission) recommended in 1967 a significant but sometimes overlooked change by virtue of the phrase "on the basis of average ratio of 35 offenders per officer." [14] The change was to a ratio for staffing, not a formula for a caseload.

Agencies are now considering workloads, not caseloads, to determine staff requirements. Specific tasks are identified, measured for time required to accomplish the task, and translated into numbers of staff members needed.

The Decisionmaking Framework

The framework for making decisions about probationers varies widely from agency to agency and within a single agency. Some decisions about a case, such as recommendations for probation revocation or termination, may be made only by the head of the probation agency, while other decisions about the same case may be made by any of a number of staff workers. Consequently, many probational personnel may not know who can make what decisions and under what circumstances. Part of the difficulty may come from statutes that define the responsibilities of a probation officer more explicitly than those of an agency. In addition, probation administrators often do not establish a clear decisionmaking framework.

The decisionmaking patterns 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 is likely to be circumvented. This occurs despite 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 necessity restricts his choices of action. The probationer, therefore, has the task of adapting to an assigned status while seeking to perform the normal roles of a self-sufficient individual in the community: 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 consults 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 him.

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 probation staff only if they are consistent with the conditions of probation or with the notions of the probation system, which usually means the probation officer. In short, the probationer's right to participate in decisionmaking has been limited by probation conditions and the role assigned him by the probation staff or the system.

Although probation staff members may be receptive to the social work concept of self-determination, they are aware that they occupy a position of authority. The very words "probation officer" signify authority, indicating an assigned role of power over another individual.

Furthermore, probation staff members may not be aware of or sensitive to what it means to be a probationer. A study on the interaction between parole staff and parolees indicated that most staff were rela-

[11] Elliot Studt, *Education for Social Workers in the Correctional Field* (New York: Council on Social Work Education, 1959), p. 50.
[12] G. W. Carter, *Fields of Practice: Report of a Workshop* (New York: National Association of Social Workers, 1963).
[13] James Robison et al., *The San Francisco Project*, Research Report No. 14 (Berkeley: University of California School of Criminology, 1969).
[14] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington: Government Printing Office, 1967), p. 169.

tively unaware of the difficulties of being a parolee. Staff and parolees saw the difficulties of parolees differently. Significantly, the parolees seemed more aware than the staff of what the staff could do and consequently to whom they could turn for expert information and advice when needed.[15]

For the most part, the probation system has tended to view offenders as a homogeneous group. The assumption has been that all require the same kind of service; namely, treatment on a one-to-one basis. Confusion exists about the form of treatment to be used and what it is supposed to accomplish. Discussion with most probation staff members reveals their difficulty in explaining what they do to "treat" a probationer and why. They speak of a relationship with each probationer as an end in itself and the sole means of providing services to individuals. Probation staff members also perceive the periodic contact they must make to account for the probationer's presence in the community as helping, treating, or rehabilitating the probationer.

Probationers are a heterogeneous group. The needs of juveniles differ from those of adults; girls and women have different needs than boys and men. There may be some common needs but one means, casework, will not meet them all. For example, casework is not a satisfactory technique for the probationer who has a drug problem. The problem of a probationer may not be interpersonal but one that should be met through specific help such as a job, employment training, or education. Reducing caseloads alone to improve supervision does not necessarily result in better probation services. Research in the past decade provides evidence that other approaches are needed.

The emphasis should be on classification of offenders and development of appropriate service programs, which usually are labeled "treatment." The impetus for this shift has been slowed by lack of research and the ideology of the caseload standard. A recent monograph from the Center for Studies of Crime and Delinquency at the National Institute of Mental Health, provides a good summary of the various models that have been or are being tested.[16] These include specialized supervision programs, guided group interaction programs, and delinquent peer group programs, as well as out-of-home placement and residential treatment. The monograph also covers specialized units in probation and parole such as the California Community Treatment Project and the Community Delinquency Control Project of the California Youth Authority.

Classification of probationers is only one approach to typology. Another is identification and classification of the probationer's needs. To date, this has not been done systematically by any probation agency; what have been identified as basic needs usually are derived from anecdotal reports concerning individual offenders.

A third approach to the typology question involves the question, "Who is to be changed?" To date the primary target for change has been the probationer. A suggestion has been made that the typological approach might be applied to families and to the community.[17]

Future Directions for Service Delivery

To implement an effective system for delivering services to all probationers, it will be necessary to:

1. Develop a goal-oriented service delivery system.
2. Identify service needs of probationers systematically and periodically, and specify measurable objectives based on priorities and needs assessment.
3. Differentiate between those services that the probation system should provide and those that should be provided by other resources.
4. Organize the system to deliver services, including purchase of services for probationers, and organize the staff around workloads.
5. Move probation staff from courthouses to residential areas and develop service centers for probationers.
6. Redefine the role of probation officer from caseworker to community resource manager.
7. Provide services to misdemeanants.

Developing Goals

The probation services system should be goal-oriented, directed toward removing or reducing individual and social barriers that result in recidivism among probationers. To achieve this goal, the probation system should provide a range of services directly and obtain others from existing social institutions or resources. The goal should be to help persons move from supervised care in their own communities to independent living.

The probation system must help create a climate that will enable the probationer to move successfully through transitions from one status to another. The first is from the status of an individual charged with committing an offense to that of a probationer living in the community but not completely independent. The final transition occurs when probation is terminated and the probationer moves from supervised care to an independent life. The goal should be to maintain in the community all persons who, with support, can perform there acceptably and to select for some type of confinement only those who, on the basis of evidence, cannot complete probationer status successfully, even with optimal support.

With this goal in mind, the practice of commitment to an institution for the initial period of probation (variously known as shock probation, split sentence, etc.), as the Federal and some State statutes permit, should be discontinued. This type of sentence defeats the purpose of probation, which is the earliest possible reintegration of the offender into the community. Short-term commitment subjects the probationer to the destructive effects of institutionalization, disrupts his life in the community, and stigmatizes him for having been in jail. Further, it may add to his confusion as to his status.

Identifying Needs of Probationers

To plan for services, a probation system must initiate and maintain an assessment of needs of its target group, the probationers. This assessment must be ongoing because needs change. An inventory of needs should be developed by involving probationers rather than relying solely on probation staff to identify what it believes probationers' problems to be. More specifically, needs assessment requires:

- Knowledge of the target group in terms of such factors as age, race, education, employment, family status, availability of transportation.
- Identification of what services the offender most wants and needs to remove individual and social barriers.
- Identification of services available and conditions under which they can be obtained.
- Determination of which needed and wanted services do not exist or are inadequate.

From an assessment of needs, problem areas can be highlighted and priorities determined. This process makes it possible to specify how the various needs identified are to be met; whether directly through the probation system or through other social institutions; for what number or percentage of the target group; in what period of time; and for what purpose. Specifying objectives provides a means for evaluating whether the system was able to accomplish what it set out to achieve. If an objective is not met, the basis for pinpointing possible reasons is provided.

Differentiating Internal and External Services

Direct probation services should be defined clearly and differentiated from services that should be met by other social institutions. Generally the kinds of services to be provided to probationers directly through the probation system should:

- Relate to the reasons the offender was brought into the probation system.
- Help him adjust to his status as a probationer.
- Provide information and facilitate referrals to needed community resources.
- Help create conditions permitting readjustment and reintegration into the community as an independent individual through full utilization of all available resources.

In addition, probation must account to the court for the presence and actions of the probationer.

Other needs of probationers related to employment, training, housing, health, etc. are the responsibility of other social institutions and should be provided by them. Therefore, most services needed by probationers should be located outside the system itself. These services should be available to probationers just as they are to all citizens, but some social institutions have created artificial barriers that deny ready access by persons identified as offenders.

Employment is an example. Some probation agencies have created positions of job developers and employment finders. Probation systems should not attempt to duplicate services already created by law and supposedly available to all persons. The responsibility of the system and its staff should be to enable the probationer to cut through the barriers and receive assistance from social institutions that may be all too ready to exclude him.

The probation system has a responsibility to assure that probationers receive whatever services they need. To mobilize needed resources for helping probationers, the probation system must have funds to purchase services from an individual vendor, such as a person to provide foster care for a probationer or a psychiatrist to provide treatment, or from agencies or social institutions, such as marital counseling, methadone maintenance, education, and training. The potential for purchasing services for groups has been largely untapped. For example, juvenile probationers with reading difficulties may need diagnostic testing and remedial help. If these cannot be provided through local schools, the probation agency may have to locate a resource and purchase the needed testing and remedial help.

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 ed-

[15] Elliot Studt, *People in the Parole Action System: Their Tasks and Dilemmas* (Los Angeles: University of California Institute of Government and Public Affairs, 1971).
[16] Eleanor Harlow, J. Robert Weber, and Leslie T. Wilkins, *Community-Based Correctional Programs: Models and Practices* (Washington: Government Printing Office, 1971).
[17] Seymour Rubenfeld, *Typological Approaches and Delinquency Control: A Status Report* (Rockville, Md.: National Institute of Mental Health, Center for Study of Crime and Delinquency, 1967), pp. 21–25.

ucation or vocational training, depending upon the identified need of a given group of probationers.

Many other kinds of services may be purchased. Regardless of the service purchased, it is essential that provision be made for monitoring and evaluation of the services to insure that they are, in fact, being provided and that they meet the specified objective.

Organizing the System to Deliver Services

To meet the needs of the increased number of individuals that will be placed on probation within the next decade, the probation service system must be organized differently than it has been. With the recognition that needs continually change, that the probation system itself will not be able to meet all the needs of the probationers, that many of the needs can be met through existing community resources, that new resources will have to be developed, and that some services will have to be purchased, the system should be organized to accomplish the following work activities:

- Needs assessment—ongoing assessment of probationers' needs and existing community resources.
- Community planning and development—establishing close working relationships with public and private social and economic groups as well as community groups to interpret needs; identifying needs for which community resources do not exist; and, in concert with appropriate groups, developing new resources.
- Purchase of services—entering into agreements and monitoring and evaluating services purchased.
- Direct services—receiving and assessing probationers; obtaining and providing information, referral, and followup; counseling; and supervising.

Differentiating work activities permits staff assignments to be organized around a workload rather than a caseload. Tasks directed toward achieving specific objectives should be identified and assigned to staff to be carried out in a specified time. This activity should be coordinated by a manager who makes an assessment of the staff members best able to carry out given tasks. Thus, the manager should know the capacities and capabilities of his workers and their specific areas of competence. He also should be able to help his subordinates work together as a team rather than as individuals.

A trend in modern organizational theory is to use teams of staff members with different backgrounds and responsibilities. Teams of individuals from varying disciplines and with differing skills may be assembled for a given task and project and disbanded when the project is completed. The leadership within the team may change, with a junior person serving as the team leader if there is particular need for his knowledge and skills.

In examining the various functions within the probation service delivery system it becomes apparent that there is a range of jobs requiring different kinds of knowledge and skills. Paraprofessionals and those in other "new career" occupations can provide services complementary to those of the probation officer. The potential for assigning a group of probationers to a team of probation officers, paraprofessionals, and other new careerists, headed by a team leader who does not function in the traditional social work supervisory role, is worth testing.

Location of Services

Probation services should be readily accessible to probationers. Therefore they should be based in that part of the community where offenders reside and near other community services. Staff serving probationers should be removed from courthouses and separated from staff providing services to the courts.

Services to probationers in rural areas may have to be organized on a regional rather than the traditional county basis. Service centers should be located in the more populated areas, with mobile units used for outlying districts. In such areas, where transportation is a problem, it is important that probation and other community services be in the same physical location.

Services to offenders should be provided in the evening hours and on weekends without the usual rigid adherence to the recognized work week. The problems of offenders cannot be met by conventional office hours. Arrangements should be made to have a night telephone answering service available to probationers.

Probation Officers as Community Resource Managers

The responsibility for being the sole treatment agent that has traditionally been assigned to the probation officer no longer meets the needs of the criminal justice system, the probation system, or the offender. While some probation officers still will have to carry out counseling duties, most probation officers can meet the goals of the probation services system more effectively in the role of community resource manager. This means that the probation officer will have primary responsibility for meshing a probationer's identified needs with a range of available services and for supervising the delivery of those services.

To carry out his responsibilities as a community resource manager, the probation officer must perform several functions. In helping a probationer obtain needed services, the probation officer will have to assess the situation, know available resources, contact the appropriate resource, assist the probationer to obtain the services, and follow up on the case. When the probationer encounters difficulty in obtaining a service he needs, the probation officer will have to explore the reasons for the difficulty and take appropriate steps to see that the service is delivered. The probation officer also will have to monitor and evaluate the services to which the probationer is referred.

The probation officer will have a key role in the delivery of services to probationers. The change in responsibility will enable him to have greater impact on probationers. As community resource manager, he will utilize a range of resources rather than be the sole provider of services—his role until now and one impossible to fulfill.

Services to Misdemeanants

The group that comprises the largest portion of the offender population and for which the least service is available are misdemeanants. Misdemeanants usually are given short jail sentences, fines, or suspended sentences. Even in jurisdictions with means to provide services to misdemeanants, probation is used in a relatively small percentage of cases. The rationale usually given is that misdemeanants are not dangerous to the community. But they are a major factor in the national crime problem: they tend to be repeaters; they tend to present serious behavior problems; as a group, they account for a large expenditure of public funds for arrest, trial, and confinement with little or no benefit to the community or the offender. The offense has been the determining factor rather than the offender.

If probation services continue to be provided as they now are, it will not be feasible to meet the varied needs of misdemeanants, many of whom come from disadvantaged groups and lack opportunities for training and jobs. However, with a probation services system that draws upon a range of resources to meet probationers' needs, as described in this chapter, it will be possible to provide services to misdemeanants. Misdemeanants should be placed on probation long enough to allow for effective intervention, as indicated in Chapter 5, Sentencing.

SERVICES TO COURTS

The services of probation to the courts traditionally have taken the form of reports. Originally, the probation officer submitted orally to the judge information used for screening candidates for probation. With the expansion of probation, the process became formalized, and written reports were prepared. The report became a record available to any probation officer handling the same case, but the agency limited outside access, thus establishing the confidentiality concept.

The initial purpose of investigation and report was to provide information to the court. However, other uses were proposed and adopted. A written report could assist the probation officer to whom a probationer was assigned, the institution to which he might be sent, the paroling or aftercare agency when the person was considered for release from an institution, and researchers.

Consistent efforts have been made through the years to improve the reports. Both private and public agencies have published documents setting forth what the contents should be. The National Council on Crime and Delinquency, originally organized as the National Probation Association, was the first private agency to do so. The American Correctional Association has focused on standards for the presentence report. The American Bar Association Project in 1970 also published presentence report standards. The U.S. Children's Bureau was the first Federal agency to publish standards for social studies. The Probation Division of the Administrative Office of the United States Courts has published material on presentence reports for the Federal probation staff that has influenced probation personnel nationwide. Many State agencies also have published standards.

The efforts and products of the various organizations have been influenced by people who shared the same education and sometimes had overlapping memberships or roles in both private and public sectors. Social work was the common background for many of the individuals who had key parts in determining what information was to be included in the written report. Their frame of reference was a social work model that involved strong emphasis on the person's life history.

Several criticisms have been made about the usual process of investigation and report. The literature emphasized the need to verify; this has been carried to extremes; e.g., staff members would attempt to verify the education of a 45-year-old defendant. Another criticism has been that investigations and reports became equated, so that the report contained almost all information secured in the process of investigation. Critics would ask, for example, why reports had to contain information about the defendant's deceased grandparents, including where they were born, where they had lived, and what work they had done.

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 documenting optional data would depend on the requirements of a specific case. Under "health" the following is listed as essential data:

Identifying information (height, weight, complexion, eyes, hair, scars, tattoos, posture, physical proportions, tone of voice, manner of speech).

Defendant's general physical condition and health problems based on defendant's estimate of his health, medical reports, probation officer's observations.

Use of narcotics, barbiturates, marijuana.

Social implications of defendant's physical health (home, community, employment, association).[18]

The last three items presumably 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 the decision game played 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.[19]

The project staff selected cases previously referred for presentence reports. The contents of the reports were analyzed and classified under 24 subject headings commonly used by the probation staff. The information for each heading was reproduced on a file card. The cards were then arranged with the captions visible so that all 24 titles could be shown at the same time to the probation staff. By selecting a caption 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 any order.

The results upset some of the assumptions. Some probation officers used only one card in making recommendations. The most 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 and prior record are two key factors. Attitude, employment history, and marital history are factors of moderate importance. It would appear that most data traditionally collected and presented in written reports actually are not used by staff to develop recommendations for disposition.

Articles in correctional publications emphasize the diagnostic aspect in making good investigations and written reports, with the apparent implication that probation workers operate from a different theoretical basis than that used by a judge. One study examined presentence reports in an effort to discern differences and similarities in the theoretical frameworks underlying the operation of the probation officer and the court. The analysis revealed no differences. The findings suggest that the work of a probation officer in preparing presentence reports is not based on diagnostically oriented casework.[20]

In 1970, 66 judges of courts with misdemeanant jurisdiction and 65 judges of courts with felony jurisdiction in New York City responded to a questionnaire asking them to list information they deemed (1) essential, (2) desirable but not essential, and (3) of little or no value for presentence reports. Sixteen different items, under captions generally used by probation staff and judges, were given on the questionnaire. Only 10 items were listed by 55 percent or more of the judges with felony jurisdiction, while the judges in the other courts selected only eight items. The topics rated highest were: offense, drug use or involvement, employment history, prior record, and mitigating circumstances. The result was a recommendation that presentence reports should focus on those items, limited in number, deemed essential by the judges.[21]

A study asking probation officers to rank the most important information used in selecting recommendations for juvenile cases indicated that information about an offense was first, family data second, and previous delinquency problems third. The same group of officers, when asked what they thought the court would consider most important, ranked present offense first, previous delinquency second, and the child's attitude toward the offense third. In both rankings the least important of those aspects questioned were child's interests, activities, and religion.[22]

In a study about criteria for probation officers' recommendations on juveniles, an analysis was made of the data contained in the reports.[23] The items most often recorded were objective, such as age, sex, religion, race, the delinquent act, family composition, school and church attendance, and economic situation. Missing were such subjective items as personalities of the 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 pathology and in developing a treatment plan.

The evidence suggests that written reports should contain only that information relative and pertinent to the decision being made by the judge. Thus, probation agencies should first ask the judges to identify that information needed by the court. The evidence indicates judges want to know the "here and now" of the offender, not a detailed life history.

The American Bar Association project calls for two categories of written report. The first is a short-form report used for disposition or for screening to select those cases requiring additional information. The second category is a more complete investigation. The latter report, if properly used, would be prepared in only a limited number of cases. The ABA recommendation should be adopted. The use of the two reports has been discussed in Chapter 5, Sentencing.

Although correctional institutions and paroling authorities may challenge the brevity of reports, those agencies have the responsibility to identify their actual informational needs. When that is done, the informational requirements of institutions and parole can be met. Probation staff, or the investigating officers who may be assigned this responsibility in the future, can always collect more information than will be included in a report designed for a judge. A supplemental report might be made for the correctional institutions and the paroling authorities.

Responsibility for Written Reports

At present probation officers do the investigation and prepare the written report. The judge may hold the probation officer accountable for the report's contents. Good administrative practice dictates that 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 use their skills more appropriately. For example, other employees could collect prior police and court records, employment records, and school records. The probation officer's time could thus be used for interviewing defendant, family, police 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 delinquent, 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 indicate beforehand whether he will plead guilty. There is considerable 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 probation to have the report available more readily after the plea is entered.

While there may be some strong reasons for conducting prepleading 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 systems 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 probation staff might be trusted. However, the relationship in probation is different from that between a doctor or lawyer and his client, where the information is privileged. A probation officer receives information only because he is an employee of an organization. Thus the informa-

[18] Administrative Office of the U.S. Courts, Division of Probation, *The Presentence Investigation Report* (Washington: AOUSC, 1965), p. 17.

[19] Robison et al., *The San Francisco Project.*

[20] Yona Cohn, "The Presentence Investigation in Court: A Correlation between the Probation Officer's Reporting and the Court Decision," unpublished doctoral thesis, Columbia University School of Social Work, 1969.

[21] Data from unpublished report on the study results.

[22] Seymour Z. Gross, "The Pre-Hearing Juvenile Report: Probation Officer's Conception," *Journal of Research in Crime and Delinquency*, 4 (1967), 212–217.

[23] Yona Cohn, "Criteria for the Probation Officer's Recommendations to the Juvenile Court Judge," *Crime and Delinquency*, 9 (1963), 262–275.

tion belongs properly to the agency itself, not to the staff member.

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 for a child can see 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 sources of information. It is also argued that disclosure could damage the offender, his family, and the potential relationship with the probation officer; and, as a result, probation staff might produce superficial reports.

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 refute 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 in its 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. *Kunz*, 55 N.J. 128, 259 A.2d 895 (1969), has mandated disclosure of the presentence report. The issue of disclosure is discussed in Standard 5.16 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.

Requiring a written report before a disposition of probation can be used may not be as valuable as requiring a written report before an individual can be sent to a correctional facility. Rumney and Murphy, in a followup study in 1948 of the first thousand juveniles and adults placed on probation in Essex County, New Jersey in 1937, found that:

> Our studies failed to disclose any significant difference with respect to outcome as between those who were released on probation following investigation by a probation officer and those who were released on probation by the court without preliminary investigation.[24]

If the principle is adopted that probation should be used as disposition of first choice and a correctional 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 dispositional 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 used 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 without formal court 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 involved discretion to look into a matter and resolve it informally.

Many factors led to the practice of adjusting juvenile cases. Some matters were too trivial to warrant action other than a warning not to repeat the act. Parents sometimes came with their child to the court seeking advice or direction rather than any disciplinary action by the court. In some situations, because favorable home conditions existed, the odds were favorable that results of informal adjustment would be as good as or better than formal court action.

The process called "intake" has been practiced in different ways by various courts resulting in a variety of procedures. In some places, it was limited to screening out cases. In other places, the process was expanded to "unofficial probation," which meant interaction among a child, family, and probation officer with all the ingredients of probation as a disposition by the court except formal court action.

[24] Jay Rumney and Joseph D. Murphy, *Probation and Social Adjustment* (New Brunswick, N.J.: Rutgers University Press, 1952), p. 252.

The first edition of the Standard Juvenile Court Act, published in 1926 by the National Probation Association, provided a procedure for a preliminary inquiry and investigation before the filing of a petition. The comment was made that the court had an inherent right to exercise discretion before accepting official jurisdiction, and that the practice of screening had grown so widespread that it should be recognized in law.

Screening of cases at intake continued, and use of "unofficial probation" became so common that it was formally recognized by the U.S. Department of Health, Education, and Welfare in reporting national juvenile court statistics. The term continued until challenged by the Advisory Council of Judges of the National Probation and Parole Association in 1954. The judges, representing a cross-section of courts throughout the country, declared that granting probation was a judicial function and should not be confused with a nonjudicial service rendered for a limited period of time. The phrase "nonjudicial service" was used 3 years later by the U.S. Department of Health, Education, and Welfare in reporting juvenile court statistics. The term "informal service" also is used. (See Chapter 8, Juvenile Intake and Detention.)

"Standards for Specialized Courts dealing with Children," a 1954 publication from the Children's Bureau, offered ideas to rectify some abuses that had developed. The publication indicated that referral of a child or family to a social agency should be voluntary, attendance at any conference in an effort to adjust a matter should be voluntary, and conditions should not be imposed on any of the parties.

Guides for Juvenile Court Judges, published in 1957 by the National Council on Crime and Delinquency, presented guidelines for a screening process and, for the first time, criteria for selecting cases for diversion or judicial handling. The book provided that in all cases handled nonjudicially, voluntary acceptance by all parties was essential, the allegation of delinquency or neglect should not be disputed, and the parent or child must be aware of his right to a court hearing. The time during which the matter might be handled nonjudicially was limited; no nonjudicial service should extend beyond 3 months without review by court.

Guidelines have since been made statutory in several States. Although the intake or screening process may be carried out in a juvenile court because of the judge's decision to do so, the preferable pattern is for a statutory provision or a rule providing for the nonjudicial service. This is particularly true when the statute or rule includes the provision that no report from staff at intake can be made available to the judge until after a hearing has been held to determine the validity of the allegations of the petition.

Criteria for selecting cases to be handled nonjudicially—that is, without the filing of a petition—are:

- There is need for a relatively short period of service.
- The matter is not an emergency, and the offense has not had serious repercussions in the community.
- All parties cooperate and a disposition involving change of custody is not in question.

Criteria for selecting cases to be handled judicially, with filing of petition and formal court hearing, are:

- Either party indicates a desire to appear before the court.
- There is a dispute about the allegations of the petition.
- A serious threat to others is involved.

Decisionmaking at the point of intake is extremely important. Two basic decisions must be made, and both involve a considerable amount of discretion. The first decision is relatively simple: does the matter fall within the jurisdiction of the court? For example, if the allegation is delinquency, is the child within the age range for that particular State? If there is jurisdiction, the second question is whether official intervention and the authority of the court are required.

These key decisions require that competent staff be assigned to intake work. The staff must be skillful interviewers, have a broad knowledge of resources available, and be able to make decisions quickly.

Intake screening requires continuing staff training. The criteria staff must use are subjective. That subjectivity permits a latitude that tends to widen unless the staff engages in a continuing process of examining how and why they make decisions at intake.

Adult Pretrial Services

Probation staff have provided services prior to hearings in juvenile matters for some time, but they have been reluctant to do so at the pretrial stage for adults. The contrast is sharpest in the area of detention, both prehearing and pretrial.

The premise usually is expressed in law that a child is to be released to parents unless there is substantial probability the child will not appear in court or would commit, before the time of the court hearing, an act that would be a crime if done by an adult. Probation staff members assess a child's potential and may be authorized by a judge or by statute to screen children away from detention. Many children therefore are not detained.

The opposite prevails for the adult. When ar-

rested, the adult literally has to prove to the court he should be released. Proof usually is provided in the form of bail or bond. The number of people annually passing through the jails of this country is estimated at no less than one million and as high as 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.[25]

As presently constituted, the jails in this country have been described as a menace to the society they allegedly are serving. Jailing people awaiting trial because they cannot afford bail is ineffective, inhumane, and perhaps unconstitutional. To those sent to jail, the experience is psychologically and sociologically devastating and at the same time provides opportunities to acquire an education in crime.

Various strategies for decreasing the jail population have been advanced, including: decriminalization of such offenses as drunkenness and vagrancy; diversion just after a defendant's arrest; greater use of summons by the police rather than arrest; bail reform; and release on recognizance (ROR). The Vera Institute of Justice, in its Manhattan Bail Bond Project in 1961 to 1964, focused attention on the judge's need for information at the time of arraignment. The courts long have had the authority to release individuals on recognizance. The Vera study indicated that when information about the defendant was provided to the judge, the possibilities of ROR increased. Information was collected and was withheld from the court in some cases and not in others to determine the outcome. Four times as many individuals were released on recognizance when the information was provided.[26]

The Manhattan Bail Bond Project proved that information could be secured easily and given to the judge at arraignment or shortly thereafter. The results of that project had national impact. The project was replicated throughout the country, usually under the sponsorship of private groups. Only a small number of probation agencies have undertaken this type of pretrial service.

The ABA project has recognized that adults are jailed unnecessarily pending trial and proposed that release on recognizance be considered in every case. Their standards include provision for investigation for that purpose. The quickest way to expand ROR programs may be for probation personnel to collect information for 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 the 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, information about the crime must be excluded from any ROR investigation. Information as to the defendant's stability 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 who now are jailed awaiting trial; certainly it would be less damaging.

MANPOWER FOR PROBATION

The Commission's general positions on manpower for corrections are discussed in Chapter 14 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 will require, among other things, a considerable expansion in the size of probation staffs. 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 in most agencies. Moreover, the evidence indicated that graduate schools of social work could not turn out sufficient M.S.W.'s to meet the demand. Joint Commission studies indicated that persons with bachelor's degrees can do and are doing probation officers' jobs effectively. It therefore recommended the undergraduate degree as the standard educational requirement for entry-level professional work in probation.[27]

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 tasks traditionally assigned to professionals can perfectly 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 up 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 classification 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 give persons with less than a college 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 to:

- Direct service—for example, explain to the individual and family the purpose of probation.
- Escort—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—such as taking part in staff meetings for training and research activities.[28]

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 group of staff members—none 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 would extend the scope of current services to probationers. Many volunteers have special skills that are extremely helpful to probationers. And the very fact that they are volunteers creates a sense of personal equality very different from the superior/inferior attitude that usually characterizes the 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 probation. Tutoring a child is an example; offering advice on buying a car or borrowing money is another. Serving as receptionists in a probation service center 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"

[25] See, for example, Caleb Foote, "Compelling Appearance in Court; Administration of Bail in Philadelphia," *University of Pennsylvania Law Review*, 102 (1954), 1031; Alfred Kamin, "Bail Administration in Illinois," *Illinois Bar Journal*, 53 (1965), 674; Charles O'Reilly and John Flanagan, *Men in Detention: A Study of Criteria for the Release on Recognizance of Persons in Detention* (Chicago: Citizens' Committee for Employment, 1967).

[26] Charles Ares and Herbert Sturz, "Bail and the Indigent Accused," *National Probation and Parole Association Journal*, 86 (1962), 12–20.

[27] Joint Commission on Correctional Manpower and Training, *A Time to Act* (Washington: JCCMT, 1969), p. 30.

[28] New York State Division of Probation, *The Paraprofessional Demonstration Project in Probation*. New York City: 1971.

chapter in the Commission's Report on Community Crime Prevention.

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 out 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 background 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 piecemeal, 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 meeting agency goals through a more effective services delivery system that also provides workers with a sense of accomplishment and opportunities for career development.

Standard 10.1

Organization of Probation

Each State with locally or judicially administered probation should take action, in implementing Standard 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 for delivery of services to the courts and to probationers until separate staffs to perform services to the courts are established within the courts system.

During the period when probation is being placed under direct State operation, the State correctional agency 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 regulative rather than service-oriented bodies.

Placement in the executive branch has these features to recommend it:

1. Allied human service agencies are located within the executive branch.
2. All other corrections subsystems are located in the executive branch.
3. More coordinated and effective program budgeting as well as increased ability to negotiate fully in the resource allocation process becomes possible.
4. 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

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Probation*. New York: Institute of Judicial Administration, 1970.
2. American Correctional Association. *Manual of Correctional Standards*. 3d ed. Washington; ACA, 1966.
3. National Council on Crime and Delinquency. *Model Act for State Correctional Services*. New York: NCCD, 1966.
4. Nelson, Elmer K., Jr., and Lovell, Catherine H. *Developing Correctional Administrators*. Washington: Joint Commission on Correctional Manpower and Training, 1969.
5. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington: Government Printing Office, 1967.
6. Smith, Robert L. *A Quiet Revolution—Probation Subsidy*. Washington: U.S. Department of Health, Education, and Welfare, 1972.

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.

4. The primary function of the probation officer should be that of community resource manager for probationers.

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

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Probation* New York: Institute of Judicial Administration, 1970.
2. Bloodorn, Jack C.; Maclatchie, Elizabeth B.; Friedlander, William; and Wedemeyer, J. M. *Designing Social Service Systems*. Chicago: American Public Welfare Association, 1970.
3. Litwak, Eugene, and Rothman, Jack. "Impact of Factors of Organizational Climate and Structure on Social Welfare and Rehabilitation Workers and Work Performance," in *Working Papers No. 1: National Study of Social Welfare and Rehabilitation Workers, Work and Organizational Contexts.* Washington: Government Printing Office, 1971.
4. Olmstead, Joseph. "Organizational Factors in the Performance of Social Welfare and Rehabilitation Workers," in *Working Papers No. 1: National Study of Social Welfare and Rehabilitation Workers, Work and Organizational Contexts.* Washington: Government Printing Office, 1971.
5. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington: Government Printing Office, 1967.
6. Studt, Elliot. *The Reentry of the Offender into the Community*. Washington: Government Printing Office, 1967.

Related Standards

The following standards may be applicable in implementing Standard 10.2.

2.12 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.
13.2 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 misdemeanant and felony probation. Other than the possible length of probation terms, there should be no distinction between misdemeanant 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 jailing of these 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 misdemeanant 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 misdemeanant probation.

References

1. Dressler, David. *Practice and Theory of Probation and Parole*. 2d ed. New York: Columbia University Press, 1969.
2. Joint Commission on Correctional Manpower and Training. *Perspectives on Correctional Manpower and Training*. Washington: JCCMT, 1970.
3. Newman, C. L. *Sourcebook on Probation, Parole and Pardons*. 3d ed. Springfield, Ill.: Thomas, 1968.
4. President's Commission on Law Enforcement and Administration of Justice. *The Challenge of*

Crime in a Free Society. Washington: Government Printing Office, 1967.
5. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington: Government Printing Office, 1967.

Related Standards

The following standards may be applicable in implementing Standard 10.3.

2.12 Disciplinary Procedures.
5.4 Probation (Sentencing).
5.14 Requirement for Presentence Report and Content Specification.
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

examined 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

1. Fine, Jean Szalocsi. "A Systems Approach to Manpower Utilization," in *Working Papers No. 1: National Study of Social Welfare and Rehabilitation Workers, Work and Organizational Contexts.* Washington: Government Printing Office, 1971.
2. Fine, Jean Szalocsi. "Issues in Manpower Development Program Planning," in *Working Papers No. 1: National Study of Social Welfare and Rehabilitation Workers, Work and Organizational Contexts.* Washington: Government Printing Office, 1971.
3. Fine, Sidney A. "A Systems Approach to Manpower Development in Human Services," *Public Welfare*, 28 (1970), 81–97.
4. Joint Commission on Correctional Manpower and Training. *Perspectives on Correctional Manpower and Training.* Washington: JCCMT, 1970.
5. Joint Commission on Correctional Manpower and Training. *A Time to Act.* Washington: JCCMT, 1969.
6. Piven, Herman, and Alcabes, Abraham. *The Crisis of Qualified Manpower for Criminal Justice: An Analytic Assessment with Guidelines for New Policy.* Washington: Government Printing Office, 1969. Vol. 1.
7. U.S. Department of Health, Education, and Welfare. *Differential Use of Staff in Family and Child Welfare Services.* Washington: USDHEW, 1970.

Related Standards

The following standards may be applicable in implementing Standard 10.4.

6.3 Community Classification Teams.
7.2 Marshaling and Coordinating Community Resources.
10.2 Services to Probationers.
13.2 Planning and Organization.
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.
14.7 Participatory Management.
14.8 Redistribution of Correctional Manpower Resources to Community-Based Programs.
16.4 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 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 insure 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

1. American Bar Association Project on Minimum Standards for Criminal Justice. *Standards Relating to Pretrial Release.* New York: Institute of Judicial Administration, 1968.
2. Ares, Charles, and Sturz, Herbert, "Bail and the Indigent Accused," *National Probation and Parole Association Journal,* 8 (1962), 12–20.
3. Hickey, William L. "Strategies for Decreasing Jail Populations," *Crime and Delinquency Literature,* 3 (1971), 76–94.
4. Mattick, Hans W. "The Contemporary Jails of the United States: An Unknown and Neglected Area of Justice," in Daniel Glaser, ed., *Handbook of Criminology.* Chicago: Rand McNally, 1972.
5. Moelleur, Richard R. *Bail Reform in the Nation's Capital.* Washington: Georgetown University, 1966.
6. Wallace, John. "Probation Administration," in Daniel Glaser, ed., *Handbook of Criminology.* Chicago. Rand McNally, forthcoming.

Related Standards

The following standards may be applicable in implementing Standard 10.5.

3.1 Use of Probation.
6.3 Community Classification Teams.
7.2 Marshaling and Coordinating Community Resources.
9.4 Adult Intake Services.
16.11 Probation Legislation.

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 only 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 gallows. The Great Law directed: ". . . that every county within the province of Pennsylvania and territories thereunto belonging shall . . . build or cause to be built in the most convenient place in each

respective county a sufficient house for restraint, labor, and punishment of all such persons as shall be thereunto commited by laws."

In 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 indiscriminately.

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 penology in Pennsylvania, a penology which to a large degree eliminated capital and corporal punishment as the principal sanctions for major crimes. The penitentiary 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 in Philadelphia was the most expensive public building constructed in the New World to that time. States were extremely proud of these physical plants. Moreover, they saw in them an almost utopian ideal. They were to become stabilizers of society. They were to become laboratories committed to the improvement of all mankind.[1]

When these new penitentiaries were being planned and constructed, practitioners and theorists held three factors to be the primary contributors to criminal 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 indolence 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 from them 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 within one's cell. There the offender was denied all contact with the outside world except that provided by the Scriptures, religious tracts, and visits from specially selected, exemplary 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, each equipped with plumbing and running water. In the cell were 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 influences; provision of work; and opportunity for penitence, introspection, and acquisition of religious knowledge.[2]

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 during nonworking hours. During working hours inmates labored in factory-like shops. The contaminating effect of the congregate work situation was eliminated by a rule of silence. Inmates were prohibited from communicating in any way with other inmates or the jailers.

The relative merits of these two systems were debated vigorously for half a century. The Auburn system ultimately prevailed in the United States, because it was less expensive and because it lent itself more easily 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.

Imprisonment as an instrument of reform was 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 hold offenders gave the public a sense of security. It also was thought to deter people from crime by fear of imprisonment.

[1] For a history of these developments, see David Rothman, *The Discovery of the Institution: Social Order and Disorder in the New Republic* (Little, Brown, 1971), chs. 3 and 4.

[2] Harry Elmer Barnes, *The Story of Punishment* (Patterson-Smith, 1972), ch. 6.

Imprisonment had many disadvantages, too. Principal among them was the phenomenon that so many of its "graduates" came back. The prison experience often further atrophied the offender's capacity to live successfully in the free world. The prison nevertheless has persisted, partly because a civilized 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 confinement 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 where foreigners and blacks who were not adjusting could be held outside the mainstream of society's concern. The new prisons, built in the most remote areas of the States, became asylums, not only for the hardened criminal but also for the inept and unskilled "un-American." Although the rhetoric of reformation persisted, the be-all and end-all of the prison was to hold.

From 1830 to 1900 most prisons built in the United States reflected that ultimate value—security. Their principal features were high walls, rigid internal security, cage-like cells, sweat shops, a bare minimum of recreation space, and practically nothing else. They kept the prisoners in and the public out, and that was all that was expected or attempted.

Many of these prisons were constructed well and have lasted long. Together they form the backbone of our present-day correctional system. As Table 11.1 shows, 56 of them, remodeled and expanded, still are in use. They currently house approximately 75,000 of the 110,000 felons in maximum security facilities. Today 56 percent of all State prisoners in America are in structures built to serve maximum security functions. (See Table 11.2.)

Any attempt to describe the "typical" maximum security prison is hazardous. One was constructed almost two centuries ago. Another was opened in 1972. The largest confines more than 4,000 inmates,

Table 11.1. Date of Opening, State Maximum Security Prisons Still in Operation.

Date of Opening	Number of Prisons
Prior to 1830	6
1831 to 1870	17
1871 to 1900	33
1901 to 1930	21
1931 to 1960	15
1961 to date	21
Total	113

Source: American Correctional Association, *1971 Directory of Correctional Institutions and Agencies of America, Canada and Great Britain* (College Park, Md.: ACA, 1971).

another less than 60.[3] Some contain massive undifferentiated cell blocks, each caging as many as 500 men or more. Others are built in small modules housing less than 16. The industries in some are archaic sweat shops, in others large modern factories. Many provide absolutely no inside recreation space and only a minimum outside, while others have superlative gymnasiums, recreation yards, and auditoriums. Some are dark, dingy, depressing dungeons, while others are well glazed and sunny. In one the early warning system consists of cow bells strung along chicken wire atop the masonry wall, while in others closed circuit television and sensitive electronic sensors monitor the corridors and fences.

Maximum security institutions are geared to the fullest possible supervision, control, and surveillance of inmates. Design and program choices optimize security. Buildings and policies restrict the inmate's movement and minimize his control over his environment. Other considerations, such as the inmate's individual or social needs, are responded to only in conformity with security requirements. Trustworthiness on the inmate's part is not anticipated; the opposite is assumed.

Technology has brought much to the design and construction of these institutions, and development of custodial artifacts has far outpaced skill in reaching inmates and in using rapport with them to maintain security or control. A modern maximum security institution represents the victory of external control over internal reform.

[3] Data from American Correctional Association, *1971 Directory of Correctional Institutions and Agencies of the United States of America, Canada, and Great Britain* (College Park, Md.: ACA, 1971).

The prison invariably is surrounded by a masonry wall or double fence with manned towers. Electronic sensing devices and lights impose an unremitting surveillance and control. Inside the institution, the need for security has dictated that men live in windowless cells, not rooms. Doors, which would afford privacy, are replaced by grilles of tool-resistant steel. Toilets 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 backless stools and eat without forks and knives at tables devoid of condiments.

Lest security be 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 guard'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 in the design of the secure institution. Places for privacy or small group activity are structurally, if not operationally, precluded.

Maximum security institutions, then, may be viewed as those facilities characterized by 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, Tocqueville 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 might serve as a model, we find another whose prisons present the example of everything which ought to be avoided." [4]

He was right in 1833. His words still ring true in 1972.

Medium Security Correctional Centers

Since the early 20th century, means of housing the offender in other than maximum security prisons 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. Pretrial holding centers, or 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, 30 percent of all State inmates, are housed in such facilities. (See Table 11.2.)

Table 11.2. Population of State Correctional Facilities for Adults, By Security Classification of Inmates.

Classification	Inmates	Percent of Total Population
Maximum	109,920	56
Medium	57,505	30
Minimum	28,485	15
Total	195,910	100

Source: ACA, *1971 Directory* and poll taken by the American Foundation's Institute of Corrections, which contacted the head of every State department of corrections.

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 rehabilitation 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 still is security.

These institutions are designed to confine individuals where they can be observed and controlled. All have perimeter security, either in the form of masonry 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.

Internal security usually is maintained by: locks, bars, and concrete walls; clear separation of activities; highly defined movement paths both indoors and outdoors; schedules and head counts; sightline supervision; and electronic devices.

Housing areas, medical and dental treatment rooms, schoolrooms, recreation and entertainment facilities, counseling offices, vocational training and industrial shops, administration offices, and maintenance facilities usually are clearly separated. Occasionally they are located in individual compounds complete with their own fences and sally ports. A complex series of barred gates and guard posts controls the flow of traffic from one area to another. Central control stations keep track of movement at all times. Circulation is restricted to specified corridors or outdoor walks, with certain spaces and movement paths out of bounds. Closed circuit television and alarm networks are used extensively. Locked steel doors predominate. Bars or concrete substitutes line corridors, surround control points, and cross all external windows and some internal ones.

Housing units in medium security institutions vary from crowded dormitories to private rooms with furniture. Dormitories may house as many as 80 persons or as few as 16. Some individual cells have grilled fronts and doors.

The variations found in maximum security institutions also are seen in medium security correctional facilities, but they are not so extreme, possibly because the latter were developed in a much shorter period.

Several heartening developments have occurred recently in the medium security field. Campus-type plants have been designed that largely eliminate the cramped oppressiveness of most confinement. Widely separated buildings are connected by meandering pathways, and modulated ground surfaces break monotony. Attractive residences house small groups of inmates in single rooms.

Schools, vocational education buildings, gymnasiums, and athletic fields compare favorably with those of the best community colleges. Yet external security provided by double cyclone fences and internal security enforced by excellent staff and unobtrusive building design protect the public from the inmates and the inmates from each other.

If confinement to institutions is to remain the principal sanction of our codes of criminal justice, medium security plants and programs such as these, not the traditional "minimum security" prison farms, should be the cornerstone of the system.

Minimum Security Correctional Centers

The facilities in this group are diverse but generally have one feature in common. They are relatively open, and consequently custody is a function of classification rather than of prison hardware. The principal exceptions are huge prison plantations on which entire penal populations serve time. Minimum security institutions range from large drug rehabilitation centers to small farm, road, and forestry camps located throughout rural America.

Most, but not all, minimum security facilities have been created to serve the economic needs of society and only incidentally the correctional needs of the offenders. Cotton is picked, lumber is cut, livestock is raised, roads are built, forest fires are fought, and parks and State buildings are maintained. These are all legitimate tasks for prisoners, especially while our system still (1) receives large numbers of offenders who are a minimal threat to themselves and to the general public, and (2) holds men long after they are ready for freedom. Moreover, open facilities do serve therapeutic purposes by removing men from the stifling prison environment, separating the young and unsophisticated from the predators, and substituting controls based upon trust rather than bars. All these aspects are laudable.

However, these remote facilities have important deficiencies. They seldom provide educational or service resources other than work. Moreover, the predominantly rural labor bears no relationship to the work skills required for urban life. Separation of the prisoner from his real world is almost as complete as it would have been in the penitentiary.

One remarkable minimum security correctional center was opened in 1972 at Vienna, Ill., as a branch of the Illinois State Penitentiary. Although a large facility, it approaches the quality of the nonpenal institution. Buildings resembling garden apartments are built around a "town square" complete with churches, schools, shops, and library. Paths lead off to "neighborhoods" where "homes" provide private rooms in small clusters. Extensive provision has been made for both indoor and outdoor recreation. Academic, commercial, and vocational education facilities equal or surpass those of many technical high schools.

This correctional center has been designed for 800 adult felons. Unfortunately, most of them will come from the State's major population centers many miles away. Today this open institution is enjoying the euphoria that often accompanies distinctive newness. One may speculate about the future, however, when community correctional programs siphon from the State's prison system many of its more stable and less dangerous offenders. Fortunately, this facility will not be rendered obsolete by such a development. The nonprisonlike design permits it to be adapted for a variety of educational, mental health, or other human service functions.

[4] Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States and Its Application in France*, H. R. Lantz, ed. (Southern Illinois University Press, 1964), p. 48.

One generalization about the future of minimum security facilities seems warranted. As society finds still more noninstitutional and 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. Perhaps fewer commit 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.[5]

Tomorrow may be different. As women increasingly assume more roles previously seen as male, their involvement in crime may increase and their treatment at the hands of the agencies of justice change. A possible, if unfortunate, result could be an increase in the use of imprisonment for women.

Correctional institutions for women present a microcosm of American penal practice. In this miniature model, the absurdities and irrationalities of the entire system appear in all their ludicrousness. In one State, the few women offenders are seen to be so dangerous as to require confinement in a separate wing of the men's penitentiary. There they are shut up in cells and cell corridors without recreation, services, or meaningful activity.

In other places, new but separate facilities for women have been built that perpetuate the philosophy, the operational methods, the hardware, and the repression of the State penitentiary. These facilities are surrounded by concertina fences, and the women's movements are monitored by closed circuit television. Inmates sit endlessly playing cards, sewing, or just vegetating.

A woman superintendent has observed that these institutions should release exclusively to San Francisco or Las Vegas because the inmates have been prepared for homosexuality or card dealing. Everything about such places—their sally ports, control centers, narrow corridors, small cells, restrictive visiting rooms—spells PRISON in capital letters. Yet these institutions were not built in the 19th century. They are new.

[5] ACA, *1971 Directory*

Compared to women's institutions in other States, the prisons just described demonstrate the inconsistency of our thinking about criminals in general and women prisoners specifically. One center—the Women's Treatment Center at Purdy, Wash.—vividly demonstrates that offenders can be viewed as civilized human beings. Built around multilevel and beautifully landscaped courtyards, the attractive buildings provide security without fences. Small housing units with pleasant living rooms provide space for normal interaction between presumably normal women. The expectation that the women will behave like human beings pervades the place. Education, recreation, and training areas are uncramped and well glazed. Opportunity for interaction between staff and inmate is present everywhere.

About 200 yards away from the other buildings are attractive apartments, each containing a living room, dining space, kitchen, two bedrooms, and a bath. Women approaching release live in them while working or attending school in the city. These apartments normally are out of bounds to staff except on invitation.

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 prisons are the correctional solution to the female offenders. At least 15 other States use open institutions exclusively.

This contrast raises questions about the nature of correctional planning. What is it really based upon? The propensities of the offender? The meanness or enlightenment of the general population? The niggardliness of the public? The broadness or narrowness of the administrator's vision? Whatever the reason, the architecture of these correctional institutions tells us either that women in State A are profoundly different from those in State B or that the correctional leadership holds vastly differing human values.

Youth Correction Centers

The reformatory movement started about a century ago. With the advent of the penitentiary, imprisonment had replaced corporal punishment. The reformatory concept was designed to replace punishment through incarceration with rehabilitation. This new movement was aimed at the young offender, aged 16 to 30. Its keystone was education and vocational training to make the offender more capable of living in the outside world. New concepts—parole and indeterminate sentences—were introduced. An inmate who progressed could reduce the length of his sentence. Hope was a new treatment dynamic.

The physical plant in the early reformatory era was highly secure. One explanation given is that the first one, at Elmira, N.Y., was designed as a maximum security prison and then converted into a reformatory. Other States that adopted the reformatory concept also copied the physical plant. Huge masonry walls, multi-tiered cell blocks, mass movements, "big house" mess halls, and dimly lit shops were all part of the model. Several of these places are still in operation. Later, in the 1920's, youth institutions adopted the telephone-pole construction design developed for adults; housing and service units crisscross an elongated inner corridor. More recently campus-type plants, fenced and unfenced, have been constructed. Some of these resemble the new colleges.

Most recently built reformatories, now called youth "correction" or "training" centers, are built to provide only medium or minimum security. (However, the newest—Western Correctional Center, Morganton, N.C.—is a very secure 17-story facility.) These centers usually emphasize academic and vocational education and recreation. Some supplement these with counseling and therapy, including operant conditioning and behavior modification. The buildings themselves are 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 training, and recreation space, are similar in youth centers to those provided in adult centers of comparable custody classification. The only major difference is that some youth institutions provide more programs. The amount of space, therefore, often exceeds that of adult centers. Some youth centers have highly screened populations, 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, placing a heavy responsibility on the classification process.

Facilities and programs in the youth correction centers vary widely from institution to institution and from State to State. While some provide a variety of positive programs, others emphasize the mere holding of the inmate. In the latter, few rehabilitative efforts are made; facilities are sparse and recreational space is inadequate. The general atmosphere is repressive, and the physical plant prohibits program improvement.

Youth institutions include at least two types of minimum security facilities, work camps and training centers, which present a series of dilemmas. In work camps, outdoor labors 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 frequently are not. The other type of minimum security youth center has complete training facilities, fine buildings, attractively landscaped surroundings, and extensive programs. These, too, usually are remote from population centers. Though they probably represent our most enlightened form of imprisonment, quite possibly they soon will be obsolete.

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 irksome 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 program opportunities usually not available otherwise.

In the near future, it is to be hoped, these three purposes will be assumed by small and infinitely 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 national development we had to face the phenomenon of child dependency, and we built orphanages. Children would not stay put, and we established the "Home for Little Wanderers." When children stole we put them in jails, filthy places where the sight of them incensed pioneer prison reformers. They turned to a model already common in Europe where congregate facilities, often under the auspices of religious groups, cared for both dependent and delinquent children.

The first such facility in America was established in New York in 1825. Reflecting its purpose, it was called the "House of Refuge." Others followed, coinciding almost exactly with the first penitentiaries. The pioneering juvenile institutions were just about as oppressive and forbidding, emphasizing security and austerity. By today's standards they were basically punitive. In time they tended more toward benign custodial care along with providing the essentials of housing and food. They became character-

ized by large populations, with consequent regimentation, and by oversized buildings.

In the latter decades of the 19th century, attempts to minimize the massive institutional characteristics led to the adoption of the "cottage concept." Housing was provided in smaller buildings. "House parents" aimed at simulating home-like atmospheres. This model has remained and today continues as a common, perhaps the predominant, type of institution for juvenile delinquents.

Institutions for the delinquent child usually have vastly different characteristics than those holding adults. Often they are located on a campus spreading over many acres. The housing units provide quarters for smaller groups, invariably less than 60 and frequently less than 20. Often they also provide apartments for cottage staff. Dining frequently is a function of cottage life, eliminating the need for the large central dining rooms. Grilles seldom are found 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 recreational activity often is undertaken in nearby towns, parks, streams, and resorts. Teams from youth institutions usually play in public school leagues and in community competition. The principal program emphasis at these children's centers quite naturally has been education, and many have fine, diversified school buildings, both academic and vocational.

Exterior security varies, but most juvenile centers have no artificial barriers separating them from the community at large. Space frequently provides such a barrier, however, as many juvenile centers are in rural settings. Fences do exist, especially where the institution borders a populated area. Usually they do not have towers. Walkaways are quite frequent and cause considerable annoyance to neighbors, who sometimes hold public subscriptions to raise money for fences.

At the risk of oversimplification this section describes two predominant but conflicting philosophies about the care of delinquent children. This is done because they suggest profoundly different directions and consequently different facility requirements for the future.

One has its roots in the earliest precepts of both the penitentiary and reformatory systems. It holds that the primary cause of delinquent behavior is the child's environment, and the secondary cause is his inability to cope with that environment. The response is to provide institutions in the most remote areas, where the child is protected from adverse environmental influences and exposed to a wholesome lifestyle predicated on traditional middle-class values. Compensatory education, often better than that available in the community, equips the child with tools necessary to face the world again, some day. This kind of correctional treatment requires expensive and extensive plants capable of providing for the total needs of children over prolonged periods.

The second philosophy similarly assumes that the child's problems are related to the environment, but it differs from the first model by holding that the youngster must learn to deal with those problems where they are—in the community. Institutions, if required at all, should be in or close to the city. They should not duplicate anything—school, recreation, entertainment, clinical services—that is available in the community. The child's entire experience should be one of testing himself in the very setting where he will one day live. The process demands that each child constantly examine the reality of his adjustment with his peers.

The first model clings to the traditional solution. Yet institutions that serve society's misfits have never experienced notable success. One by one, institutions have been abandoned by most of the other human services and replaced by community programs. The second model, still largely untested, moves corrections toward more adventurous and hopeful days.

Reception and Classification Centers

Reception and classification centers are relatively recent additions to the correctional scene. In earlier times there were no State systems, no central departments of corrections. Each prison was a separate entity, usually managed by its own board, which reported directly to the governor. If the State had more than one institution, either geography or the judge determined the appropriate one for the offender. As the number and variety of institutions increased, classification systems and agencies for central control evolved. Still later, the need for reception and classification centers seemed apparent.

Not all such centers operating today are distinct and separate facilities. Quite the contrary. In most States, the reception and classification function is performed in a section of one of its institutions—usually a maximum security facility. Most new prisoners, therefore, start their correctional experience in the most confining, most severe, and most depressing part of the State's system. After a period of observation, testing, and interviewing, an assignment is made, supposedly reflecting the best marriage between the inmate's needs and the system's resources.

Today 13 separate reception centers for adult felons (most of which are new) are in operation. Their designers have assigned priority to security on the premise that "a new fish is an unknown fish." Generally these institutions are the most depressing and regressive of all recently constructed correctional facilities in the United States, with the possible exception of county jails. Nowhere on the current correctional scene are there more bars, more barbed wire, more electronic surveillance devices, more clanging iron doors, and less activity and personal space. All this is justified on the grounds that the residents are still unknown and therefore untrustworthy. Moreover, their stay will be short.

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 campus style with several widely separated buildings occupying 52 acres enclosed with a double cyclone fence with towers. There is a great deal of movement as inmates circulate between the classification building, gymnasium, dining room, clinic, canteen, craft shops, visiting area, and dormitories.

Housing is of two varieties. Three-quarters of the men are assigned to medium security units scattered around the campus. One maximum security building accommodates the rest.

Men not specifically occupied by the demands of the classification process are encouraged to take part in a variety of recreational and self-betterment activities conducted all over the campus. An open-air visiting patio supplements the indoor visiting facility that ordinarily is used only in inclement weather. Relationship between staff and inmates appears casual. Movement is not regimented. Morale appears high, and escapes are rare.

The contrast between this reception center and one in an adjacent State is vivid. In the Medical and Diagnostic Center at Montgomery, Ala., the inmate spends the entire reception period in confinement except when he is being tested or interviewed. Closed circuit television replaces contact with correctional personnel—a contact especially needed during reception. In that center escapes and escape attempts are almost as common as suicide efforts. A visitor, observing the contrast between these two neighboring facilities, might speculate on the relative merits of the new correctional artifact vis-a-vis the responding human being and be heartened that man is not yet obsolete in this technological age.

As physical plants contrast, so does the sophistication of the reception and classification process. Diagnostic processes in reception centers range from a medical examination and a single inmate-caseworker interview without privacy to a full battery of tests, interviews, and psychiatric and medical examinations, supplemented by an orientation program. The process takes from 3 to 6 weeks, but one competent warden feels that 4 or 5 days should be sufficient. It seems unlikely, considering the limitations of contemporary behavioral science, that the process warrants more than a week.

THE FUTURE OF INSTITUTIONS

For Adults

From the standpoint of rehabilitation and reintegration, the major adult institutions operated by the States represent the least promising component of corrections. This report takes the position that more offenders should be diverted from such adult institutions, 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.

However, the need for some type of institution for adults cannot be denied. There will always be a hard 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 the foreseeable future. These institutions have and will have a difficult task indeed. Nevertheless, the nature of imprisonment does not have to be as destructive in the future as it has been.

With growth of community-based corrections, emphasis on institutional programs should decline. However, the public has not yet fully supported the emerging community-oriented philosophy. An outdated philosophy continues to dominate the adult institution, thus perpetuating a number of contradictory assumptions and beliefs concerning institutional effectiveness.

One assumption is that the committed offender needs to change to become a functioning member of the larger law-abiding society. But it seems doubtful that such a change really can take place in the institution as it now exists.

Another assumption is that the correctional system wants to change. Even though research results have demonstrated the need for new approaches, traditional approaches have created inbred and self-perpetuating systems. Reintegration as an objective has become entangled with the desire for institutional order, security, and personal prestige. As long as the system exists chiefly to serve its own needs, any impending change represents a threat.

Correctional personnel who are assigned responsibility for the "treatment" of the committed offender traditionally have taken the attitude that they know what is best for him and are best qualified to pres-

cribe solutions to his problem. Descriptions of offender problems compiled by personnel also have been traditional—lack of vocational skills, educational deficiencies, bad attitudes, etc.

Aside from the contradictory assumptions prevailing in the correctional field, adult institutions are plagued by physical shortcomings described previously in this chapter. Adult facilities generally are architecturally antiquated, overcrowded, inflexible, too large for effective management, and geographically isolated from metropolitan areas where resources are most readily available.

A major problem in adult institutions is the long sentence, often related more directly to the type of crime committed than to the offender. How can vocational training and other skill-oriented programs 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 resource agencies.

Correctional administrators of the future will face a different institutional population from today's. As a result of diversion and 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 of new needs.

If a new type of institution is to be substituted for the prison, the legitimate needs of 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 Offenders; Chapter 5, Sentencing; Chapter 6, Offender Classification; Chapter 7, Corrections and the Community; Chapter 12, Parole; Chapter 13, Organization and Administration; Chapter 14, Manpower; Chapter 15, 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 reverses assumptions as to how youthful offenders should be treated. Previously there was a heavy emphasis on the use of institutional settings. Now 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 nature of social institutions is such, however, that there is considerable delay between a change in philosophy and a change in practice. Despite major redirection of manpower and money toward both diversion and community programs, progress is slow. Use of major State institutions for juvenile delinquents 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 are required.

Arguments for diversion and alternatives to incarceration largely are negative, stemming from overwhelming disenchantment with 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 failing record of "correctional" institutions. As long as institutional "treatment" is a dispositional alternative for the courts, there must be a continuing effort to minimize the inherently negative aspects and to support and maximize the positive features that distinguish community programs from institutionalization.

The failure of major juvenile and youth institutions to reduce crime is incontestable. Recidivism rates, imprecise as they may be, are notoriously high. The younger the person when entering an institution, the longer he is institutionalized, and the farther he progresses into the criminal justice system, the greater his chance of failure. It is important to distinguish some basic reasons why institutional programs continuously 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 variety of objectives, many of which are conflicting. Both society and the other components of the criminal justice system have contributed to this confusion.

A judge may order a juvenile committed as an example to others or because there are no effective alternatives. The police officer, whose function is to provide community protection, may demand incarceration for the temporary protection it provides for the public. The public may be fearful and incensed at the seriousness of an offense and react by seeking

retribution and punishment. To the offender, commitment means he has been banished from society.

Institutions do succeed in punishing, but they do not deter. They protect the community temporarily, but that protection does not last. They relieve the community of responsibility by removing the young offender, but they make successful reintegration unlikely. They change the committed offender, but the change is more likely to be negative than positive.

While it is true that society's charges to the correctional institution have not always been clear or consistent, corrections cannot continue to try to be all things to all publics. Nor can the institution continue to deny responsibility for articulation of goals or objectives. The historical tendency of corrections to view itself as the passive arm of other state agents has resulted in almost total preoccupation with maintaining order and avoiding scandal.

Youth institutions have implicitly accepted the objectives of isolation, control, and punishment, as evidenced by their operations, policies, and programs. They must seek ways to become more attuned to their role of reducing criminal behavior. That the goal of youth institutions is reduction of criminal behavior and reintegration into society must be made explicit. This pronouncement is not sufficient to eliminate their negative aspects, but it is a necessary first step.

Another contributing factor to the failure of major youth institutions has been their closed nature. The geographic location of most institutions is incompatible with a mission of services delivery. Their remote locations make family visitation difficult and preclude the opportunity to utilize the variety of community services available in metropolitan areas. They have been staffed largely with local residents, who, unlike the young offenders, are predominantly white, provincial, and institutionally oriented.

Most existing institutions were built before the concept of community programing gained acceptance. They were built to last; and most have outlasted the need for which they were established. For economic reasons, they were constructed to hold large numbers of people securely. Their structure has restricted the ability to change and strongly influenced the overall direction of institutional programing.

Many administrative policies and procedures in youth institutions also have contributed to their closed nature. The emphasis on security 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, most 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 alienated already, who find themselves in such institutions, experience feelings of abandonment, hostility, and despair. Because many residents come from delinquent backgrounds, a delinquent subculture flourishes in the closed institution. This in turn, reinforces administrative preoccupation with security and control.

Large institutions are dehumanizing. They foster an increased degree of dependency that is contrary to behavior expected in the community. They force youths to participate in activities 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 reexamined. 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 involved in 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 without removing responsibility for the offender from the community. Direct involvement of family, school, work, and other social institutions and organizations can have a marked positive impact on decreasing the flow of delinquents into corrections and on the correctional process.

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, regardless of where they are held, should have both institutional and community participants. Public acceptance of community-based programs is necessary, especially when they operate next door.

The institution always has existed in a changing world, but it has been slow to reflect change. Correctional administrators require the impetus of com-

munity development to respond and adapt to changing conditions and needs.

As diversionary and community programs expand, major institutions for juvenile and youthful offenders face an increasingly difficult task. These programs remove from the institution the most stable individuals who previously had a moderating influence on others' behavior.

The most hardened or habitual offender will represent an increasing proportion of those committed to institutions where adequate services can be provided by a professional staff, trained paraprofessionals and volunteers. All staff and participants must be prepared to serve a "helping" role.

More committed offenders than ever before have drug abuse problems. 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 crucial in working with these individuals.

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 history has demonstrated clearly that tinkering with the system by changing individual program areas without attention to the larger problems can achieve only incidental and haphazard improvement.

THE CORRECTIONAL 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. Dissatisfaction with correctional programs is related to the permanence of yesterday's institutions—both physical and ideological. We are saddled with the physical remains of last century's prisons and with an ideological legacy that equates criminal offenses with either moral or psychological illness. This legacy leads inexorably to two conclusions: (1) the sick person must be given "treatment" and (2) "treatment" should be in an institution removed from the community.

It is time to question this ideological inheritance. If New York has 31 times as many armed robberies as London, if Philadelphia has 44 times as many criminal homicides as Vienna, if Chicago has more burglaries than all of Japan, if Los Angeles has more drug addiction than all of Western Europe, then we must concentrate on the social and economic ills of New York, Philadelphia, Chicago, Los Angeles, and America.

This has not been our approach. We concentrate on "correcting" and "treating" the offender. This is a poor version of the "medical" model. What is needed is a good version of the "public health" model, an attempt to treat causes rather than symptoms.

If the war against crime is to be won, it will be won ultimately by correcting the conditions in our society that produce such an inordinate amount of criminal activity. These conditions include high unemployment, irrelevant education, racism, poor housing, family disintegration, and government corruption. These, among others, form the freshets that make the streams that form the rivers that flood our criminal justice system and ultimately its correctional institutions.

Public policy during the coming decades should shift emphasis from the offender and concentrate on providing maximum protection to the public. A more just society, offering opportunity to all segments, would provide that protection. The prison, call it by any other name, will not. It is obsolete, cannot be reformed, should not be perpetuated through the false hope of forced "treatment," and should be repudiated as useless for any purpose other than locking away persons who are too dangerous to be allowed at large in free society.

For the latter purpose we already have more prison space than we need or will need in the foreseeable future. Except where unusual justification can be proved, there is no need to build additional major institutions—reform schools, reformatories, prisons, or whatever euphemisms may be used to designate them—for at least 10 years. Further, the use of major State institutions for confinement of juveniles should be totally discontinued in favor of local community-based programs and facilities.

In view of the dearth of valid data to substantiate the rehabilitative effectiveness of institutional programs, we have no basis for designing more effective physical facilities. Under these circumstances, new construction would represent merely a crystallization and perpetuation of the past with all its futility.

Under prevailing practices, institutional construction costs are excessive. They now run as high as $30,000 to $45,000 per inmate in some jurisdictions. Costs of operation vary widely, from $1,000 per year per inmate to more than $12,000.[6] Construction of new major institutions should be deferred until effective correctional programs to govern planning and design can be identified, and until the growth of a more selected inmate population dictates. The potentially tremendous savings should be expended more productively in improving probation, parole, and community-based programs and facilities.

PLANNING NEW INSTITUTIONS

It cannot be overemphasized that unusually convincing justification of need should be required as a logical precedent to planning a new institution. Yet there are many impediments to recognizing this rationality in planning. One of them is fragmentation of the criminal justice system.

The traditional division of the entire system into several parts—police, courts, institutions, and field services—and more fundamentally, the concept that the criminal justice system exists apart from society and unto itself, have created an administrative and organizational climate that allows the construction of new institutions with little or no real consideration of other possible solutions.

The most fundamental question to be addressed in the planning of institutions is the reason for their existence. They obviously represent the harshest, most drastic end of the spectrum of possible correctional response.

Different States have different philosophies. Some rely heavily on incarceration, others do not. (See Table 11.3.) Some concentrate on size and security; others build more varied facilities.

This absence of correctional consistency poses a serious handicap to the administration of an equitable criminal justice system.

If protection of society is seen as the purpose of the criminal justice system, and if it is felt that this protection requires sequestration of some offenders, then institutions must exist to carry out this purpose. Immediately the planner is confronted with the question, "What kind of institutions?"

Of fundamental importance to any planning are the values and assumptions dictating the policies. Programs and structural responses are fixed by those policies. Their underlying values affect all subsequent planning and implementation. For nearly two centuries this Nation has used the correctional institution as its primary response to illegal behavior. It is long past time for legislators, administrators, and planners to collect and examine the results of this vast institutional experience. Scholarly evaluation currently available suggests that our prisons have been deficient in at least three crucial areas—conception, design, and operation. These areas and two others—location and size—should be given serious consideration in all correctional planning.

[6] Data derived from a 2-year study of more than 100 institutions by the American Foundation Institute of Corrections.

Table 11.3. Comparative Use of State Correctional Institutions.

Ratio of Prisoners in State Institutions to State Population	Number of States with Ratio
1 to 2,501 and over	1
1 to 2,001–2,500	4
1 to 1,501–2,000	8
1 to 1,001–1,500	21
1 to 501–1,000	16

Sources: Data from 1970 Census and ACA *1971 Directory*.

Conception

The correctional institution has been poorly conceived, in that it is intended to hide rather than heal. It is the 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 dehumanizing environments. The facility design precludes any experience that could foster social growth or behavioral improvement. Indeed, institutions more often breed hostility and resentment and strip inmates of dignity, choice, and a sense of self-worth.

Operation

The punitive function and design of correctional institutions is reflected in their operation. Containment and control command a lion's share of resources. Activities aimed at modifying behavior and attitudes or at developing skills often are limited or absent altogether. The daily routine is dominated by frustration, idleness, and resentment, punctuated by the aggressive behavior such conditions breed.

Correctional institutions often are designed and constructed with little consideration of their place in the overall corrections system. Some system needs are duplicated, while others go unmet. Many administrators of maximum and medium security centers state that only 20 to 25 percent of their inmates need that level of security. Yet centers offering community programs are extremely scarce or nonexistent.

Improper design may prevent an institution from fulfilling its assigned function. Use of dormitories in maximum security prisons, for example, permits physical violence and exploitation to become a way of life. Conversely, inmates who are not considered a threat to others may be housed in single inside cells, with fixed furniture, security-type plumbing, and grilled fronts 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 token rehabilitation. 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. Here idleness is a way of life.

Lack of funds, haphazard planning, faulty construction, and inadequate programing 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 unknown. Space may be programed without knowledge of the actual needs for a particular activity. Planners and programers may develop schemes without consulting architects and engineers. Architects may be engaged without being given adequate guidelines.

The architect often is inexperienced in design and construction of correctional facilities. To overcome this lack he may visit an institution serving an entirely different purpose. Errors are repeated and compounded because few institutions are worthy of emulation. New mistakes and inconsistencies, therefore, are built on top of existing ones.

Location

Location has a strong influence on an institution's total operation. Most locations are chosen for reasons bearing no relationship to rationality or planning. Results of poor site selection include inaccessibility, staffing difficulty, and lack of community orientation.

In the early days of America's prison history, penitentiaries were built where the people were—Philadelphia, Pittsburgh, Columbus, Trenton, Baltimore, and Richmond. The urban location had nothing to do with the prevailing theory of penology. The idea was to isolate the prisoner—and he was isolated, even though his prison walls pressed tightly against the city streets.

During the last century, rural settings usually were chosen for new correctional institutions. This remoteness may have been relatively unimportant when America was predominantly a farm country. Lifestyles—rural and urban—had not yet hardened in their contrasting molds. At a time when the prison was viewed almost exclusively as a place of quarantine, where better than the remote reaches of a State?

These no longer are valid reasons, nor have they been for a quarter of a century. America has become increasingly urban. Lifestyles and values, born not only of population diversity but of ethnic differences, create gaps of understanding wider than the miles separating city dwellers from farmers.

The rhetoric, if not the purpose, of corrections also has changed. The ultimate objective now being expressed no longer is quarantine but reintegration—the adjustment of the offender in and to the real world.

But in 1972 correctional institutions still are being built in some of the most isolated parts of the States. Powerful 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 cities. They may agree on the need for "reintegration" of the ex-offender, but this objective is 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—to work in rural areas.

3. The prolonged interruption of offenders' contacts with friends and relatives, which are important to the reintegration process.

4. The absence of meaningful work- and study-release programs.

5. Most importantly, the consignment of corrections 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. Almshouses of old have been replaced with family assistance; workhouses, with employment insurance; orphanages, with foster homes and aid to dependent children; colonies for imbeciles, with day care and sheltered workshops. Drugs have made obsolete the dismal epileptic facilities and the tuberculosis sanitariums of yesteryear. Asylums are rapidly yielding to community mental health approaches.

All of these human services changed because isolated institutions proved to be unsuccessful, expensive, and even counterproductive as responses to specific human problems. They also changed because better treatment methods were developed, making the isolated institutions largely obsolete and treatment 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 organizational and operational monstrosity. Separation of large numbers of people from society and mass confinement have produced a management problem of staggering dimensions. The tensions and frustrations inherent in imprisonment are magnified by the herding together of troubled people. Merely "keeping the lid on" has become the real operational goal. The ideal of reform or rehabilitation has succumbed to that of sheer containment, a goal of limited benefit to society.

The usual response to bigness has been regimentation and uniformity. Individuals become subjugated to the needs generated by the institution. Uniformity is translated into depersonalization. A human being ceases to be identified by the usual points of reference, such as his name, his job, or family role. He becomes a number, identified by the cellblock where he sleeps. Such practices reflect maladaptation resulting from size.

Almost every warden and superintendent states that his institution is too big. This hugeness has been the product of many factors, including economics, land availability, population of the jurisdiction, the influence of Parkinson's Law, and an American fetish that equates bigness with quality. (A half century ago, one State built the "world's biggest wall" only to bow to another jurisdiction that gleefully surpassed it two 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 requests, he will feel that the facility's prime purpose is to serve the system and not him. The reverse also is 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: security, counseling, inmate social and informal activities, and formal program requirements. Although security conditions traditionally have been met with hardware and electronic equipment, these means contradict the purposes of corrections and should be deemphasized. Security is maintained better by providing small housing units where personal supervision and inmate-staff contact are possible and disturbances can be contained easily.

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 cooled, 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 because of overriding preoccupation with security. Without privacy and personal space, inmates become tense and many begin to react with hostility. As tension and hostility grow, security requirements increase; and a negative cycle is put into play.

A REVIEW OF CORRECTIONAL STANDARDS

Correctional practice in the United States seems to defy standardization. Each State is virtually independent in its choice of correctional options. The U.S. Bureau of Prisons operates Federal prisons and has no mandate to regulate State institutions. The National Bureau of Standards has made studies for corrections but has no means of influencing change. The Law Enforcement Assistance Administration, under the provisions of the Safe Streets Act, has provided the impetus for State and local governments to determine their own approaches to corrections and other criminal justice problems. Consequently, the efforts of LEAA in large part have been directed to monitoring the fiscal and not the programmatic aspects of its grants.

In 1970 Congress created a new section of the Omnibus Crime Control and Safe Streets Act. This section (Part E) authorized LEAA to make grants to States that incorporated "advanced techniques" and "advanced practices" in a comprehensive State

corrections plan. The standards in this report can serve as possible guideposts for the advanced techniques and practices. This promise of corrections reform 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 never have been authoritative 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, is 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. 362 (E.D. Ark. 1970), aff'd., 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.

Some statutes also are a source of standards. Every jurisdiction has its own laws spelling out certain requirements for the correctional establishment. A few examples show they usually are explicit.

> All prisoners 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 among or mingle with those of opposite inclination.
>
> Every warden shall provide that such person shall have, at least two hours daily, physical exercise in the open.
>
> No prisoner shall be confined in a cell occupied by more than one individual.[7]

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 found in that city's prison system 161 violations of State statutes. Together, said the court, these transgressions added up to the violation of those provisions of both State and Federal Constitutions dealing with cruel and unusual punishment.[8]

The United Nations also has developed policy statements that attempt to set standards for correctional practices. Usually they are broad, idealistic, and ignored.

Private groups have contributed richly to the articulation 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 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. Fundamental, 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 jurisdictions. 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 institutions to provide 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 to minimize 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.[9]

[7] Purdon's Penn. Stat. Ann., Title 61, ch. 1, secs. 2, 4, and 101.

[8] Court of Common Pleas for the County of Philadelphia, Pennsylvania, February Term 1971 # 71-2437, Complaint in Equity (Class Action), filed April 7, 1972.

[9] Many of the standards that follow reflect the work of an intensive on-site study of over 100 of the newest correctional institutions made in 1971 by the American Foundation Institute of Corrections, Philadelphia. An extensive study with a multidisciplinary orientation, this project examined the relationship of correctional architecture and program. The experience and opinions of architects, psychologists, correctional administrators, officers, counselors, and inmates were used in the formulation of standards. A book based on the study is William G. Nagel, *The New Red Barn: A Critical Look at the Modern American Prison* (Walker, 1973).

Standard 11.1

Planning New Correctional Institutions

Each correctional agency administering State institutions for juvenile or adult offenders should adopt immediately a policy of not building new major institutions for juveniles under any circumstances, and not building new institutions for adults unless an 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.

c. Areas that have community services and activities to support the correctional goal, including social services, schools, hospitals, universities, and employment opportunities.

d. The courts and auxiliary correctional agencies.

e. Public transportation.

4. The physical environment of a new institution should be designed with consideration to:

a. Provision of privacy and personal space.

b. Minimization of noise.

c. Reduction of sensory deprivation.

d. Encouragement of constructive inmate-staff relationships.

e. Provision of adequate utility services.

5. Provision also should be made for:

a. Dignified facilities for inmate visiting.

b. Individual and group counseling.

c. Education, vocational training, and workshops designed to accommodate small numbers of inmates and to facilitate supervision.

d. Recreation yards for each housing unit as well as larger recreational facilities accessible to the entire inmate population.

e. Medical and hospital facilities.

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 more likely to confirm juveniles in delinquent and criminal patterns of behavior.

Similar considerations apply to adults, but it is recognized that for the safety of the public some offenders must be locked away. The Commission considers that sufficient security-type institutions already exist for this purpose. However, it is conceded that in rare instances a State may not have any institution that can be modified under Standard 11.2 for satisfactory service, and further, may have its existing facilities condemned by court order.

The decision to build a new major institution for adults should be the result of a planning process that reviews the purposes of corrections, assesses the physical plants and operations of existing institutions and programs in light of these purposes, examines all possible alternatives, and identifies a clear and indispensable role for a new institution. The process should consider corrections as part of a broader human service network and as an integral system, rather than an aggregate of isolated entities.

The population of existing institutions and their operation should be examined to evaluate the appropriateness and effectiveness of programs with reference to inmate needs, particularly the need for custody. All inmates currently held in institutions who do not require confinement should be removed to community programs. This procedure may make it possible to close work camps and prison farms and to release substantial numbers of people from these facilities and medium security institutions. Inmates housed in maximum security prisons but not requiring high security should be transferred to medium security institutions or released to community facilities and programs if they do not constitute a threat to others.

If this process establishes a clearly identifiable need for a new physical plant, its planning and design should include the simultaneous participation of administrators, architects, planners, inmates, community representatives, and those involved in developing and operating inmate programs and activities.

This collaborative process should set forth the purpose of the new physical plant—in terms of its correctional role, type of inmate population, geographic area to be served, and its relationship to community-based transitional programs and to other elements of the correctional system. The design of the new institution should fit this purpose.

The projected institution should be small enough to enable the superintendent to develop a personal relationship with each inmate. It should facilitate the effective operation of its programs and the efficient use of its professional staff. It should also fit in with its environment with respect to the size of the buildings and the level of activity they generate. The number of inmates housed in a single spatially discrete unit should not exceed 26, and for special program requirements, the maximum should be lower.

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 small, closed communities 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 fronts and solid doors with glazed observation panels. Toilets and showers should have modesty screens. The furnishings provided should enable the inmate to personalize his room.

Noise should be minimized by eliminating 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. Education, vocational training, and work areas 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

1. Moyer, Frederick, and Flynn, Edith, eds. *Correctional Environments*. Urbana: University of Illinois Department of Architecture, 1971.

Related Standards

The following standards may be applicable in implementing Standard 11.1.

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 institutions should also be undertaken to provide larger, more dignified, and more informal visiting facilities; spaces 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 corrections 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

1. Moyer, Frederick, and Flynn, Edith, eds. *Correctional Environments*. Urbana: University of Illinois Department of Architecture, 1971.

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 Programing.
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 undertake 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 on 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 decisionmaking process.

a. Inmate advisory committees should be developed.

b. A policy of participative management should be adopted.

c. An ombudsman 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 program thrust.

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 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 visitation should be held in an environment conducive to healthy relationships between offenders and their families and 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 take 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 programing 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.

h. The institution should arrange for representatives of government agencies to render services to offenders by traveling to the institution or by enabling offenders to appear at agency offices.

i. The institution should obtain the participation of business and labor in intramural and extramural programs and activities.

j. The institution should seek the participation of volunteers in institutional programs and activities.

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 resocializing offenders. In its simplest form this means involvement, fairness, and self-determination. Without involvement 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, the opportunity to commit crime exists, 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 urgency of providing acceptable outlets 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 problems existing there. At present, both inmates and staff usually 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. Institutionalization becomes an end in itself, reinforced by staff-sponsored values encouraging repressive and regimented behavior. This repression and regimentation is irrelevant and counterproductive to the offender's adoption of a nondelinquent or noncriminalistic 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 adopted. An independent check on policies, 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 insist that their function is treatment. However, institutions are ruled by punitive laws, operate in agencies organized to carry out punishment, and perform their functions in ways that reinforce punitive attitudes.

The issue has been accepted, worked with and around, ignored, and hidden in a corner too long. Expectation of an ability to punish and correct concurrently 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 decisionmaking procedures to accomplish a specific purpose. For this reason, a priority for institutional programs must be a clear statement of purpose.

With the adoption of a reintegration philosophy and program thrust, personnel should be recruited 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 policy 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 less likely he is to adjust positively to the outside world when released. Institutional regimentation produces a loss of individual identity and opportunity for individual decisionmaking and choice. Administrators presuppose that the offender is unable to make worthwhile and beneficial decisions for himself. Initiative and the will to change also are negated. Therefore, the offender loses hope, and his world generally revolves around a day-to-day existence based on surviving in the institution and obtaining 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 have had negative effects on offenders' feelings and attitudes about identity. Standard uniforms, prison numbers, standardized haircuts, extreme regimentation—all are general efforts to equalize appearances and reduce institutional life to a routine that will cause the fewest problems and the least work for personnel and administrators. These standardizations have produced rage and violence.

The correctional administration's desire to maintain order in a facility often leads to continuation of inadequate policies. Inmates often must identify with the negative or destructive elements in the prison in order to be heard. Recent prison disturbances exemplify the negative forces that develop within the walls. Identity and positive change can develop when inmates are involved in the correctional system's programs, when they have reasonable freedom of choice, and when they have positive incentives—all 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 severing positive relationships, these restrictions have virtually forced the offender to develop strong ties with other committed offenders in substitute relationships.

A result of this abnormal situation is institutionalization, 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 breeds a narrow view of the the values of human existence.

Minority groups have consistently been disproportionately represented in correctional institutions as compared to their overall representation in society. Typical of this situation are figures such as those for California Youth Authority wards for 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 cultural and behavior patterns of minority residents. Most staff members are white middle-class persons residing in suburban or rural communities near the institution. Their understanding of various cultural values and their interaction with minorities is almost nonexistent. The resident from an urban minority group views the remote institution as alien, with little sensitivity to or concern for his needs.

A person's self-image and identity depend in part on how he is accepted socially by others and how his ethnic or racial group is regarded. Manifestations of alienation and hostility of many minority individuals are related to a negative self-image.

In recognition of the minority groups that make up a substantial (in many instances preponderant) proportion of the institutional population, courses in ethnic studies should be provided, and the formation of ethnic or subcultural groups in the institution should be supported and assisted. Staff members who understand minority problems and who come from the same minority groups should be hired and trained. Representatives of minority groups in the community should be involved in institutional programs.

The historical stance of institutions has been to accept all who are committed legally. This has implied acceptance of responsibility for the control of those offenders and, in addition, acceptance of responsibility for the community behavior of those released. In recent years the correctional community has begun to question the wisdom of taking this responsibility. Efforts should be made to shift responsibility back to its rightful place—the community.

If the offender is to be successfully reintegrated, his community cannot abdicate responsibility or withhold resources. To discharge its responsibility, the community must not allow the offender to be cut off from it. The correctional institution must be part of the community's criminal justice system, not a place of banishment. It must not be viewed as the sole agent bringing about behavior change. At best, the institution is a temporary and limited supplement to community resources.

The community should be intimately involved in institutional planning and programs. Work- and study-release programs should be used wherever possible in preference to institutional work and educational programs. Ex-offenders and paraprofessionals who have an understanding of the problems of offenders should be used for a variety of roles in both community-based and institutional programs. Community agencies and representatives should have a primary role in related activities in the institution.

Members of the community should be allowed to take educational courses available in the institution, and the community should accept inmates in its own educational classes. Police officers, who are the community representatives with most frequent contact with offenders, should participate in institutional programs to encourage more constructive relationships and a better understanding of the law among offenders. Offenders should have access to church services in the community, and the community churches should participate in the institutional religious services.

Offenders should be allowed to become active in community clubs and civic organizations, in order to help normalize their relationships with other community members. The services of all government agencies should be as available to offenders as they are to other citizens. Business and labor can be of assistance in the operation of institutional programs and the eventual reintegration of the offender into the community. Volunteers of all kinds can be recruited and trained to assist in a wide variety of institutional and community-based programs.

Correctional administrators are responsible for what takes place in their institution and are under pressure to "look good." 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 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 effect on the inmate.

Community demands for protection have helped to produce unwillingness on the part of the correctional administrators to relax security measures. However, this is a reciprocal arrangement—community apprehension could be alleviated to a large extent if the public were encouraged to participate in institutional activities.

The demand for security and discipline has created an atmosphere of hostility and anxiety within the institution. When security is increased, inmates feel final loss of personal autonomy and find few positive channels available through which to direct their grievances. So they communicate through negative means—by escaping, rioting, or disobeying regulations. These actions further excite community imagination, thus leading to further pleas for intensified security.

Thus, security has become a self-perpetuating phenomenon. Intense security creates an atmosphere conducive to offender behavior that requires still more security.

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 overpowering 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 willing participation 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 insure fair decisions arrived at with due respect to the rights of offenders.

References

1. "Application of Token Reinforcement to Academic Reinforcement of an Institutionalized Delinquent Boy," *Journal of Education Psychology,* 59 (1968), 164–168.
2. Ayllon, T., and Azrin, N. *The Token Economy: A Motivational System for Therapy and Rehabilitation.* New York: Appleton-Century-Crofts, 1968.
3. Baker, J.E. "Inmate Self Government," *Journal of Criminal Law, Criminology and Police Science,* 51 (1960).
4. Bandura, A. *Principles of Behavior Modification.* San Francisco: Holt, Rinehart and Winston, 1969.
5. California Board of Corrections. *California Correctional System Study—Institutions.* Sacramento, 1971.
6. Cohen, Bruce J. *Crime in America.* Itasca, Ill.: Peacock, 1970.
7. Fitts, William H., and Hamner, William T. *The Self Concept and Delinquency.* Nashville, Tenn.: Martin and Bruce, 1969.
8. Glaser, Daniel. *The Effectiveness of a Prison and Parole System.* New York: Bobbs-Merrill, 1964.
9. Harrison, Eddie M. "Inside Looking Out" and "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.
10. "The Impact of Dual Cultural Membership on Identity," *Psychiatry,* 27 (1964), 332–344.
11. Korn, Richard R., and McCorkle, Lloyd W. *Criminology and Penology.* San Francisco: Holt, Rinehart and Winston, 1959.
12. McGee, Thomas A. *Minimum Standards of Disciplinary Decisionmaking.* Sacramento: California Youth Authority, n.d.
13. *Manual for Administrators, Counselors, Instructors and Employment Officers in a Manpower Project for Prisoners: The Draper Project Final Report.* Vol. II. Elmore, Ala.: The Rehabilitation Research Foundation, 1968.
14. Office of Juvenile Delinquency and Youth Development, U.S. Department of Health, Education and Welfare. *The Reentry of the Offender into the Community.* Washington: DHEW, 1967.
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.
16. Schwitzgebel, Ralph K. *Development and Legal Regulation of Coercive Behavior Modification Techniques with Offenders.* Bethesda, Md.: National Institute of Mental Health, 1971.
17. Spitzer, Paul. *Pre-Parole Programs.* Whittier, Calif.: Fred C. Nelles School for Boys, 1972.
18. "Stereotypes and Self-Images Held by Native-Born and Foreign-Born Mexican Americans," *Sociology and Social Research,* 49 (1965), 214–244.
19. Street, D.; Vinter, R.; and Perrow, C. *Organization for Treatment: A Comparative Study of Institutions for Delinquents.* Glencoe, Ill.: Free Press, 1966.
20. Watkins, John C. "Incentive Programs." Unpublished study, Draper Institute, Ala., 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 Marshaling 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 re-examine immediately its educational and vocational training programs to insure that they meet standards that will individualize education and training. These programs should be geared directly to the reintegration of the offender into the community. It is recognized that techniques and practices for juveniles may be somewhat different from those required for adults, but the principles are similar. Usually the programs for juveniles and youths are more adequately equipped and staffed, but this distinction should not continue. It is assumed that intensive efforts will be made to upgrade adult institutions and that juvenile institutions will be phased out in favor of community programs and facilities.

1. Each institution should have a comprehensive, continuous educational program for inmates.

a. The educational department of the institution should establish a system of accountability to include:

(1) An annual internal evaluation of achievement data to measure the effectiveness of the instruction program against stated performance objectives.

(2) An appraisal comparable to an accreditation process, employing community representatives, educational department staff, and inmate students to evaluate the system against specific objectives. This appraisal should be repeated at least every 3 years.

b. The educational curriculum should be developed with inmate involvement. Individualized and personalized programming should be provided.

c. The educational department should have at least one learning laboratory for basic skill instruction. Occupational education should be correlated with basic academic subjects.

d. In addition to meeting State certification requirements, teachers should have additional course work in social education, reading instruction, and abnormal psychology. Teachers in juvenile institutions also should be certified to teach exceptional children, have experience teaching inner city children, and have expertise in educational technology.

e. Each educational department should make arrangements for education programs at local colleges where possible, using educational opportunities programs, work-study programs for continuing education, and work-furlough programs.

f. Each educational department should have a guidance counselor (preferably a certificated school psychologist) and a student personnel worker. School records of juveniles should be available to these persons at the time of commitment.

g. Social and coping skills should be part of the educational curriculum, particularly consumer and family life education.

2. Each institution should have prevocational and vocational training programs to enhance the offender's marketable skills.

a. The vocational training program should be part of a reintegrative continuum, which includes determination of needs, establishment of program objectives, vocational training, and assimilation into the labor market.

b. The vocational training curriculum should be designed in short, intensive training modules.

c. Individual prescriptions for vocational training programs should include integration of academic work, remedial reading and math, high school graduation, and strong emphasis on the socialization of the individual as well as development of trade skills and knowledge.

d. Vocational programs for offenders should be intended 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.

e. An incentive pay scale should be a part of all on-the-job training programs for inmates.

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.

g. Vocational education and training programs should be made relevant to the employment world.

(1) Programs of study about the work world and job readiness should be included in prevocational or orientation courses.

(2) Work sampling and tool technology programs should be completed before assignment to a training program.

(3) 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.

h. 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.

i. Vocational instructors should be licensed or credentialed under rules and regulations for public education in the State or jurisdiction.

j. Active inservice instructor training programs should provide vocational staff with information on the latest trends, methods, and innovations in their fields.

k. Class size should be based on a ratio of 12 students to 1 teacher.

l. Equipment should require the same range and level of skills to operate as that used by private industry.

m. Trades advisory councils should involve labor and management to assist and advise in the ongoing growth and development of the vocational program.

n. Private industry should be encouraged to establish training programs within the residential facility and to commit certain numbers of jobs to graduates from these training programs.

o. The institution should seek active cooperative programs and community resources in vocational fields with community colleges, federally funded projects such as Job Corps, Neighborhood Youth Corps, and Manpower Development Training Act programs, and private community action groups.

p. On-the-job training and work release or work furloughs should be used to the fullest extent possible.

q. An active job placement program should be established to help residents find employment related to skills training received.

3. Features applicable both to educational and vocational training programs should include the following:

a. 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.

b. A variety of instructional materials—including audio tapes, teaching machines, books, computers, and television—should be used to stimulate individual motivation and interest.

c. 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.

f. 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 pace 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 institution and generally must compete for the individual's time during the standard working hours.

The status and priority established for institutional education is not commensurate with today's demand and expectation. Staffing and organization of education departments lack diversity. Teachers are employed in the general categories of elementary or high school classes. Subjects taught are highly traditional and uninspiring. Libraries generally are open only during regular school hours and closed to students in the late afternoon and evenings and on weekends and holidays.

Diverse abilities, severe behavioral problems, social deficiencies, and the ever-changing population of a correctional institution require the best-qualified staff available. Performance standards specifying job responsibilities must be provided for every staff member to insure appropriate levels of service and elimination of inefficiency.

Some dramatic changes have taken place in the characteristics of offenders. A rising demand by the disadvantaged for their share of education has forced institutions to look to the communities for additional programing resources. Race and family income often have determined the quality and quantity of education available in the community. Corrections has an opportunity to make education available to persons from low-income areas.

A major educational effort requires attention to costs, which will be higher than in the regular educational system owing to technical expertise required, additional training, and use of learning laboratories and skill centers. It often will be possible to adjust current operating budgets to cover minor outlays for equipment. Elimination of unnecessary tasks and reassignment of clerical tasks from professional to clerical staff also can free educators to educate.

Educational departments of institutions should measure the effectiveness of their programs in achieving their stated objectives. This effort should be done by internal evaluation and by an appraisal process involving the inmate students themselves and independent outsiders. The student also should have a role in developing the educational curriculum and in determining their own participation. The educational curriculum should be related to vocational instruction.

Teachers not only should be required to have State certification, but they should have special educational preparation for dealing with the particular needs of offenders. They should be required to meet the performance standards prevailing in the best schools in the community. Supplementary resources should be available, including guidance counselors. The curriculum should not be restricted to traditional academic subjects, but particular stress should be placed on consumer and family life and other social education courses.

Offenders typically lack marketable skills for employment as well as the basic education necessary to develop these skills. They have been "losers" in school and are caught up in the cycle of cultural and economic deprivation. In institutions they are trained too often in a skill for which there are no jobs at all or no jobs in the community to which they will return. Often the job is being phased out as obsolete.

In today's technological society, the occupational structure is changing rapidly, and both men and women are experiencing increased job mobility. Over the next several years the focus of vocational instruction will change, as fewer young people make lasting decisions about their future at an early age. Vocational programs should expose offenders to a number of skills. A much closer involvement of labor and industry in planning programs and much less investment in equipment will be required.

Vocational training should be given in short, intensive modules. Each module should include a pretest, a written statement of what the student will know when he completes the unit, written objectives for this achievement, curriculum content, a posttest, and a recycling process. Students passing the pretest should not continue with that unit but move on to the next module. Short training modules in interest inventory, vocational interest, and vocational opportunities should be provided to offer the student a variety of choices for his own employability.

Vocational training should be geared to the individual requirements of each offender, rather than to meet such institutional considerations as filling available spaces in particular programs. The training programs themselves should be related to the actual needs of offenders and of the job market in the communities to which they will return.

Vocational programs, like the institution's educational programs, should have measurable objectives, and the instructors should be as highly qualified as the instructors of similar programs in the State public education systems. The community also should be involved, including trades advisory councils and other representatives of business and labor. Vocational training resources of the community should be used wherever 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 at the earliest possible time.

Both educational and vocational training programs should be modernized. A widespread technique is the use of individually programed 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 correspondence courses supplementing instruction given in the institution.

Credit for the completion of educational and vocational programs will help offenders compete for jobs on release and add credibility to their training.

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 and follow through after release. Community residents should serve on advisory boards for vocational training, assist in postincarceration employment placement, and provide talented offenders and ex-offenders with needed educational opportunities. The Department of Corrections in North Carolina, for example, has developed a cooperative arrangement with the Department of Community Colleges to make available to offenders and ex-offenders a wide variety of academic, technical, and vocational programs.

References

1. American Correctional Association. *Manual of Correctional Standards*. Washington: ACA, 1969.
2. Beto, George. "A Philosophy of Education," *in Collection of Papers Prepared for the 1970 National Seminars: Adult Basic Education in Corrections.* Honolulu: University of Hawaii, 1970.
3. Burton, W. H., and Brueckner, L. J. *Supervision: A Social Process.* 3rd ed. New York: Appleton-Century-Crofts, 1955.
4. California Department of Education. *Instructions for Preparing a District Plan for Vocational Education.* Sacramento, 1971.
5. California Youth Authority. *Procedures for Appraising California Youth Authority Education Programs,* adapted from *Procedures for Appraising the Modern High School.* Rev. ed. Sacramento, 1971.
6. Cassell, Richard E. "Educational Release Program (Project Newgate)" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education for Corrections.* Honolulu: University of Hawaii, 1970.
7. Daye, Dorothy B., and Powell, Louis C. *Model of Adult Basic Education for Correctional Center for Women, Raleigh, North Carolina.* Athens: University of Georgia, 1971.
8. Dickens, Fred A. "Use of Inmates as Tutors" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education in Corrections.* Honolulu: University of Hawaii, 1970.
9. Dunfee, Maxine. *Ethnic Modification of the Curriculum.* Washington: National Education Association, n.d.
10. Erickson, Robert A. "A Philosophy for Adult Basic Education in Correctional Institutions" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education in Corrections.* Honolulu: University of Hawaii, 1970.
11. Homme, Lloyd, and others. *How to Use Contingency Contracting in the Classroom.* Champaign, Ill.: Research Press, 1969.
12. McKee, John M. "The Use of Programmed Instruction in Correctional Institutions" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education in Corrections.* Honolulu: University of Hawaii, 1970.
13. Mayer, R. F., and Beach, K. M., Jr. *Developing Vocational Instruction.* Belmont, Calif.: Fearon Publishers, 1967.
14. Myers, A. F., and Williams, C. O. *Education in a Democracy.* 3rd ed. New York: Prentice-Hall, 1948.
15. National Council on Crime and Delinquency. *New Gate—New Hope Through Education.* Paramus, N.J.: NCCD, 1968.
16. Roberts, Albert F. "Developing Perspective of Correctional Education," *American Journal of Corrections,* 31 (1969), 14–18.

17. Sessions, Arnold R. "Philosophy of Adult Basic Education in Corrections" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education in Corrections*. Honolulu: University of Hawaii, 1970.
18. Tarlaian, Ronald C. "Manpower Development and Training Programs for Adult Offenders" in *Collection of Papers Prepared for 1970 National Seminars: Adult Basic Education in Corrections*. Honolulu: University of Hawaii, 1970.
19. U.S. Department of Labor, Manpower Administration. *Breakthrough for Disadvantaged Youth*. Washington: Department of Labor, 1969.

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 Community Programs.
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.

(1) Staff selections should be made through in-depth interviews. In addition to broad education and experience backgrounds, personal qualities of tolerance and maturity are essential.

(2) Continuous on-the-job staff evaluation and administrative flexibility in removing ineffective staff are needed to meet the stringent demands of these positions.

(3) Training programs designed to implement new knowledge and techniques are mandatory.

c. Recalcitrant offenders who are too dangerous to be kept in the general institutional population should be housed in a unit of not more than 26 individual rooms providing safety and comfort.

(1) Good surveillance and perimeter security should be provided to permit staff time and efforts to be concentrated on the offenders' problems.

(2) No individual should remain in the unit longer than is absolutely necessary for the safety of others.

(3) Wherever possible the inmate of the special unit should participate in regular recreation, school, training, visiting and other institution programs. Individual tutorial or intensive casework services should also be available.

(4) Tranquilizers and other medication should be used only under medical direction and supervision.

d. 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.

3. 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 of the emotionally disturbed should be under the supervision and direction of psychiatrists.

a. Program policies and procedures should be clearly defined and specified in a plan outlining a continuum 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 example, individual, group, 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 neurologist and essential radiological and laboratory services, by contractual or other agreement.

e. In addition to basic 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 prescription, and all case material should be reviewed within 2 working days.

g. 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 consistent 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 service 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 are most severe.

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.

4. 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 salvageable 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.

d. They should not be considered eligible for such community-based programs as work- or study-release, furloughs or other privileges taking them into the community.

e. They are entitled to the same rights as other committed offenders. See Chapter 2.

Commentary

Addicts

Drug abuse treatment in an institutional setting has yielded little success. Traditional staff attitudes regarding the addict as beyond help have reinforced the negative self-image of users and contributed to the inherent difficulties of institutional drug treatment programs.

In recent years penalties for narcotics violators have grown more severe. The result has been a large commitment of offenders with drug problems to penal institutions. In addition, many offenders confined for offenses not related to narcotics are drug users. Currently in many institutions more than 50 percent of committed offenders have drug problems.

To deal effectively with the drug abuser's problems will require a treatment continuum. Many innovative programs now are being undertaken in the community by a variety of agencies and organizations. The drug abuser and his needs should be identified in the institution, and a program initiated that will be continued on release.

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 group affiliations that can substitute for the drug subculture. Because no solutions have yet been developed that provide effective treatment for addicts in correctional institutions, 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 not psychotic, he resists any 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-

priate 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 reappraisal 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. This decision was motivated by the fact 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 for both.

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.

Costs related to the severely disturbed offender may range from $50 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 psychotic 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 subculture 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 units with older, more confirmed criminals. They should not be placed among younger, less sophisticated, and more impressionable men. Educational and vocational 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

1. American Psychiatric Association. *Standards for Psychiatric Facilities: A Revision of the Standard for Hospitals and Clinics.* Washington: APA, 1969.
2. American Psychiatric Association. *Standards for Psychiatric Facilities Serving Children and Adolescents.* Washington: APA, 1971.
3. Bratman, Richard, and Freedman, Alfred. *A Community Mental Health Approach to Drug Addiction.* Washington: Government Printing Office, 1965.
4. California Human Relations Agency. *Training for Tomorrow: A Design for Creating Manpower Development for California Corrections.* Sacramento, 1970.
5. California Youth Authority. *The Disturbed and Intractable Ward: A Staff Analysis and Report.* Sacramento, 1969.
6. Glaser, William, M. D. *Reality Therapy.* New York: Harper and Row, 1965.
7. Glasscoti, Raymond, and others. *The Treatment of Drug Abuse Programs, Problems and Prospects.* Washington: Joint Information Service of the American Psychiatric Association and the National Association for Mental Health, 1972.
8. Golden, Stephen. *Psychiatric Treatment Programs.* Sacramento: California Youth Authority, 1972.
9. Knight, Doug. *The Impact of Living-Unit Size in Youth Training Schools: A Review of Selected Evidence.* Sacramento: California Youth Authority, 1971.
10. Lindesmith, Alfred. "Our Immoral Drug Laws," *Nation,* June 21, 1958, pp. 558–562.
11. Lindesmith, Alfred R. *The Addict and the Law.* Bloomington: Indiana University Press, 1965.
12. Mayse, Robert L. *The Recalcitrant Offender.* Tone, Calif.: Preston School of Industry.
13. Ohmart, Howard. *The Disturbed and Intractable Wards.* Sacramento: California Youth Authority, 1969.
14. Task Force on Juvenile Delinquency, Missouri Law Enforcement Assistance Council. *Proposed High Security Training Schools for Youth in Trouble.* Jefferson City: Missouri Law Enforcement Assistance Council, 1971.
15. U.S. Bureau of Prisons. *Handbook of Correctional Psychiatry.* Vols. I and II. Washington, 1968.

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.
15.5 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 these policies, procedures, and programs more relevant to the problems and needs of women.

1. Facilities for women offenders should be considered 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 woman 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 aptitudes 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.

a. In coeducational facilities, classification and diagnostic procedures also should give consideration to offenders' problems with relation to the opposite sex, and coeducational programs should be provided to meet those needs.

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 of 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 programing, 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 programing. 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 has, however, been a change in the administrators. Twenty-four of the 34 State women's facilities operating in 1966 were headed by men. 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 diversionary measures 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 Univerisity Women indicated that approximately 80 percent of institutionalized women have children for whom they are responsible. In most instances, the woman offender is not allowed to participate in the decisionmaking 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 women's prisons is the almost total lack of meaningful programing. Work assignments serve institutional and systemwide needs.

Women do the laundry, sewing, and other "female" tasks for the correctional system. Such programing does nothing to prepare a woman for employment and in fact greatly 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 adjusment 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, problems, and needs essentially are no different for females than for males. The correctional system should abandon the current system of separate institutions based on sex and develop a fully integrated system based on all offenders' needs. The coeducational program can be an invaluable tool for exploring and dealing with social and emotional problems related to identity conflicts that many offenders experience.

Coeducational programs such as those in the Ventura and Los Guilucos schools of the California Youth Authority have demonstrated clearly that a mixed population has a positive program impact. The Federal system also has converted at least two institutions, one for juveniles at Morgantown, W. Va., and one for adults at Fort Worth, Tex., to coeducational facilities. It is recognized, however, that in jurisdictions with a relatively large number of male institutions and a small number of women prisoners, coeducational arrangements cannot be universally feasible.

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 programs not only will serve to improve programs, but also will require more women in correctional positions.

References

1. American Association of University Women, Pennsylvania Division. *Report on the Survey of 41 Pennsylvania County Court and Correctional Services for Women,* Philadelphia: AAUW, 1969.
2. American Friends Service Committee. *Struggle for Justice.* New York: Hill and Wang, 1971.
3. California Youth Authority. *A Guide to Treatment Programs.* Sacramento, 1971.
4. Flynn, Edith E. "The Special Problems of Female Offenders," in *We Hold These Truths,* report of The National Conference on Corrections. Richmond: Virginia Division of Justice and Crime Prevention, 1972.
5. Giallombardo, Rose. *Society of Women: A Study of a Women's Prison.* New York: Wiley, 1966.
6. Kay, Barbara A. "Differential Self Perception of Female Offenders," unpublished Ph.D. dissertation, Ohio State University, 1961.
7. Pollack, Otto. *The Criminality of Women.* New York: Barnes, 1950.
8. *Proceedings, National Conference of Superintendents of Institutions for Delinquent Females.* Collegeville, Minn.: Rural Crime and Justice Institute, 1971.
9. Reckless, Walter C., and Kay, Barbara A. *The Female Offender,* consultants' report to the President's Commission on Law Enforcement and Administration of Justice. Washington: Government Printing Office, 1967.
10. Sarri, Rosemary. "A Model of Institutional Programming for the Seventies." Paper presented at the Annual Meeting, American Correctional Association, 1971.

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.

1. 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.

2. The chaplain should play an integral part in institutional programs.

3. 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 alien to the chaplain but existing in his institution. Funds should be provided for this purpose.

4. The chaplain should locate religious resources in the civilian community for those offenders who desire assistance on release.

5. 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.

6. 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

1. American Correctional Association. *Manual of Correctional Standards*. 3rd ed. Washington: ACA, 1966.

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 of 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 stimulate 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, handcrafts, 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

1. Gabrielson, M. Alexander, and Miles, Canvell M., eds. *Sports and Recreation Facilities.* Englewood Cliffs, N.J.: Prentice-Hall, 1958.
2. Joint National Conference of the Division for Girls' and Women's Sports and the Division of Men's Athletics. *Values in Sports.* Washington: American Association for Health, Physical Education, and Recreation, 1963.
3. Kraus, Richard. *Recreation Today.* New York: Meredith, 1964.
4. Menninger, Karl. *The Crime of Punishment.* New York: Viking, 1968.
5. Meyer, Harold D., and Brighthill, Charles K., eds. *Community Recreation.* Englewood Cliffs, N.J.: Prentice-Hall, 1964.
6. Nesbit, John A.; Brown, Paul D.; and Murphy, James F., eds. *Recreation and Leisure Service for the Disadvantaged.* Philadelphia: Lea and Febiger, 1970.
7. O'Morrow, Gerald S., ed. *Administration of Activity Therapy Service.* Springfield, Ill.: Charles C. Thomas, 1966.
8. Smith, Larry. "An Analysis of the Recreational Pursuits of Selected Parolees from the State Correctional Institution at Rockview, Pennsylvania," unpublished master's thesis, Pennsylvania State University Graduate School of Physical Education, 1969.

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.
15.5 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, education, 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 nonthreatening 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 social world, including family members 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 often lead to 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 capable counseling supervisor who can choose and train existing 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

1. California Youth Authority. *Division of Institutions Task Force for Program Development.* Sacramento, 1966.
2. Fenton, N., et al. *The Correctional Community.* Sacramento: California Youth and Adult Corrections, 1967.
3. *The Role of Group Counseling in a Wholesome Group Living Program.* Job Corps Staff Training Monograph. Berkeley: University of California, 1966.
4. U.S. Department of Health, Education, and Welfare. *Institutions Servicing Delinquent Children.* Children's Bureau Publication 360. Washington: DHEW, 1962.
5. U.S. Department of Health, Education, and Welfare. *Group Counseling with Delinquent Youth.* Children's Bureau Publication 459. Washington: DHEW, 1968.

Related Standards

The following standards may be applicable in implementing Standard 11.9.

6.2 Classification for Inmate Management.
14.4 Employment of Ex-Offenders.
14.5 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 enterprise 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 on the outside by companies that might be expected to hire offenders when they are released. Such companies may be persuaded to establish factory branches at 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

1. Bridges, Kirke E. "Prison Labor and Industries," unpublished paper, Sam Houston State University, Texas, 1970.
2. Caldwell, Robert G. *Criminology*. New York: Ronald Press, 1956.
3. Gillin, John Lewis. *Criminology and Penology*. New York: Century, 1926.
4. Jones, Howard. *Crime and the Penal System*. London: University Tutorial Press, 1962.
5. Lopez-Rey, Manuel. "Some Considerations on the Character and Organization of Prison Labour," *Journal of Criminal Law, Criminology, and Police Science*, 1958.
6. Means, Ernest E. *Prison Industries and Rehabilitation Programs*. Tallahassee: Florida Division of Corrections, 1959.
7. Robinson, Louis N. *Should Prisoners Work?* Philadelphia: Winston, 1931.
8. Sutherland, Edwin H., and Cressey, Donald R. *Principles of Criminology*. 6th ed. New York: Lippincott, 1960.
9. United Nations. *Prison Labour*. New York: United Nations, 1955.

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.[1] 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 stated 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.[2]

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.[3]

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.[4] There is little reason to believe the situation has changed radically since 1965, although efforts have been made in several jurisdictions to ex-

[1] *National Prisoner Statistics: Prisoners in State and Federal Institutions for Adult Felons, 1970* (Washington: Federal Bureau of Prisons, 1970), p. 43.
[2] *National Prisoner Statistics: Prisoners in State and Federal Institutions for Adult Felons, 1966* (Washington: Federal Bureau of Prisons, 1968), p. 43.
[3] President's Commission on Law Enforcement and Administration on Justice, *Task Force Report: Corrections* (Washington: Government Printing Office, 1967), pp. 6–8. Publication referred to hereinafter by title.
[4] *Task Force Report: Corrections*, p. 61.

tend parole services to jail populations. The need for parole services is acute at the misdemeanant level.

Parole has been attacked as leniency, but its proponents argue that it is both humanitarian and designed to protect the public. They advance these arguments on two grounds. First, virtually everyone convicted and sent to a correctional institution will return to the community. He can be turned loose by discharge with no continuing responsibility on his part or the State's, or he can be released under supervision at what appears to be an optimal time and be assisted in reintegration into the community. From this perspective, parole is simply a form of graduated return to the community, a sensible release procedure.

A second major argument is that the sentencing judge cannot anticipate what new information may be available to a parole board or what circumstances might arise to indicate the optimum release date. Unlike the judge, a paroling agency has the advantage of being able to observe the offender's behavior. Furthermore, decisions on release made at the time of sentencing may be more angry than rational. Greater objectivity in appraising the offender may be achieved by a parole board when the passions that may have been aroused by an individual's offense have cooled.

Available evidence supports the view that parole does not lead necessarily to a lessening of the amount of time inmates actually serve in prison. In fact, one major criticism of present parole laws is that their administration tends to result in more severe penalties in a criminal justice system that already imposes extensive State control.

Inmates released on parole in the United States in 1964, the last time national data of this kind were available, actually served slightly *more* time than those released through unconditional discharge (Table 12.1). The table does not show the additional time served by offenders returned to prison as parole violators, a hazard to which those discharged unconditionally are not subject. In the major proportion of parole revocation cases, violation of parole rules rather than new felony offenses cause the offender's return to prison to serve more of his sentence. Thus arguments are made that the sentencing structures supporting extensive parole use should be severely modified because of their capacity to inflict additional and unwarranted "punishment."

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

Table 12.1. Number and Types of Releases in 1964 and Median Time Served

Type of release	Number	Median time served
Discharge	22,883	20.1 months
Parole	42,538	21.1 months

Source: *National Prisoner Statistics, State Prisoners: Admissions and Releases, 1964* (Washington: Federal Bureau of Prisons, 1967.)

a portion of his sentence, under the continued custody of the state and under conditions that permit his reincarceration in the event of misbehavior."[5] Though some jurisdictions impose limitations on parole use, offenders generally can be released on parole and repeatedly returned to confinement for parole violation until the term of their original commitment has expired.

Yet to many, parole is still seen as "leniency" for offenders. Others contend that, in well-operated systems, different types of offenders should serve differing periods of time, and the more dangerous and violence-prone should serve more time. This is seen as a proper use of sentencing and parole flexibility. To actually understand parole and to make it a more effective instrument of public policy requires sophisticated knowledge of all its processes, procedures, and objectives. Understanding is obscured by the use of such value-laden terms as leniency, harshness, punishment, or coddling. All of them oversimplify what is a complex administrative, legal, and political issue.

Parole resembles probation in a number of respects. In both, information about an offender is gathered and presented to a decisionmaking authority with power to release him to community supervision under specific conditions. If he violates those conditions, the offender may be placed in, or returned to, a correctional institution. Parole, however, differs from probation in a significant way. Parole implies that the offender has been incarcerated in a correctional institution before he is released, while probation usually is granted by a judge in lieu of any kind of confinement.

Recent development of informal institutions (halfway houses, etc.) used by both courts and parole boards make the distinction between probation and parole increasingly difficult to sustain. To add further confusion, some jurisdictions use the term "bench parole" to refer to a form of minimally supervised probation.

Parole and probation also differ significantly in terms of who makes the decision. Parole is almost always an administrative decision; the granting of probation, a court function.

The power to determine when an offender may be released from an institution, to fix the conditions of his supervision, and to order parole revocation almost always passes from the court to an agency within the executive branch. In the case of adults this agency is usually a parole board; in the case of juveniles, an institutional official. As a condition of probation, a sentencing judge may require an offender to spend some time in an institution before he is released under community supervision, as in the "split sentence" in Federal jurisdictions. In this situation, authority to fix conditions and powers of revocation and discharge continue with the court after the offender is released from confinement. Therefore, the case almost always is classified as probation.

Parole also needs to be distinguished from one other kind of release. In a number of jurisdictions—New York, Wisconsin, the Federal system—adult offenders are automatically released under supervision when they have served a portion of their sentence and have earned a specified amount of time off for good behavior. Legislation specifies the calculation of "good time," and the parole authority exercises no discretion in the matter. The procedure is called "mandatory" or "conditional" release and is used to provide supervision for those offenders who have been denied parole, are ineligible for it, or have previously refused it. Although released automatically, such offenders may be returned to serve the remainder of their terms if they violate any of the release conditions. The advantage of mandatory release is that supervision is provided for those not paroled. Its main disadvantages are that time under supervision usually is short, and inmates are released simply because they have earned time off for good behavior, with little regard for their readiness to return to the community.

The beginning of parole in the United States generally is identified with the Elmira Reformatory in New York, which opened in 1876. In the Elmira system, sentences were indeterminate, dependent on "marks" earned by good behavior. Release was for a six-month parole term, during which the parolee had to report regularly to a volunteer guardian or sponsor.

Elmira drew wide attention by its new approach to imprisonment, which was markedly different from the tradition of incarceration for a term fixed at the time of sentence. The designation of certain institutions for youthful felons as "reformatories," and the accompanying practice of permitting indeterminate sentences and parole, spread rapidly through the United States in the last quarter of the 19th century and the beginning of the 20th. This sentencing system, including its provisions for parole, soon was extended to prisoners of all ages. By 1922, parole laws had been passed by 45 States, and in 1945 Mississippi became the last State to develop parole legislation.

This does not imply, however, that either parole laws or practices have developed uniformly. States still vary widely in the proportion of inmates released under parole supervision. In 1968, for example, the National Prisoner Statistics of the Federal Bureau of Prisons showed that among offenders released in the States of Washington, New Hampshire, and California, more than 95 percent were released under parole supervision. During the same period, less than 10 percent of inmates released in Oklahoma were released on parole. In Nebraska the comparable figure was 20 percent. Nationwide, releases to parole supervision were approximately 60 percent of all releases.

The history of parole for juvenile offenders is different from that for adults. For juveniles, parole usually is traced to the houses of refuge for children in the latter part of the 19th century. From these settings, children were released to work for several years in private homes. Total control of the child was vested in the family to whom he was released. It was the family's responsibility to determine when he had earned his freedom.

The child protection programs developed later assumed many of these activities. Although in recent years juvenile programs have become more correctional, they have continued to be involved closely with child welfare activities.[6] In many States, juvenile aftercare services are the responsibility of the welfare department or a similar agency containing a broad range of services. In these settings, delinquency is seen as merely a symptom of a young person's need for State services. Labels such as "delinquent," "dependent," or "neglected" are de-emphasized. The general thrust is to treat these children within the context of child welfare.

Juvenile parole authorities usually are more than willing to distinguish their services from those for adults. Juvenile officials typically use the term "aftercare" as a synonym for parole, but in many ways the difference is more than semantic. The problems presented by the young releasee are different from those

[5] *Attorney General's Survey of Release Procedures* (Washington: Government Printing Office, 1939), vol. IV, p. 4.

[6] See Anthony Platt, "The Rise of the Child-Saving Movement: A Study in Social Policy and Correctional Reform," *Annals of the American Academy of Political and Social Sciences*, 381:21 (January 1969).

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.[7] The two concerns might be cursorily equated. 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 Corrections 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 sources of sentencing authority and limits on sentencing alternatives and lengths.[8] 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 noted 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 within jurisdictions from one offense category to another.

Variations in Structure

Throughout the history of American criminal justice, there have been various models of "ideal" sentencing structures proposed in different jurisdictions. Some have been tried, all have been debated, most have been modified. But there is still no uniform sentencing structure. The Model Penal Code of 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 are recent attempts to propose sentencing structures suitable for all offenders in all jurisdictions. Because there have been no common standards for sentencing structures and processes, establishing standards for parole functions is extremely complex.

It might be possible to reach agreement on matters such as structure and composition of parole boards, appropriate workloads, staff training and development, and proper procedures for granting and revoking. But it must be remembered that the meaning and importance of the paroling function vary from one postconviction system to another. For example, in jurisdictions where legislatures set long maximum terms that trial judges cannot modify, where good-time laws are stringent, or where pardon is almost unheard of, parole becomes not only an important method of release 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 maxima, and with liberal good-time allowances or frequent use of pardon. In such cases parole determinations may play a relatively minor part in overall release processes. In short-sentence jurisdictions, parolees terminate supervision fairly quickly. In jurisdictions in which minimum sentences are not required by either legislation or court determination, parole authorities have wide discretion to release inmates at any time.

Variations also exist among jurisdictions in regard to institutionalized juvenile delinquents, but they are not nearly as disparate as in the case of adults. The extent of control by the State over juvenile offenders generally is fixed by age rather than by offense. In most jurisdictions juvenile commitments do not have fixed minimum terms, so that release authorities have wide discretion.

But laws relating to juveniles are by no means uniform in all jurisdictions. For example, the National Survey of Corrections reported that in five States juveniles can be paroled from State training schools only with the committing judge's approval. In three States, the time a juvenile must serve before release is fixed in advance by the court. In effect, these are minimum sentences.

The sentencing system finally adopted is crucial to the parole function because it fixes the amount and the character of discretion a parole system can exercise. Seeking to eliminate the abuses that lurk in discretion, some persons would eliminate any form of discretionary release after sentencing by the trial judge.[9] However, most authorities hold that discretion is inevitable; the task is to limit and control it. From this view, many more problems arise when the entire releasing decision is placed in the hands of the trial judge or made dependent on a system of totally fixed sentences set by the legislature than if the decision is shared with a parole authority.[10]

On the other hand, most parole officials do not want the amount of power implicitly delegated by completely indeterminate sentencing. They feel that the awesome task of determining sentence limits should be left to judicial and legislative branches.

Sentencing Consistent With Parole Objectives

The sentencing system that seems most consistent with parole objectives has the following characteristics:

1. Sentence limits set by legislation, with the sentencing judge having discretion to fix the maximum sentence, up to legislative limits.
2. No minimum sentences, either by mandate or by judicial sentencing authority.
3. Comparatively short sentences for most offenses, with a legislative maximum not to exceed five years for most offenders.
4. Mandatory release with supervision for offenders ineligible for parole, so that they are not held in an institution until their absolute discharge date.
5. All parole conditions set by the paroling authority, but with opportunity for a sentencing judge to suggest special conditions.
6. Legislative prohibition of offenders' accumulating consecutive sentences if it interferes with minimum parole eligibility.
7. Legislative provisions for alternatives to reimprisonment upon parole revocation.
8. No offenses for which parole is denied by legislation.

In general, the intent of such a system is to give to the legislature and sentencing judges the authority to set outer limits of sentence but not to restrict parole authorities by setting minimum terms. At the same time, the sentencing structure provides supervised release for those offenders whom parole authorities cannot conscientiously release under regular parole criteria. The sentencing structure may provide for extended terms for dangerous offenders, though parole eligibility requirements should remain roughly the same in these cases.

A system of this kind would give parole authorities discretion over the release of offenders whom trial courts decided need incarceration. Yet it would be a limited discretion. Parolees would not be under supervision for excessive time periods nor, if parole were denied, would they be incarcerated for unnecessarily long terms.

PURPOSES OF PAROLE

The objectives of parole systems vary widely. Without clearly stated and understood objectives, the administrator cannot make the most basic decisions regarding effective resource allocation. Even a casual attempt to clarify the purposes of parole will reveal that objectives frequently are in conflict. One of the parole administrator's chief tasks 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 specific 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).[11]

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 development of clear definitions of recidivism and creation of information systems that make data available about the probabilities of various types 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

[7] See William Arnold, *Juveniles on Parole* (Random House, 1970).

[8] See Chapter 5 of this report. See also Daniel Glaser, Fred Cohen, and Vincent O'Leary, *The Sentencing and Parole Process* (Washington: U.S. Department of Health, Education, and Welfare, 1966).

[9] See *Struggle for Justice: A Report on Crime and Punishment in America*, Prepared for the American Friends Service Committee (Hill and Wang, 1971), ch. 8.

[10] See American Bar Association Project on Minimum Standards for Criminal Justice, *Sentencing Alternatives and Procedures* (Institute for Judicial Administration, 1967), Sec. 3, pp. 129–199.

[11] American Correctional Association, *Manual of Correctional Standards* (Washington: ACA, 1966), p. 114.

some instances. 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 three other concerns: equitable punishment, impact on the system, and reactions of persons outside the correctional organization.

Table 12.2. Items Considered by Parole Board Members to be Most Important in Parole Decisions

Item	Percent Including Item as One of Five Most Important
1. My estimate of the chances that the prisoner would or would not commit a serious crime if paroled.	92.8
2. My judgment that the prisoner would benefit from further experience in the institution program or, at any rate, would become a better risk if confined longer.	87.1
3. My judgment that the prisoner would become a worse risk if confined longer.	71.9
4. My judgment that the prisoner had already been punished enough to "pay" for his crime.	43.2
5. The probability that the prisoner would be a misdemeanant and a burden to his parole supervisors, even if he did not commit any serious offenses on parole.	35.3
6. My feelings about how my decision in this case would affect the feelings or welfare of the prisoner's relatives or dependents.	33.8
7. What I thought the reaction of the judge might be if the prisoner were granted parole.	20.9

Source: National Parole Institutes, *Selection for Parole* (New York: National Council on Crime and Delinquency, 1966).

A number of other studies have noted the same phenomenon.[12] 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 feelings, 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 a poor risk, because in the opinion of the board he has simply served enough time for 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 prominantly in parole decisionmaking and must be accounted for in any discussion of objectives. To judge from questionnaires returned by parole board members and from studies in the field, there seem to be at least three core sets of concern other than reducing recidivism,[13] which significantly and regularly impinge upon most parole decisionmakers.

[12] See Robert Dawson, *Sentencing: The Decision as to Type, Length, and Conditions of Sentence* (Little, Brown, 1969).

Fairness and Propriety

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 systems have been expected to conform with practices that enhance the ideals of fairness and reflect hallmarks of American justice such as procedural regularity, precedent, and proof.

Most recently these issues have been reflected in increased sensitivity to inmates' or revokees' rights to counsel, the right of a hearing on parole grant and revocation, and disclosure of information used in decisionmaking. Reflecting this emphasis, some parole board members may even refuse to consider at 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 the 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 jurisdiction's sentencing system. One of the most common is through decisions seeking to equalize penalties for offenders who have similar backgrounds and have committed the same offense but who have received different sentences.

Alternatively, decisions to grant or deny parole, particularly in well-known cases, often may hinge on the question, "Has this person served enough time for the act he committed?" Considerable differences in these matters exist from one system to another, as well as among individuals in the same system. Such concerns usually are less apparent in, and perhaps less relevant to, juvenile agencies. However, in many parole systems, maintaining an appropriate system of sanctions directly or indirectly underlies most decisionmaking. How significant these considerations are depends on the kind of sentencing framework in which the parole system is operating.

In addition to issues of equity, parole decisionmakers sometimes respond to actual or anticipated public attitudes. Such concerns for public acceptance of parole generally, and case decisions specifically, govern the kinds of risks that are acceptable and the actions considered feasible by parole decisionmakers. This public reaction issue is particularly acute in cases affecting society's core beliefs. Criteria having little to do with the question of risk may be used by parole officials in dealing with certain cases, particularly those involving crimes seen as "heinous." The concern is more for meeting general social norms and responding according to public expectations.

[13] Keith Hawkins, "Parole Selection: The American Experience," unpublished doctoral dissertation, Cambridge University, 1971.

Maintenance of the Justice System

A third set of concerns that influences parole decisionmaking relates to support of other criminal justice operations. Parole boards play a crucial role as a kind of system regulator, influencing other parts of the justice system, from police to prisons. For example, in some systems where a parole board has extensive control over the amount of time a large proportion of inmates will serve, institutional populations can change dramatically depending on board policy. Not only do parole board decisions influence institutional size, but they also reinforce behavior that can have profound effects on the kinds of programs sustained. Inmates are more likely to participate in a program the parole board explicitly values than in one to which the board pays no attention.

Institutional staff members have an obvious stake in the programs in which inmates are involved. Hence they too are affected by parole decisions. Various parole officials are sensitive to the correctional impact of their decisions and some take this factor into account in their decisions.[14] In some instances, boards will be reminded forcefully of their effect on inmates and institutions. For example, it is not uncommon during times of high prison tension (as after riots), when parole policy is under attack by inmates and sympathizers, for boards to become more "liberal." In such instances, the degree of risk acceptable for parole, conditioned by pressures within the institutions, shifts perceptibly. Parole boards directly affect parole supervision staff by the kind of offenders they release and revoke, and by the policies surrounding these actions.

System maintenance and other basic concerns cited clearly influence parole decisionmaking. However, questions of risk, fairness, public expectation, and system maintenance are not the only considerations affecting parole authorities. Of great importance as well are the beliefs they hold concerning the sources of criminality, strategies for changing offenders, and the nature of the relationship between the correctional system and the offender.

[14] Keith Hawkins, "Some Consequences of a Parole System for Prison Management," in D. F. West, ed., *The Future of Parole* (London: Gerald Duckworth, 1972).

ORGANIZATION OF PAROLING AUTHORITIES

Most persons concerned with parole decisionmaking for juveniles are full-time institutional personnel. Only a few juvenile jurisdictions have noninstitutional personnel determining parole releases.

Different circumstances prevail in the adult area. For example, adult boards tend to carry many more direct State-level administrative responsibilities than do releasing authorities for juveniles. Table 12.3 shows that in 1965, 14 adult parole boards supervised probation services for the courts of the State. Few parole decisionmaking groups for juvenile offenders had a similar responsibility. The table also shows the historical link in many States between parole and the clemency or pardon authority of the governor. Many boards carried out advisory functions for the governor in executive clemency matters and in one State, Alabama, the board granting paroles also had the power to pardon.

Although there is considerable variety in the organizational settings in which parole decisionmakers work, at least two dominant organizational strains can be identified—the institutional model, which largely predominates in the juvenile field, and the independent model, the most common in the adult field. Considerable controversy has arisen around these two models.[15]

The Institutional Model

In general, the institutional model perceives parole as being bound closely to institutional programs.

[15] *Task Force Report: Corrections*, pp. 65–66.

Table 12.3. Responsibilities of Adult Paroling Agencies Other Than Parole, 1965

Additional Responsibility	Number of Boards
Holds clemency hearings	28
Commutes sentences	24
Appoints parole supervision staff	24
Administers parole service	20
Paroles from local institutions	19
Grants or withholds "good time"	17
Supervises probation service	14
Grants pardons, restorations, and remissions	1
Fixes maximum sentence after 6 months	1
May discharge prior to sentence expiration	1
Sets standards for "good time"	1
Acts as advisory board on pardons	1
None	5

Source: National Council on Crime and Deliquency, *Correction in the United States* (New York: NCCD, 1967), p. 215.

It places the release decision with the correctional facility's staff. Parole is simply one more of a series of decisions affecting the offender. The persons most familiar with the cases make the releasing decision; and this makes it possible to develop a rational and consistent set of decisions that affect the inmate. The Crime Commission reported that 34 of 50 States used this form of organization in the juvenile field.

The major arguments raised against the institutional model is that too often institutional considerations, rather than individual or community needs, influence the decisions. Overcrowding in the institution, desire to be rid of a problem case or to enforce relatively petty rules, or other concerns of institution management easily become the basis of decisionmaking. Institutional decisionmaking also lends itself to such informal procedures and lack of visibility as to raise questions about its capacity for fairness or, what may be as important, the appearance of fairness.

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. Undoubtedly much of the basis for this reform came from the view that paroling authorities were being swayed too easily by institutional considerations or were not being objective enough.[16] The change was so complete that today no adult parole releasing authority is controlled directly by the operating staff of a penal institution.

Whatever its merits in fostering objectivity, the independent parole board also has been criticized on several counts. First, the claim is made that such boards tend to be insensitive to institutional programs and fail to give them the support they require. Second, independent boards are accused of basing their decisions on inappropriate considerations, such as the feelings of a local police chief. Third, their remoteness from the institutional program gives independent boards little appreciation of the dynamics in a given case; their work tends to be cursory, with the result that too often persons who should be paroled are not, and those who should not be paroled are released. Fourth, the argument is made that independent systems tend to place on parole boards persons who have little training or experience in corrections.

Lack of knowledge about corrections, combined with the distance of the parole board from institutional programs, builds unnecessary conflicts into the system. The rapid growth of partway release programs and halfway houses has increased the probability of those conflicts. In short, critics of the independent model assert that important decisions are being made concerning the correctional system, its programs, and the offenders in it by persons far removed from the system who have little appreciation of its true nature.

The Consolidation Model

While these arguments and their rebuttals continue, an alternate system has gained considerable support in recent years, tending to cut the ground away from both major models. This system is linked with a general move toward consolidation of all types of correctional services into distinctive departments of corrections that subsume both institution and field programs. The consolidation model, emerging from the drive toward centralized administration, typically results in parole decisions being made by a central decisionmaking authority organizationally situated in an overall department of corrections but possessing independent powers. The director of corrections may serve on such a releasing authority, or he may designate a staff member to do so. In the youth field, the centralized board may have policy responsibilities for institutions as well as parole decisionmaking.

Proponents of the consolidation model argue that there is increased concern for the whole correctional system in departments where parole releasing authority is part of a centralized system. They claim that sensitivity to institutional programs seems more pronounced in consolidated systems than in completely autonomous ones. They also contend that removal of parole decisionmaking from the immediate control of specific correctional institutions tends to give greater weight to a broader set of considerations, a number of which are outside direct institutional concerns.

Although variations in organizational or administrative arrangements may be required to meet special circumstances, certain general organizational requirements seem clear. Among the most essential requisites is that the organizational structure of parole authorities should foster close coordination between parole decisionmakers and the increasingly complex set of programs throughout the correctional network. Yet sufficient autonomy should be preserved to permit parole boards to act as a check on the system.

The trend in this country clearly is in the direction of consolidation. More than 60 percent of the State parole boards responsible for release of adult offenders now function in common administrative structures with other agencies for offenders.[17] This trend enhances integration of correctional operations. If parole boards are to function as useful and sophisticated decisionmaking units that balance a wide set of concerns, they also must achieve and maintain some degree of autonomy from the systems with which they interface. This issue involves appointment and tenure methods, as well as the tasks and functions for which parole authorities take responsibility.

Articulation of Criteria for Decisions

Articulation of criteria for making decisions and development of basic policies is one of the chief tasks that parole decisionmakers need to undertake. While discretion is a necessary feature of parole board operations, the central issue is how to contain and control it appropriately. Few parole boards have articulated their decision criteria in much detail or in writing, even though research has shown that criteria exist. Parole board members tend to display, with slight variations, a consistent response to case situations of which they may be only marginally aware.[18]

Articulating the basis of decision systems is crucial to improving parole decisions, because criteria must be specified before they can be validated. For example, 75 percent of 150 board members queried in 1965 by the National Probation and Parole Institute asserted that rapists generally were poor parole risks. Research data have shown such an assumption to be wrong.

Articulation of criteria is crucial to staff and inmates alike. The notion of an inmate's participation in a program of change depends on an open information system. His sense of just treatment is inextricably bound with it. As one parole board member put it:

> It is an essential element of justice that the role and processes for measuring parole readiness be made known to the inmate. This knowledge can greatly facilitate the earnest inmate toward his own rehabilitation. It is just as important for an inmate to know the rules and basis of the judgment upon which he will be granted or denied parole as it was important for him to know the basis of the charge against him and the evidence upon which he was convicted. One can imagine nothing more cruel, inhuman, and frustrating than serving a prison term without knowledge of what will be measured and the rules determining whether one is ready for release. . . . Justice can never be a product of unreasoned judgment.[19]

And without valid information on the basis of parole decisions, correctional staffs hardly can be expected to deal realistically with offenders or to shape meaningful programs with them.

In most parole systems, board members are so heavily committed to case-by-case decisions that these additional tasks, and those to be suggested subsequently, will require a substantial alteration in work style. Smaller States will need to shift from part-time to full-time parole boards. Other States will require additional personnel at the parole decisionmaking level.

Need for Appeal Procedures

Besides the pressure for clearly articulated policies, there also is a rapidly developing demand for mechanisms by which correctional, and specifically parole, decisions can be appealed. The upsurge of cases being considered by the courts documents this need.[20] The courts can and will test at least certain aspects of parole decisions. Yet if parole authorities are to develop correctional policy consistent with correctional needs and judicial standards, they need

[16] *Attorney General's Survey of Release Procedures* (1939), vol. IV, p. 49.

[17] National Probation and Parole Institutes, *The Organization of Parole Systems for Felony Offenders in the United States*. 2d ed. (Hackensack, N.J.: National Council on Crime and Delinquency, 1972). Unless otherwise stated, factual data on State parole systems given in this chapter are from this publication.

[18] Don Gottfredson and Kelly Ballard, "Differences in Parole Decisions Associated with Decision Makers," *Journal of Research in Crime and Delinquency*, 3 (1966), 112.

[19] Everette M. Porter, "Criteria for Parole Selection" in *Proceedings of the American Correctional Association* (New York: ACA, 1958) p. 227.

[20] For examples of this growth in interest by the courts, see Comment, "The Parole System," *Pennsylvania Law Review*, 120 (1971), 282.

to establish self-regulation systems, including internal appeal procedures.[21]

Where 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 should be done by hearing examiners responsible to the board and familiar with its policies and knowledgeable as to correctional programs.

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 conduct the hearings and make decisions. Hearing examiners operating in teams of two should handle the large part of day-to-day interviewing and decisonmaking for the board. Inmates and parolees should be entitled to appeal decisions to the parole board, which could hear cases in panels or en banc. 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 deciding appeals and 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 improvement developed. The use of the board for all types of appeals from correctional decisions (loss of good time, denial of privileges) also should be considered.

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 attention to each separate function—policy development, hearings, 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 Federal 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 achieved.

[21] Edward Kimball and Donald Newman, "Judicial Intervention in Correctional Decisions: Threat and Response," *Crime and Delinquency*, 14 (1968), 1.

PAROLE AUTHORITY PERSONNEL

The most recent data available on members of juvenile parole releasing authorities indicate that by far the largest number are full-time staff of juvenile correctional institutions.[22] In several States, such as California and Minnesota, youth commissions parole juveniles. In others, such as Wisconsin and Illinois, the same board is responsible for release of both juveniles and adults.[23] The issues of appointment, qualifications, and training raise precisely the same questions for juvenile release authority members as they do for board members responsible for adult release.

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 corrections.

A similar problem exists with any part-time member of a paroling authority. In 18 States, parole board members responsible for the parole of adult males are part-time employees. In six others only the chairman is a full-time employee. Part-time board members tend to be located in the smallest States, but there are exceptions. Tennessee and South Carolina, for example, with part-time boards, have larger populations than several other smaller States that have full-time boards. If parole services were extended to local jails and one board was made responsible for jails, training schools for delinquents, and adult prisons, a full-time board would be needed in virtually every State.

For larger States, the relevant question is, What is the optimum size of the parole decisionmaking authority? Almost half of parole boards for adult offenders consist of three members; 18 jurisdictions have five members; six have seven members; and one parole board, New York's, consists of 12 members. Some parole authorities argue that boards could grow indefinitely. But with a shift in emphasis toward policy articulation and appeals, it would seem prudent to hold the size to a manageable level. Few, if any, State boards should exceed five members. As the workload expands beyond the capacity of these members, hearing examiners should be appointed. The largest States might need 20 hearing examiners or more.

Qualifications of Board Members

Two dilemmas that are common to most appointive public offices are also seen in deciding on the best method of selecting parole board members: first, how to secure appointees with expertise and willingness to challenge the system when necessary rather than merely preserving it; second, how to select parole board members who will be responsive to public concern, as expressed through elected officials, without making politics rather than competence the basis for appointment.

[22] National Council on Crime and Delinquncy, *Correction in the United States* (New York: NCCD, 1967), p. 104.
[23] *Correction in the United States*, p. 86.

Parole decisionmakers too frequently have shown the negative possibilities of both dilemmas. In many instances they have become so coopted by a correctional system that there is no independent check against abuses of public or offender interests. Too many times appointments have been governed by patronage considerations, a dangerous criterion when human freedom is at stake and the most difficult moral, legal, and scientific issues are involved.

If parole authorities are to have the competence required for their tasks, specific statutory qualifications for board members must be developed. In 24 States there are no statutory requirements for parole members responsible for the release of adult offenders. In one State generalized references to character are made. In another 21 only the broadest references to experience or training are enunciated.

According to the findings of the first National Parole Conference in 1939, board members "should be selected on the basis of their integrity and competence to deal with human and social problems, without reference to political affiliations." [24] More recently the standards proposed by the American Correctional Association required that parole board members should "command respect and public confidence," be "appointed without reference to creed, color or political affiliation," possess "academic training which has qualified the board member for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work and sociology," and "have intimate knowledge of common situations and problems confronting offenders." [25]

No single professional group or discipline can be recommended as ideal for all parole board members. A variety of goals are to be served by parole board members, and a variety of skills are required. Knowledge of at least three basic fields should be represented on a parole board: the law, the behavioral sciences, and corrections. Furthermore, as a board assumes responsibility for policy articulation, monitoring and review, the tasks involved require persons who are able to use a wide range of decisionmaking tools, such as statistical materials, reports from professional personnel, and a variety of other technical information. In general, persons with sophisticated training and experience are required. In this context, the standards suggested by the American Correctional Association should be statutorily required for each jurisdiction.

Hearing examiners require less specialized education and training. More critical in these roles are persons with educational and experiential qualifications that allow them to understand programs, to relate to people, and to make sound and reasonable decisions. These roles should offer particular opportunities for ex-offenders and for those persons most sensitive to the implications of offenders' lifestyles.

[24] *Proceedings, National Parole Conference, 1939* (Leavenworth, Kan.: Federal Prison Industries, Inc., 1970), p. 113.
[25] American Correctional Association, *Manual of Correctional Standards*, p. 119.

Making the Appointment

A critical question concerns who should make the actual appointment to the parole board. Two basic choices are the governor or the head of the department of corrections. Appointment by the governor provides the board increased autonomy and greater responsiveness to public influence. But it increases the likelihood of lack of coordination with the corrections agency, oversensitivity to public reactions, and appointment of unqualified personnel. Selection by the director of corrections, who is himself selected on the basis of professional qualifications, is more likely to secure appointment of knowledgeable persons, protection from political influence, and some shielding from an undue concern for public criticism. The major disadvantage is the possible appointment of a "rubber stamp" decisionmaking body.

Some type of device must be employed if competent board personnel are to be selected. Each State should require by law that nominees for parole board positions first be screened by a committee broadly representative of the community. Representatives of groups such as the State bar and mental health associations should be included, as well as representatives of various ethnic and socioeconomic groups. The law should require that appointments be made only from the approved list of nominees.

Terms of Office, Salary

A number of other suggestions to improve parole board appointments have been made and should be adopted. One of these is to provide parole board members with substantial terms of office, as long as 12 years, during which they cannot be removed except for good cause.[26]

[26] Phillip E. Johnson, *Federal Parole Procedures* (Washington: Administrative Conference of the United States, 1972).

A matter of particular importance in attracting well-qualified persons to parole positions is the compensation. According to the most recent data available, the median salary 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 posts. 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 should inform board members of recent legal 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 and hearing officers also should receive support. Recent experiments carried out by the National Probation and Parole Institutes, in which parole board members had the opportunity to visit other States, proved to be valuable experience for participants.

THE PAROLE GRANT HEARING

The parole hearing is a critical moment for inmates. At this point they are legally "eligible" for release, their case is studied, they are interviewed, and the decision is made. In all States except Texas, Georgia, and Hawaii, adult felony offenders are present at hearings at the time of parole consideration. Four States screen files and grant interviews only to eligible inmates who seem to merit parole consideration. All other States hear every offender at least once, even those unlikely to be released. Many parole authorities see an inmate several times during the course of his sentence. In fact, a number of States provide for at least annual review of each case, no matter how remote release may be.

Formal hearing procedures are much less common with juveniles. More often, primary emphasis is placed on written reports or staff conferences at which the youth may or may not be present.

Procedures followed at parole hearings for adult offenders are extremely diverse. In some States, each parole applicant is heard by the full parole board. In others, especially those with many correctional institutions, boards are split into smaller working panels, each of which conducts hearings. In several jurisdictions, a single parole board member may conduct a hearing unless the case is regarded as unusually important, when a larger subcommittee 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 on the offender's adjustment to prison life. Some parole boards request special investigations of release plans for 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 clinical 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 would be involved most directly in providing data for the board's decisions.[27] 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. This lack is not solely an information gap; unfortunately, the basic problem is that community resources are meager.

Right to a Hearing

In most jurisdictions the offender has no statutory rights in the parole consideration process, except in some instances the right to a personal appearance before the parole board. Yet at these hearings, the traditional stance has been that the inmate and his record must make an affirmative case for parole. The Model Penal Code represents a turn-around in the traditional assumption that the burden of proof (however evaluated) rests on the inmate. It proposes that an inmate is to be released on parole when he is first eligible unless one of the following four conditions exists:

1. There is a substantial indication that he will not conform to conditions of parole.
2. His release at that time would depreciate the seriousness of the crime or promote disrespect for the law.
3. His release would have substantially adverse effects on institutional discipline.
4. His continued correctional treatment, medical care, or vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life when released at a later date.[28]

Recently the National Commission on Reform of Federal Criminal Laws substantially endorsed the presumption and the four considerations of the Model Penal Code. It offered in addition the proviso that, once an inmate has served the longer of five years or two-thirds of his sentence, he should be paroled unless the board is "of the opinion that his release should be deferred because there is a high likelihood that he would engage in further criminal conduct." [29]

Procedural Guidelines

In the past few years there has been a noticeable increase in complexity of procedural requirements for 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.

Development of guidelines for desirable parole hearings should attend to several concerns simultaneously. First, such hearings should provide parole authorities with as much relevant and reliable information about each case as possible. Second, the hearing process itself should carry the hallmark of fairness. Not only should it be a fair determination in substance, but to the extent possible it also should be perceived by the inmate as fair. Third, as far as practicable the hearing should enhance the prospects for an inmate's successful completion of his parole.

To these ends the hearing can make a number of contributions. The manner in which the inmate is interviewed and notified of decisions affecting him can support or undermine respect for the system of justice. Any opportunity for the offender's active participation in decisions can greatly affect his commitment to the plans made. In the final analysis, *his* commitment is the crucial factor in whether or not these plans will be carried out.

In keeping with the reintegration emphasis, a modern corrections system should embrace a wide variety of alternative programs, not only for institutions, but also for release or partway release. Except in rare cases it will probably be too cumbersome for a parole board to approve specific actions in detail. With community corrections, halfway houses, prerelease centers, split sentences, and similar developments, the line between parole and prison already is becoming blurred. It therefore appears necessary that the parole board increasingly test the appropriateness of programs and match individuals with them by criteria fixed in advance, rather than try to make clinical decisions on an individual's readiness for release.

The Automatic First Hearing

A number of practical steps for parole hearings flow from these changes in overall correctional processing. Every inmate should routinely be seen by a parole authority during the first year of incarceration. This review should be automatic and no application by the inmate should be required. Such a hearing might result in consideration of early parole. More often, it would be devoted to a review of the particular objectives and programs developed by the inmate and staff. Any program involving release for long periods should involve the parole board hearing staff.

The important element of this first, automatic hearing is that the board approves program objectives and program categories for offenders rather than attempting to make detailed clinical judgments about each case. The objective of the hearing, however, should not be to coerce the inmate to subject himself to specific institutional treatment programs. The traditional ineffectiveness of such programs does not make participation a good basis for a parole decision.

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 full-time parole release date, as far as a year in advance without requiring another hearing or further interviews by the parole board. If the objectives of the program are met, administration of the parole board's plan would be left to the offender and institutional and field staffs. Should substantial variations occur or important new information develop, the board could be notified and a new hearing scheduled. On the other hand, not all release dates can be predetermined at an initial interview. Additional hearings may be required either because of the length of the inmate's sentence or by the circumstances of a particular case.

[27] Daniel Glaser, *The Effectiveness of a Prison and Parole System* (Bobbs-Merrill, 1964), ch. 9.

[28] American Law Institute, *Model Penal Code*, (Philadelphia: ALI, 1962).

[29] National Commission on Reform of Federal Criminal Laws, *Final Report* (Washington: Government Printing Office, 1971), p. 300.

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 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 effective hearing requires close attention of board representatives, institutional staff, offenders, and other persons involved in tailoring programs and releases to individual cases. It also requires careful recording of plans and decisions. With a system of this kind, no more than 20 cases should be heard in a day.

Prompt Decision and Notification

If this system is to work, it requires involvement of at least two representatives of the parole 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 case until he returns to a central point where other board officials can join him in making a decision. Hence there is often inordinate delay, while the inmate and others involved must simply mark time. Not only does such delayed decisionmaking lower morale, but also available parole resources may deteriorate and no longer be open to the inmate when the parole finally is granted. The job that was waiting is lost; the chance to participate in vocational education programs is gone.

Delay in making parole decisions should be eliminated. The key lies in sufficient decisionmaking power being allocated at the point of hearing. In almost all cases two examiners can perform the necessary hearing functions if they can agree.

Allied to prompt decisionmaking is the manner in which an inmate is notified of determinations affecting him. About half of the State jurisdictions now inform inmates of the decision and the reasons for it as soon as it is made, at the hearing itself. This practice is relatively new. Formerly, the almost universal practice was to send word of release or deferral to the inmate through a board representative or an institutional official. Such officials have no way of clarifying the meaning of the decision or its implications to the inmate. This task can and should be done only by parole decisionmakers, not by others trying to represent them. Parole authorities should explain the reasons for their decisions directly to the inmate and answer any questions he has.

Written Decisions

Also critical in this respect is the necessity for parole decisionmakers to spell out in writing the reasons for their decision and to specify the behavioral objectives they have in mind. Currently only about 12 parole boards dealing with adult offenders document the reasons for their decisions. It should be a universal practice. It is important for future hearing representatives to have available the reasoning of prior hearing officials.

Likewise, it is important for institutional officials to have the written parole opinion to assist them in shaping future programs for offenders denied parole. It also is important for board self-evaluation; research should be able to measure the relationship between reasons for actions and subsequent events and decisions. Board documents provide a basis for checking the reasons for decisions against the criteria used. This is particularly crucial in a two-tiered system of decision and review in which appeals can be made.

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 a two-tiered appeal process not only are good administrative practice but also are consistent with legal requirements of procedural due process. They may come to be viewed as legally necessary. So far, however, courts have been restrained in requiring elaborate procedural safeguards during parole consideration. For example, the Federal Second Circuit Court of Appeals in the recent case of *Menechino* v. *Oswald,* 430 F. 2d 403 (2d Cir.1970), in referring to the parole board's function said:

> It must make the broad determination of whether rehabilitation of the prisoner and the interest of society generally would best be served by permitting him to serve his sentence beyond the confines of the prison walls rather than by being continued in physical confinement. In making that determination, the Board is not restricted by rules of evidence or procedures developed for the purpose of determining legal or factual issues.

However, the Supreme Court, in a recent case involving parole revocation hearings, laid down strict procedural requirements to safeguard due process. (See subsequent section on revocation.) It may well be that such requirements will be deemed necessary for the grant hearing as well.

Trends in court decisions are difficult to predict. Certainly in the last few years appellate courts have ordered changes in parole proceedings, particularly those surrounding revocation. There is sound basis in correctional terms alone for elements in the parole hearing that embrace some characteristics of administrative hearings occurring at other points in the criminal justice process. The value of information disclosure, for example, does not rest simply upon legal precedent. Parole boards have as much stake in the accuracy of records as other criminal justice officials. Evidence indicates that decisions are much more likely to be documented carefully and fully when information is disclosed and when those whose interests are at stake have a chance to examine and test it. Rather than resulting in an adversary battle, disclosure more often than not provides information not contained in the report. This is an important addition for decisionmakers.

Information sharing underlies much of the emphasis in modern corrections that is moving toward an open, reality-testing base. From this perspective, it is expected that offenders will be given available evidence and facts. In the average parole file little material is so sensitive that it cannot be reviewed with the inmate. Of course, if there is a need to treat with caution professional material such as certain types of psychiatric reports, it can be held back.

The suggested procedures of the American Bar Association for disclosure of presentence investigation material seem eminently suitable for the parole hearing stage. Materials could be withdrawn when deemed necessary, with a notation made of this fact in the file. In case of appeal, the full parole board would be notified as to what material had been withheld from the inmate and could take this into consideration.

Representation

The issue of inmate representation by lawyers or other spokesmen causes difficulty for many parole board members because it seems to create an unnecessarily adversarial system out of essentially a "clinical" decision process. However, several arguments for representation can be advanced. The offender's representative has the freedom to pursue information, develop resources, and raise questions that are difficult for an inmate in a helpless position. To the extent that the information base can be enlarged by representatives and issues sharpened and tested more directly, there is likely to be improvement in the whole process of parole board decisionmaking. 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 have a sense of full and careful consideration, is extremely detrimental.

Representation also can contribute to opening the correctional system, particularly the parole process, to public scrutiny. It is important that more people become personally involved in the correctional process, since the reintegration movement rests on the involvement of community resources and representatives. Involvement of persons from the outside also provides opportunity for remedy of any abuses in parole processes.

Ultimately the credibility of a parole system will rest on its openness to public scrutiny. For these reasons, 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. But the principle of allowing representation when crucial decisions regarding the offender's freedom are made should guide the board in fixing policies. Lawyers are only one possible kind of representative; citizen volunteers also could serve as offender representatives.

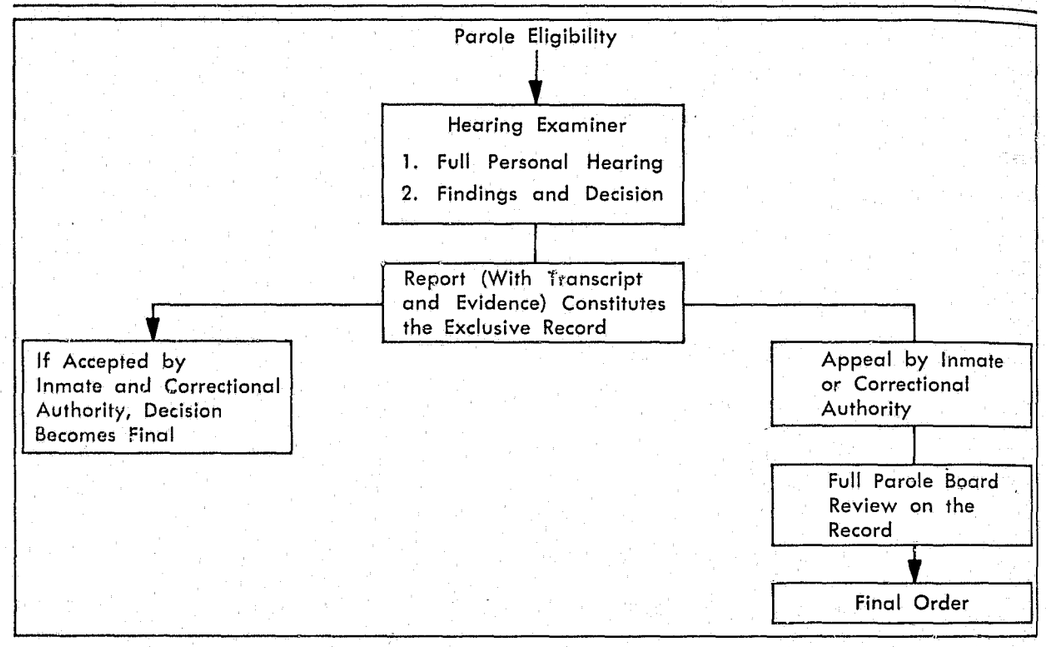
The idea of representation at hearings may be annoying to parole officials. Implementation may increase costs. On balance, these inconveniences seem a small price for the prospective gains. Assuming representation, the board should be able to prevent abuses in the conduct of hearings. It is crucial for parole boards to develop appropriate policies for information disclosure, forms and methods of representation, and procedural rules to be followed at the hearings.

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 scheduled before the examiner who conducts a full hearing and then prepares a report which contains findings of fact, conclusions of law, and recommended order. This report, the transcript, and the evidence introduced constitute the exclusive basis for decision. The hearing examiner makes the initial decision which, unless appealed to the full Board 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-

FIGURE 12.1. HEARING EXAMINER MODEL



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 included in the record.

A verbatim transcript of the proceedings should be made. The hearing examiner should make his decision on the basis of criteria and policies 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. The hearing examiner's report, with the transcript and evidence, should constitute the exclusive record.

If the decision of the hearing examiner is not appealed 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 no more than the parole board's pro forma approval of the request of the parole officer or his field staff supervisor. In many jurisdictions the revocation decision represented almost unfettered discretion of parole authorities. In addition to minimal procedural formality, the grounds for revocation also were nonspecific, 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 much concern with due process, 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 seven States. In those States providing a hearing, the alleged violator frequently was returned to prison directly from the field on 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.[30] In most cases, then, revocation was a fait accompli by the time the board's representative next visited the institution to review the revocation order and officially declare the parolee a violator.

In a small minority of cases, board members canceled the warrant or field complaint and permitted the prisoner again to resume 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 once 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 seen outside the hearing at the parole board offices, 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 has been considerable appellate court intervention in the parole process generally and in revocation procedures specifically. This new vigor is consistent with a general distinction in administrative law between granting a privilege (as in parole) and taking it away once it has been given (as 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 *Hyser* v. *Reed,* decided in the D.C. Circuit in 1963 (318 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 *Hyser* did do, however, was to deal with the venue 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 any infraction. If in fact the parolee did not commit the alleged infraction he could continue his parole uninterrupted.

Subsequent to the *Hyser* decision, however, 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 *Hyser* 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 in 1967 that a State probationer had a right to a hearing and 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, resting its decision on the *Mempa* case, reversed its former position and required the New York Parole Board to permit inmates to be represented by counsel at revocation hearings, *People ex rel.* v. *Warden Greenhaven,* 318 NYS 2d, 449 (1971). The rationale most often used as a basis for the requirement of procedural due process at parole revocation was expressed in another Federal Circuit Court case, *Murray* v. *Page,* 429 F. 2d 1359 (10th Cir. 1970):

> Therefore, while a prisoner does not have a constitutional right to parole, once paroled 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 against him and to appear 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

[30] Ronald Sklar, "Law and Practice in Probation and Parole Revocation Hearings," *Journal of Criminal Law and Criminology,* 55 (1964), 75.

lost by 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 requirements into parole revocation and at other stages of parole. Resistance has rested not simply on encroachment of authority but also on the possible negative effects of stringent procedural requirements on parole generally and on administrative costs. Some parole officials argue that elaborate revocation hearings would create demands on the parole board's time grossly incommensurate with personnel and budget. Other opponents of procedural elaborateness have argued its negative effects on the purpose and use of revocation.

Resistance to increased procedural requirements in revocation apparently is diminishing, whether by persuasion or court order. As of 1972, 37 jurisdictions allow counsel for adult inmates at the time of parole revocation. Nineteen permit disclosure of the record to the offender or his lawyer. Thirty-two States provide for the right to hear witnesses. In some places due process procedures have been extended even to the operation of juvenile aftercare revocation. For example, in Illinois a juvenile parolee is notified in writing of the alleged parole violation and of the fact that he has a right to a hearing.

The State of Washington has developed perhaps the most elaborate system for handling adult parolees accused of violation. It affords them the following rights and procedures: the right to a hearing before parole board members in the community where the violation allegedly occurred; the right to cross-examine witnesses; the right to subpena witnesses; the right to assistance of counsel, including lawyers provided at State expense for indigent parolees; and the right to access to all pertinent records.

Supreme Court Decision

The Supreme Court on June 29, 1972 dealt with several crucial issues relating to parole revocation in the case of *Morrissey* v. *Brewer,* 408 U.S. 471 (1972). Two parolees appealed an appellate court's decision on the ground that their paroles were revoked without a hearing and that they were thereby deprived of due process. The appellate court, in affirming the district court's denial of relief, had reasoned that parole is only "a correctional device authorizing service of sentence outside a penitentiary" and concluded that a parolee, who is thus still "in custody," is not entitled to a full 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 unqualified liberty and its termination inflicts a "grievous loss" on the parolee and often on others. It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a "right" or a "privilege." By whatever name the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment. Its termination calls for some orderly process, however informal.

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 of the parolee 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 decision, since many of the jurisdictions that do grant hearings grant only one. The Court also laid out a number of important points or steps for each of the above two stages which will undoubtedly apply to future parole actions.

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 the Court likened to 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 when and why the hearing will take place, and the nature of the alleged violation(s). 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 parole revocation is to be 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 digest of what transpires at the hearing and of the substance of evidence introduced. On the basis of the information before him, the officer should determine whether there is probable cause to hold the parolee for the final decision of the parole board on revocation.

The Court said there must also be an opportunity for a hearing, if it is desired by the parolee, prior to the final decision on revocation by the parole authority. This hearing must be the basis for more than determining probable cause; it must lead to a final evaluation of any contested relevant facts as determined to warrant revocation. The parolee must have an opportunity to be heard and to show, if he can, that he did not violate the conditions, or, if he did, that circumstances 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 claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons 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 revocation hearing was not considered. Nor did it reach or decide 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 prior to a formal revocation hearing, it did not specify requirements for the process by which offenders are taken and held in custody. Present law and practice in many jurisdictions empower individual parole officers to cause the arrest of parolees for an alleged violation 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 the arrest does not lead to a hearing, in which there is no review, and in which the parolee simply is held for a while in jail and then released back to parole status. This is a practice called "jail therapy" by which the parole officer "punishes" the parolee briefly (if he is a drunk, for example, he may be held in "protective custody" over New Year's Eve), then releases 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 is.

The use of all arrest and hold powers should be carefully narrowed. Parole field agents should be able to arrest and hold only when a warrant has been secured from a representative of the parole board on sufficient evidence. The warrant or similar document requiring parole commissioner approval of administrative arrest should be universally used. At present, only about half the State jurisdictions require such a warrant; in the remainder the parole agent can pick up an alleged violator on his own initiative and have him detained by signing a "hold" order. Initial two-step review of administrative arrest should be established, 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 are not the only two courses open. The work of the California community treatment programs shows that the availability of alternative measures—short-term confinement 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 suggests that jurisdictions develop alternatives to the no action vs. full revocation dilemma. 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 consolidation of formerly autonomous agencies or functionally related units into expanding departments of corrections. Some of these departments have been made part of still larger units of State government, such as human resources agencies, which embrace a wide range of programs and services. One clear indication of this trend is the number of States that have shifted administrative responsibility for parole officers from independent parole departments to centralized correctional agencies.

Most recently the States of Oregon, New York, and Georgia have made such transfers. A number of smaller States still have parole supervision staffs responsible to an independent parole board. Practically every large State now has adult parole field staff reporting 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 correctional agencies represents an important step toward

removal of a major block to needed correctional reform—fragmented and poorly coordinated programs and services. It is important that such consolidations continue, particularly among the services available for misdemeanants, where the more serious program gaps now exist. How quickly and effectively consolidation will take place depends largely on development of coordinated corrections units in large urbanized regions or absorption of these facilities and services into State programs.

Juvenile Parole Organization

The problems in parole services for juvenile delinquents had some of the same characteristics. The National Survey of Corrections found tremendous shortcomings in juvenile aftercare programs. In some States young persons released from training schools were supervised by institutional staff. In others they were made the responsibility of local child welfare workers, who simply included these youngsters in their caseloads of dependent or neglected children. In some States no organized program of juvenile parole supervision existed. Whether distinct juvenile correctional agencies should exist or whether such services should be carried out as a regular part of welfare services has been a matter of controversy for years.[31]

The events of the last years have virtually ended that argument. Distinct divisions and departments of juvenile correctional services are emerging. There is less agreement about whether such departments should be combined with agencies serving adult offenders. Yet it is widely agreed that separate program units should be maintained, even if adult and juvenile programs are combined in a single agency. Statewide juvenile correctional services embracing both institutions and field aftercare represent an established trend that should be supported.

Consolidation is not simply a matter of administrative efficiency; it facilitates important parole objectives as well. From the reintegration perspective, the task of parole staff is to intervene between the offender and his world and, if needed, to work with him to find satisfying and legal modes of behavior.

Confinement is minimized and made to serve as much as possible the goal of dealing with problems in the community. Prerelease activities and community-based correctional facilities, through which offenders can participate increasingly in community life, are central. To be effective, both of these programs require extensive involvement of field staff. It is no longer sufficient to wait for the "transfer" of a case from an institution to a parole staff. The system now must work in such a way that heavy expenditures of field staff energy in the community and with the offender are made for many months prior to his "release" on parole. This requires a close interrelationship between institution and field staffs.

Linking Institutional and Field Staffs

The lack of continuity and consistency of services between institutional and field services has been a severe problem to many jurisdictions. It often is further complicated by what could be described as rural vs. urban perspective. Institutions generally are located miles from population centers. The manpower they tend to recruit is drawn largely from small town and rural areas. The result is that institutional staff may have little understanding of city and especially ghetto life. In contrast, most field workers live in or near the large population centers in which most offenders reside, and more field workers than institutional workers are from minority groups. This cultural difference contributes to feelings of mistrust, hostility, and incredulity that handicap communication between institutional and field staffs.

A number of steps are needed to overcome this communication breakdown. An ongoing series of joint training sessions involving field workers and institutional counselors can be helpful 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 institution 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 provide that both institutional and field services be regionalized and placed under common administrators in each area. Obviously, in States where there are only one or two institutions, problems are compounded for the whole community-based thrust. But even here some program consolidations are possible by devices such as placing all institutional programming responsibilities under full control of the head of parole field services for the last months of the inmate's confinement.

The stress on linking institutional and community supervision also has implications for systems that combine probation and parole services in a common administrative unit. Although this combination is infrequent among juvenile services, in 38 States the same State agency carries responsibility for the supervision of adult parolees and probationers. Having these services in a single agency has great economic advantages and provides an even quality of service to all areas of a State. There also are significant advantages in being able to influence staff toward more consistent programs for offenders. Tying staff to locally based institutional resources can work well for both probationers and parolees. However, in urban areas where case volume is sufficient, specialized staff who work with specific institutions are needed. Such tasks demand considerable time and require field staff to become intimately familiar with institutional personnel and participate actively in their programs.

Caseload vs. Team Assignments

The caseload—the assignment of individual offenders to individual officers—is the almost universal device for organizing the work of parole officers. This concept is being modified importantly in a number of offices through development of team supervision. A group of parole officers, sometimes augmented with volunteers and paraprofessionals, takes collective responsibility for a parolee group as large as their combined former caseloads. The group's resources are used differentially, depending upon individual case needs. Decisions are group decisions and generally involve parolees, including the parolee affected by the decision. Tasks are assigned by group assessment of workers' skills and parolees' objectives and perceptions.

Under the reintegration model, for example, various groups or organizations such as employers, schools, or welfare agencies may become someone's "caseload" and the major targets of his activities. Community representatives are dealt with directly, are directly involved, and help to shape programs. The parole office, instead of being located in a State office building, shifts to the community. The staff becomes expert in knowing both the formal and informal power structure of the community in which it operates and works closely with police, schools, employers, and probation officers. Such functions have a significant impact on the kind of manpower and training required for field staff. For example, there is a heavy involvement of volunteers as tutors and job finders that requires a staff able to use and work with such personnel.

The emphasis in a traditional parole agency is directed toward the proper administration of the specific caseload assigned to each individual officer. It is an administrative style familiar to most large bureaucracies. Front-line workers have responsibility for specific and clearly defined tasks and are checked by their supervisors to see that those tasks are carried out. The supervisors are under the command of middle managers who in turn report to someone above them.

Although the rhetoric of the organization is couched in such phrases as "helping the offender" and "developing a positive relationship," organizational controls tend to be attached to activities designed largely to foster the surveillance work of the agency or protect it from outside criticism. Parole officer performance most often is judged by the number of contacts that have been made with parolees, often with little regard for the quality of events that transpired during these contacts. Complete and prompt reports showing compliance with agency policies, such as written travel permits for parolees, are valued highly and require a major investment of parole 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 parolee, being the lowest, is the least powerful.

Flexibility in Organizational Structure

A correctional policy that assumes parolees are capable of making a major contribution toward setting their own objectives and sees the parole agency's main task as helping the parolee realistically test and attain those objectives also must place a premium on developing an organizational structure 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 high degree of individual autonomy.

The dilemmas that arise when a manager tries this style of administration are many. Their resolution requires a sophisticated knowledge of administration and organizational techniques. One of the highest priorities for effective development of community-based services lies in providing managers with precisely this kind of skill.

Nelson and Lovell summarize the issues well:

> The correctional field must develop more collaborative, less hierarchical administrative regimes in order to implement its reintegration programs. The hierarchical format was developed to achieve the goal of production and orderly task performance. When individual change is the prime purpose of the organization, this format is inappropriate for people cannot be *ordered* to change strongly patterned attitudes and behavior. Nor is change apt to come about through the ritual performance of a series of tasks. . . . Power must be shared rather than hoarded. Communication must be open rather than restricted. Thus the managers of reintegration programs will need the skills of cooptation, communication, and collaboration.[32]

Resistance to reintegration-style programs can be widespread. Take for example a job function that has been interpreted traditionally as one of surveil-

[31] See, for example, State of New York, Governor's Special Committee on Criminal Offenders, *Preliminary Report* (1968), pp. 61–66.

[32] Elmer K. Nelson and Catherine H. Lovell, *Developing Correctional Administrators* (Washington: Joint Commission on Correctional Manpower and Training, 1969), p. 14.

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 decisionmaking 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 changes.

Persons who see themselves as professionals also can be major obstacles to change. The trend toward a reintegration model and away from a rehabilitation model has been frustrating to several traditional professional groups who perceive their "expertise" as being challenged or, at worst, rejected. Meetings are held to organize opposition to "nonprofessional practices" and to changes that are "untested" and that have strayed from the "tried and true." It is not surprising that administrators sometimes capitulate. But "let's not rock the boat" or "let's wait till next year" are the cliches of timid leadership that lead to stagnant bureaucracies. It takes great skill and perseverance to change an agency. There is no substitute for intelligence, skill, and above all, courage.

COMMUNITY SERVICES FOR PAROLEES

A significant number of parolees can do very well without much official supervision, according to repeatedly validated research.[33] Many offenders can be handled in relatively large caseloads simply by maintaining minimum contact with them and attending to their needs as they arise. Most of these parolees probably should be released from any form of supervision at all. Outright discharge from the institution would be an appropriate disposition and should be used much more frequently than it is. Failing that, minimum supervision can and should be employed for a significant group.

For those parolees requiring more intensive help, the emphasis in recent years, and one worthy of support, has been toward effecting as many needed services as possible through community resources available to the general population. To the extent that offenders can gain access to these opportunities on the same basis as other citizens, the additional blocks that arise when parolees attempt to move into the mainstream of community life are reduced.

Moreover, more resources usually are available to programs designed to deal with a broad public spectrum. For example, vocational training programs operated by correctional agencies cannot begin to offer the range of services offered by government agencies to economically deprived groups in general. Skills developed in programs for these groups are usually much more marketable. Job placement is also more likely to be operating effectively.

Finally, using such services allows flexibility and speed in adapting to needs. It avoids creation of additional specialized bureaucracies on State payrolls that respond more readily to their own survival needs than to changing needs of offenders. Provision of funds to parole agencies to purchase resources in the community represents an important new approach to the problems of securing needed services.

From this perspective, a major task of parole officers is to make certain that opportunities in community services and programs actually exist for parolees and to prepare and support parolees as they undertake these programs. Offenders often are locked out of services for which they apparently qualify according to the criteria established by the agency, not because of any official policy barring them but because of covert resistance to dealing with persons thought to be troublesome. Mental health agencies deny assistance to offenders on grounds that such persons cannot benefit from their programs. Public employment offices often are reluctant to refer to an employer a person viewed as unreliable. Public housing resources may be restricted because of biases against persons with records.

Considering these reactions and the discrimination that too often exists against minority group members, who constitute a significant portion of the offender population in many areas of the country, the need for a parole staff that is willing and able to play the role of broker or resource manager for parolees is clear. This need involves more than skills at persuasion or aggressive argument. It also requires a knowledge of the sources of power in a community and the ability to enlist those sources in changing agency behavior.[34]

Undoubtedly, the trend toward creating new ways of delivering services to meet human needs—mental health, family counseling, physical rehabilitation, employment, and financial assistance—will modify the parole officer's tasks in several important respects. Human service centers designed to deliver a wide range of programs will develop.[35] Part of the task of parole staff will be to support such efforts and play an appropriate role in a coordinated human-services delivery system. Increasingly, the parole officer's unique responsibility will be to make certain that offenders obtain the benefit of available resources, to counsel parolees about the conditions of their parole, and to help them meet those conditions.

Financial Assistance

Perhaps 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 transportation. Most States provide new releasees 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 usually will 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 money an offender has during the first months of release can be explained in a number of ways.[36] Nevertheless, it is a consistent finding and, 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 over the years, 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 subvention 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 unemployment 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 getting and holding a decent job. While it is difficult to demonstrate experimentally a precise relationship between unemployment and recidivism, the gross picture does show a fairly consistent link between unemployment and crime.[37] 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 in the placement of parolees.

However, the test of these programs is found in the day-by-day working relationships between local employment personnel and parole officers. How well they cooperate is colored by the attitudes of local employment department staff but more importantly by the skill of the parole staff in maintaining 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 acute employment problems are those associated with persons about to be released on parole. It is a time of great strain on the parolee. The difficulty of finding employment often is an additional source of anxiety because the most common reason why offenders are held beyond the date fixed for their release is that they have no job to go to.

Many States have developed systems of "reasonable assurance," under which a definite job is not required before an inmate is released, provided some means can be found to sustain him until one can be found. This generally is a far better practice than holding him until a job is promised. Parolees find it much easier to get a job if they can personally interview employers. Research consistently has shown offenders do as well, if not better, if they can find their own job.[38]

Partial release programs in the community go a long way toward eliminating many of these problems. While the offender still is confined, he has the chance to make contacts in the community, be interviewed by employers, work directly with a parole officer, or actually begin an employment program through work release. In terms of a broad correctional strategy aimed at coping with employment problems, prerelease programs are of pivotal importance.

Another activity that has grown in recent years, under sponsorship of both private and public sources, is job training programs in institutions that are connected to specific job possibilities on the outside. The Office of Vocational Rehabilitation has programs in a number of institutions. The Department of Labor has made numerous efforts in this area. Such programs need to be supported because of the large-scale resources and expertise they repre-

[33] See Joseph D. Lohman, Albert Wahl, and Robert Carter, *The San Francisco Project: The Minimum Supervision Caseload*, Research Report No. 8 (Berkeley: University of California, 1966).

[34] John M. Martin and Gerald M. Shattuck, "Community Intervention and the Correctional Mandate," consultant paper prepared for the President's Commission on Law Enforcement and Administration of Justice, 1966.

[35] U.S. Department of Health, Education, and Welfare, Community Service Administration, *Toward a Comprehensive Service Delivery System through Building the Community Service Center* (1970).

[36] Glaser, *The Effectiveness of a Prison and Parole System*, pp. 333–348.

[37] Glaser, *The Effectiveness of a Prison and Parole System*, ch. 14.

[38] John M. Stanton, "Is It Safe to Parole Inmates Without a Job?" *Crime and Delinquency*, 12 (1966), 149.

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, community-based 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 contract basis, the flexibility and, most probably, the program 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. Some offenders may be better 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 at maintaining close controls and surveillance over their charges. While the latter may be assigned to a specialized caseload, assignments to specialized treatment caseloads in general should involve a great deal of self-selection by the offender. Arbitrary assignments to "treatment" groups easily can result in the offender's subversion of program objectives. An ongoing program of assessment and evaluation by staff and parolees is needed to make certain that offenders are receiving the kind of program most appropriate for them.

MEASURES OF CONTROL

There is an increasing tendency to minimize use of coercive measures and find ways by which offenders' goals and aspirations can be made congruent, if not identical, with agency goals. These trends can be seen in the shifting emphasis of parole rules, the clearest manifestation of the coercive power of parole.

Until the 1950's parole rules heavily emphasized conformity to community values and lifestyles with little or no relationship to the reason why a person originally committed a crime. One State's rules, only recently amended, give the flavor of such conditions. They provided in part that:

> The person paroled shall in all respects conduct himself honestly, avoid evil associations, obey the law, and abstain from gambling and the use of intoxicating liquors. He shall not visit pool halls, or places of bad repute, and shall avoid the company and association of vicious people and shall at least once each 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.[39] As "tools of the parole officer," these conditions gave reason to expect that violations 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 officers tend to develop their own norms of behavior that should result in return to prison. These norms among parole officers became very powerful forces in shaping revocation policies.[40]

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 are being developed, as when a Federal court recently restrained the State of California from prohibiting a parolee from making public speeches *Hyland* v. *Procunier*, 311 F. Supp. 749, 750 (N.D. Calif. 1970).

Several States have reduced the number of parole conditions considerably. In 1969, 45 jurisdictions prohibited contact with undesirable associates; today 35 do so. Ten States removed the requirement of permission to marry or file for divorce. Oregon, as a specific example, has removed nine discernible general conditions, including the requirement of permission to change residence or employment, to operate a motor vehicle, or to marry; the proscription of liquor or narcotics and contacts with undesirables; and dictates that the parolee maintain employment, support his dependents, and incur no debts. Idaho has removed seven such rules from its agreement of release.

Perhaps the most substantial change in procedure occurred in the State of Washington, where the standard parole conditions imposed on all inmates were reduced to four. They required the parolee to (1) obey all laws, (2) secure the permission of a parole office before leaving the State, (3) report to the officer, and (4) obey any written instructions issued by him. The State parole board imposes additional conditions in individual cases as seems appropriate. Conditions also may be added during the course of parole on the parole officer's application.

The advantage of this system is that both the parolee and parole officer know which conditions are to be enforced, although obviously violations of the remaining rules are judged individually and may not result in a return to prison. The other advantage is that much unnecessary anxiety is avoided over rules that rarely, if ever, would result in a return to prison. More such candor should be encouraged in parole supervision practice.

The removal of unnecessary rules also helps to shape the activity of the parole officer more positively. When unclear or unnecessary rules exist, the effect is twofold: a great deal of busy work by a parole officer; and a corruption of his relationship with the parolee. The thrust of the reintegration approach is toward an open problem-solving relationship between the parole officer and the parolee in which the parolee's objectives are clarified and tested against the limits under which both he and the parole officer must live. The fewer the limits required by the parole system, the greater the opportunity of locating alternative behavior styles that are satisfying and meet the tests of legality. This is not to say that rules should not be enforced, but that there should be as much honesty in the enforcement process as possible.

Some parolees do require fairly intensive and directive supervision. In such cases, parole officers with the skill and aptitude for this kind of case should be assigned. Some intensive supervision caseloads (12 to 20 parolees) can be differentiated as caseloads for surveillance rather than for counseling and support. The parolee may not be in a position to see the relevance of any services offered, but he can respond positively to the knowledge that his daily whereabouts and activities are under careful scrutiny. In the eyes of the parolee, the efficacy of intensive surveillance caseloads resides in the credibility of the counselor and those he recruits to assist.

The need for high surveillance and intensive supervision for some offenders raises directly the question of the extent to which parole officers should assume police functions, such as arresting parolees, and the associated question as to whether they should be armed. A 1963 survey of parole authority members in the United States revealed that only 27 percent believed that parole officers should be asked to arrest parole violators. Only 13 percent believed that parole officers should be allowed to carry weapons.[41] In general, most parole officers accept the proposition that arrests by parole officers may be necessary on occasion but strong liaison with police departments should be depended on in the majority of instances when arrests are needed.

Guns are antithetical to the character of a parole officer's job. Much concern among some parole officers as to the need to be armed arises from their anxiety in working in areas of cities in which they feel alienated and estranged. This anxiety can be allayed by assigning to such districts persons who live in them. The RODEO project in Los Angeles, where probation officers are assigned two community assistants drawn from the neighborhood, is an excellent example. Because of their intimate knowledge of the community, such workers are able to keep well informed of 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

Nothing indicates more starkly the relatively low priority that parole programs 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 substantial gain compared to other positions in government and industry.

---

[39] Nat Arluke, "A Summary of Parole Rules," *Journal of the National Probation and Parole Association*, 218 (January 1956), 2–9.

[40] James Robinson and Paul Takagi, "The Parole Violator as an Organization Reject" in Robert Carter and Leslie Wilkins, eds., *Probation and Parole: Selected Readings* (Wiley, 1970).

[41] National Parole Institutes, *Description of Backgrounds and Some Attitudes of Parole Authority Members of the United States* (New York: National Council on Crime and Delinquency, 1963).

The essence of an effective parole service lies in the caliber of person it recruits. Until salaries are made attractive enough to recruit and hold competent personnel, parole programs will be sorely handicapped. Almost half of the State agencies responsible for parole services surveyed by the Joint Commission reported serious difficulties in recruiting new officers.[42]

Though merit system procedures have significantly dampened political patronage influences in staff selection and promotion, they have brought a series of built-in restrictions. These must be overcome if a reintegration style for parole agencies is to be effected. The great difficulties attached to removing incompetent employees and the lack of opportunities for lateral entry are two examples. The most acute problems are those surrounding the criteria for staff selection and promotion. The issue bears most specifically on the employment and advancement of minority group members. For example, in 1969, while blacks made up 12 percent of the general population, only 8 percent of correctional employees were black, and they held only 3 percent of all top and middle level administrative positions.[43]

Some reforms are beginning, but merit systems are traditionally suspicious of new job titles and slow to establish them. When a new program is initiated, existing job titles frequently do not fit. The red tape and delays encountered in hiring staff often seriously damage programs. A sense of the frustration felt by administrators who are trying to modernize their programs is captured in the statement of one State parole system head, who asserts that merit systems can be and frequently are the single largest obstacle to program development in community-based corrections.

Manpower Requirements

The problems of trying to determine staffing needed to carry out an effective parole supervision program is complicated tremendously by lack of agreement on objectives and knowledge of how to reach them. Within any correctional policy, a number of alternative styles are needed, ranging from no treatment at all to a variety of specific and carefully controlled programs. Perhaps the most discouraging experiments in parole supervision were those that sought to test the thesis that reducing caseloads to provide more intensive services would reduce recidivism.

The project that broke most completely from this notion was the Community Treatment Project of the California Youth Authority. The program involved classification of offenders by an elaborate measure of interpersonal maturity or "I-level" and use of treatment techniques specifically designed for each "I-level" type. Treatments ranged from firm, controlling programs for manipulative youths to supportive and relatively permissive approaches for those assigned to a category that included neurotic and anxious youngsters. With certain exclusions, offenders were assigned randomly to 10-man caseloads in the community, 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.[44]

The results of the project were impressive. After 24 months, those assigned to special caseloads had a violation level of 39 percent. Those assigned to a regular program had a 61 percent failure rate. Of interest also was the variation in success rates among "I-level" types. Some researchers argue that some of the research results should be attributed to differences in official reaction to the behavior of those in special caseloads as opposed to those in regular ones,[45] rather than improvements in the offenders. Yet results in the context of other research efforts described by Stuart Adams make the argument for a differential treatment approach fairly strong.[46]

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 parolee 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 35.[47] Two facts about the program should be noted.

1. The ratio of 1 to 35 does not express a caseload. Officers are assigned to a variety of tasks that are quantifiable. These task-related workloads are the basis for staff allocation.

2. The workload ratios for a specific agency would depend on the kinds of offenders they have to supervise and the administrative requirements of that agency.

The important point is that the concept of a caseload as a measure of workload is outmoded, especially 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. Research information must continuously inform the judgment by which these allocations are made.

[42] Joint Commission on Correctional Manpower and Training, *A Time to Act*. Washington: (JCCMT, 1969), p. 13.
[43] *A Time to Act*, p. 14.
[44] Marguerite Q. Warren, "The Case for Differential Treatment of Delinquents," *Annals of the American Academy of Political and Social Science*, 381 (1969), 46.
[45] Paul Lerman, "Evaluating the Outcomes of Institutions for Delinquents," *Social Work*, 13 (1968), 3.
[46] Stuart Adams, "Some Findings from Correctional Caseload Research," *Federal Probation*, 31 (1967), 148.
[47] California Department of Corrections, *Work Unit Program, 1971* (Sacramento, 1971).

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 requirement for a parole officer, and persons with graduate study might be used for specialized functions. Both also stressed the need to create opportunities for greater use of persons with less than college-level study. Many tasks carried out by a parole officer can be executed just as easily by persons with much less training, and many skills needed in a parole agency 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 specialized 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.[48]

Ways of recruiting, training, and supervising these relatively untapped sources of manpower for parole and other elements of corrections are discussed in Chapter 14.

STATISTICAL ASSISTANCE

Proper organization, selection, and training of personnel are necessary for improved parole services, but in themselves they are insufficient. The crucial task of making the "right" decision remains for whoever must make it, whatever his position in the organization. Although the typical parole board member deals with a variety of concerns in decisionmaking, his basic objective is to lessen as much as possible the risk that an offender will commit another crime. This criterion remains paramount, but it is so variably interpreted and measured that severe handicaps impede its attainment.

To begin with, the measures of recidivism currently used in individual jurisdictions vary so much that useful comparisons across systems, and indeed within systems, are virtually impossible. In one jurisdiction, only those parolees who return to prison are counted as failures, no matter what may have transpired among those parolees not returned. In another, everyone who has been charged with a violation as measured by the number of parole board warrants issued is treated as a failure.

The length of time under parole supervision confounds other comparisons. Thus recidivism variously includes the rest of the parolee's life, the span of the parole period only, or the time immediately following discharge.

The computational methods used in developing success or failure ratios also can do more to confuse than to assist understanding. In one State, recidivism is measured by the proportion of offenders returned to prison compared with the number released in the same period. In another, a much lower rate is shown for exactly the same number of failures because it is arrived at by computing the number of persons returned to prison in a given period compared with the total number of persons supervised during the same period. Until uniform measures are developed, vitally needed comparisons are not possible. Nor will meaningful participation in policy decisions be possible for agencies and persons outside the parole system.

Uniform Parole Reports System

A major effort to help solve the problem of uniform measures of recidivism was development of the National Uniform Parole Reports System, a cooperative effort sponsored by the National Parole Institutes. This program enlisted the voluntary cooperation of all State and Federal parole authorities having responsibility for felony offenders in developing some common terms to describe parolees—their age, sex, and prior record—and some common definitions to describe parole performance. Parole agencies for the last several years have been sending this information routinely to the Uniform Parole Report Center, where it is compiled. The results are fed back to the contributing States. Comparisons across the States thus are beginning to be possible. This effort represents a long step in developing a common language among parole systems.

Although this national system has made great strides, many additional steps need to be taken to develop its capacity fully. The Uniform Parole Report System needs to tie into a larger network that includes data from correctional institutions, so that information collected on the offender can be linked to parole outcome and crucially needed comparative data on discharged offenders can be obtained.

Important also is the need to tie in, on a national basis, to crime record data systems so that followup studies extending beyond parole periods can be carried out. The Uniform Parole Report System should have access to national criminal history information

[48] Vincent O'Leary, "Some Directions for Citizen Involvement in Corrections," *Annals of the American Academy of Political and Social Science*, 381 (1969), 99.

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 inevitably suffer from such gross inadequacies as to be almost completely useless. The careful definitions built into the Uniform Parole Report System should be combined with access to criminal data. This would enable tracing of subsequent parolee histories and could be a powerful tool for policy development and research.

A comparable system for releases from juvenile institutions also is needed. Information on misdemeanants released on parole is almost nonexistent. Development of statewide statistical services in corrections is the key for such misdemeanant 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 in sufficient detail for practical day-to-day decisionmaking. 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 probability 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 statements usually have been labeled "parole predictions."

Typically, the probability statements produced by statistical techniques are more accurate in estimating the likely outcome of parole than are traditional case methods. There has been relatively little use of these devices in the parole field, although some experimentation 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.[48] Parole board members argue, for example, that simply knowing the narrow probability of success or failures is not nearly as helpful as knowing what type of risk would be involved. For example, they are more likely to tolerate higher risks if an offender 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 a parole board that must deal with the offender as he is today within the realities of the decisions and time constraints available to them.

Technology is capable of 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 decisionmaking. Significant help lies in this direction, and each jurisdiction should be made fully aware of the possibility of using statistical information in parole decisionmaking.

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 total dependence on any statistical system highly risky at best.

Statistical predictions can be helpful in giving guidelines to parole board members as to general categories into which particular inmates fit, how other inmates similarly situated were treated earlier, and what the trends are in broad decisions. This information is important for parole decisionmakers. But most experts are convinced that the optimum 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:

> I know of no instance where an established academic criminologist, judge or correctional administrator has advocated the replacement of case studies and subjective evaluation by statistical tables for sentencing, parole or other major decisions on the fate of an offender. The many reasons 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 information on a case too special to be readily taken into account by any conceivable 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 parole board members must consider. These include the type of violation, and the consequences of certain types of violations for community treatment of other parolees.[50]

[48] Norma S. Hayner, "Why Do Parole Board Members Lag in the Use of Prediction Scores?" *Pacific Sociological Review*, (Fall 1958), 73.

[50] *The Effectiveness of a Prison 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 clearly 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 evidence 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 individual 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 insensitive 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 knowledge about corrections.

An organizational arrangement lying between these two extremes is now gaining prominence. In the new model, the parole authority is organizationally 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 organizationally 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 statements 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 themselves from total concern with case-by-case decisionmaking and attend to articulation of the actual policies 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 important 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 parole subject to parole board rules and policies. Appeals 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 examiners in addition to a parole board. However, procedures can and should be developed to assure attention to each separate function—policy development, hearings, appeals, and decisionmaking.

An important component of the parole decisionmaking function which currently exists in few, if any, parole jurisdictions is the involvement of community representatives. Policy development offers a particularly suitable opportunity for such citizen participation. It is likely to improve the quality of policies and almost certainly will improve the probability of their implementation.

References

1. U.S. Department of Justice, *Attorney General's Survey of Release Procedures,* Vol. IV. Washington: Government Printing Office, 1939.
2. California State Assembly, Select Committee on the Administration of Justice. *Parole Board Reform in California: Order Out of Chaos.* Sacramento: 1970.
3. Comment, "The Parole System," *Pennsylvania Law Review,* 120 (1971), 282.
4. Davis, Kenneth Culp. *Discretionary Justice.* Baton Rouge: Louisiana State University Press, 1969.
5. Gottfredson, Don, and Ballard, Kelley. "Difference in Parole Decisions Associated with Decision Makers." *Journal of Research in Crime and Delinquency,* 3 (1966), 112.
6. Joint Commission on Correctional Manpower and Training. *Perspectives on Correctional Manpower and Training.* Washington: JCCMT, 1970.
7. National Council on Crime and Delinquency. *Standard Act for State Correctional Services.* New York: NCCD, 1966.
8. National Parole Institutes. *The Organization of Parole Systems.* 2d ed. New York: National Council on Crime and Delinquency, in press.
9. Zwerdling, Joseph. "The Role and Functions of Federal Hearing Examiners," *Annals of the American Academy of Political and Social Science,* 400 (1972), 27.

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.
2.11 Rules of Conduct.
2.14 Grievance Procedure.
2.15 Free Expression and Association.
2.17 Access to the Public.
5.8 Credit for Time Served.
6.1 Comprehensive Classification Systems.
7.2 Marshaling and Coordinating Community Resources.
9.9 Release Programs.
13.1 Professional Correctional Management.
15.2 Staffing for Correctional Research and Information Systems.
15.5 Evaluating the Performance of the Correctional System.
16.1 Comprehensive Correctional Legislation.
16.2 Administrative Justice.
16.3 Code of Offenders' Rights.
16.15 Parole Legislation.

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 also are 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

1. American Correctional Association. *Manual of Correctional Standards*. New York: ACA, 1966.
2. National Council on Crime and Delinquency. *Correction in the United States*. New York: NCCD, 1966.
3. *National Parole Conference Proceedings*, Washington: 1939.
4. National Probation and Parole Association. *Parole in Principle and Practice: A Manual and Report of the National Conference on Parole*. New York: NPPA, 1957.
5. National Probation and Parole Association. *Standard Probation and Parole Act*. New York: NPPA, 1955.

Related Standards

The following standards may be applicable in implementing Standard 12.2.

16.1 Comprehensive Correctional Legislation.
16.16 Parole Legislation.

Standard 12.3

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 notification 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 staff.

3. Board representatives should monitor and approve programs that can have the effect of releasing the inmate without further board 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 deny or defer it.

10. Parole procedures should permit disclosure of information on which the hearing examiner bases his decisions. Sensitive information may be withheld, but in such cases nondisclosure should be noted in the record so that subsequent reviewers will know what information was not available to the offender.

11. 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 moved 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 and his record must make an affirmative case for parole. 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 releasing 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 inmate, should bear 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 a hearing might result in consideration of immediate parole. More often it would involve review of the particular objectives developed by the inmate and staff. The board's representative would approve the inmate's category 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 occurred or new information 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 written 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 directly from the parole authority representative who conducted the hearing.

The key to rectifying this situation lies in allocating sufficient decisionmaking power to the hearing examiners. They should be able to make the final decision, based on board policy, and notify inmates personally of the results before the examiners leave the institution. In addition, the examiners should specify the reasons for their decision in writing both for the record and for the inmate to retain a copy.

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 inmate representation by lawyers 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.

References

1. Advisory Council on Parole. *Guides to Parole Selection*. New York: National Council on Crime and Delinquency, 1963.
2. American Bar Association. *Standards Relating to Sentencing Alternatives and Procedures*. New York: Institute of Judicial Administration, 1970.
3. American Law Institute. *Model Penal Code: Proposal Official Draft*. Philadelphia: ALI, 1962.
4. National Commission on Federal Crime Laws. *Working Papers*. Washington: NCFCL, 1970. Vol. II.
5. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington: Government Printing Office, 1967.
6. Rubin, Sol, et al. *The Law of Criminal Correction*. St. Paul: West, 1963.

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.

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

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 subpena 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 revocaton, such as warnings, short-time local confinement, special conditions of future parole, variations in intensity of supervision or surveillance, fines, and referral to other community resources. Such alternative measures should be utilized as often as is practicable.

6. If return to a correctional institution is warranted, the offender should be scheduled for subsequent appearances for parole considerations when appropriate. There should be no automatic prohibition against reparole of a parole violator.

Commentary

A great deal of attention, stemming largely from court interventions, has been focused recently on processes by which an offender, once paroled, is returned to confinement. For years, substantial debate has centered around the issue of whether parole was a privilege or a right, proponents of the former arguing that parole was something to which an individual had no statutory right and thus it could be summarily revoked. Recently, however, there has been a growing consensus that the recommitment of a parolee represents a substantial denial of freedom and words like "privilege," "grace," or "contract" cannot blur the loss of liberty so clearly at stake. This has perhaps been best articulated by the Supreme Court, in its finding in *Morrissey* v. *Brewer*, 408 U.S. 471 (1972):

> We see, therefore, that the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a "grievous loss" on the parolee and often on others. It is hardly useful any longer to try to deal with this problem in terms of whether the parolee's liberty is a "right" or a "privilege." By whatever name the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment. Its termination calls for some orderly process, however informal.

The issues of parole revocation typically are drawn around four areas: how a parolee is taken and held in custody, when and where he is heard, what procedures are employed at revocation hearings, and what the nature of the dispositions employed is.

In a large number of jurisdictions, parole officers have wide discretion in causing the arrest of the parolee and holding him in custody. In some jurisdictions a parole warrant is issued automatically whenever a parolee is charged with a new offense, and the existence of this warrant almost always prevents bail. The unfairness of such an automatic procedure is obvious.

The place of the hearing has become a critical issue. Under former practice the parolee was heard after his return to the institution from which he was paroled. The hazards of this procedure to a fair hearing and to the parolee's sense of its being fair have inclined some parole authorities to grant hearings near the site of the alleged violation. Now the Supreme Court requires that a preliminary hearing to determine probable cause be held at or near the site of the alleged violation.

The rights to representation, to disclosure of information, to witnesses, and to cross-examination increasingly are being given to alleged parole violators in a continuing reversal of the procedures existing before the late 1960's. This increased emphasis on the components of a fair hearing usually has been the result of court edict and is being continually strengthened.

The growing emphasis on community supervision is encouraging a much wider use of measures such as short-term confinement or additional restrictions and warnings instead of return to close confinement. Such innovations should be encouraged. The possibility of reparole for offenders returned to confinement also is a desirable program direction.

References

1. Cohen, Fred. *The Legal Challenge to Corrections.* Washington: Joint Commission on Correctional Manpower and Training, 1969.
2. Comment, "The Parole System," *Pennsylvania Law Review*, 120 (1971), 282.
3. Holtzoff, Alexander. "The Power of Probation and Parole Officers to Search and Seize," *Federal Probation*, 21 (1967), 3.
4. Kadish, Sanford. "The Advocate and the Expert Counsel in the Peno-Correctional Process" *Minnesota Law Review*, 45 (1961), 803.
5. *Morrisssey* v. *Brewer*, 408 U.S. 471 (1972).
6. National Probation and Parole Association. *Standard Probation and Parole Act.* New York: NPPA, 1955.
7. Newman, Donald. "Court Intervention in the Parole Process," *Albany Law Review*, 36 (1972), 257.
8. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections.* Washington: Government Printing Office, 1967. Ch. VIII.
9. Sklar, Ronald. "Law and Practice in Probation and Parole Revocation Hearings," *Journal of Criminal Law and Criminology*, 55 (1964), 175.

Related Standards

The following standards may be applicable in implementing Standard 12.4.

2.2 Access to Legal Services.
2.3 Access to Legal Materials.
2.7 Searches.
2.10 Retention and Restoration of Rights.
2.11 Rules of Conduct.
5.8 Credit for Time Served.
16.2 Administrative Justice.
16.3 Code of Offenders' Rights.

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 to operational levels.

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 practical, under a team system in which a variety of persons including parolees, parole managers, and community representatives participate.

5. Teams should be located, whenever practical, 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 services from the rest of corrections has been no exception. The growing complexity and interdependence of correctional programs require more than ever that parole field staff 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 case from an institution to a parole staff. Rather, the lines of responsibility between institution and parole staff will become increasingly blurred. They 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 independent parole boards. These staffs should be transferred to the department of corrections to enhance correctional program integration and to free parole boards for their prime task of parole policy formation 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 restructuring 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 most able to provide for them. In many cases, parole staff's efforts will be focused on various community groups or organizations rather than directly on a parolee. The variety of needs presented by parolees and the objective 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 "case" should be handled, and strong administrative leadership will be crucial.

References

1. National Council on Crime and Delinquency. *Model Act for State Correctional Services.* New York: NCCD, 1966.
2. National Probation and Parole Institutes. *The Organization of Parole Systems for Felony Offenders in the United States.* 2nd ed. Hackensack, N.J.: National Council on Crime and Delinquency, 1972.
3. Nelson, Elmer K., and Lovell, Catherine H. *Developing Correctional Administrators.* Washington: Joint Commission on Correctional Manpower and Training, 1969.
4. New York, Governor's Special Committee on Criminal Offenders. *Report.* Albany, 1968.
5. O'Leary, Vincent, and Duffee, David. "Managerial Behavior and Correctional Policy." *Public Administration Review,* 31 (1971), 603.
6. Studt, Elliot. *People in the Parole Action System: Their Tasks and Dilemmas.* Los Angeles: University of California Press, 1971.

Related Standards

The following standards may be applicable in implementing Standard 12.5.

7.2 Marshaling and Coordinating Community Resources.
13.1 Professional Correctional Management.
14.11 Staff Development.
16.1 Comprehensive Correctional Legislation.
16.4 Unifying Correctional Programs.
16.6 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 parolees. These services should be drawn to the greatest extent possible from community programs available to all citizens, with parole staff providing linkage between services and the parolees needing or desiring them.

1. Stringent review procedures should be adopted, so 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 mechanism 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 all parolees with closer supervision have proved to be quite fruitless. A number of parolees require little 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 noncorrectional 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 gear their attention to other community service agencies and develop greater competence 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 staff 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 problems 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 until they are gainfully employed. The State of Washington has adopted such legislation. Where this is not instituted, loan funds for parolees should be established. Neither of these two alternatives is really an adequate solution. All persons confined in correctional institutions should be given opportunities to earn funds while they are incarcerated. Adequate "gate money" should be provided for those who have been involved in programs with no financial rewards. The high correlation between parole failure and the amount of money an offender has during the first months of release makes it clear that these investments would be sound ones.

Apart from the immediate need for money, however, most releasees will be interested in securing employment. This is not to say that all parolees should be required to obtain employment. Parole conditions should allow parolees to maintain themselves by any of the legal means of support available to citizens in general. But for those having difficulty finding employment, parole staff should develop working relationships with agencies and organizations in the community whose purpose is to help citizens find jobs and should make arrangements for parolees to continue in educational or training pursuits.

An additional resource with which parole personnel should be concerned is the small, community-based residential facility. Besides serving as the last stage of release for many offenders, such facilities can serve as a place to go during times of crisis for the parolee, whether to engage in activities offered or to live temporarily. These facilities can also be utilized for offenders who have violated their parole and require a brief period of control short of return to an institution. Finally, they can serve as a meeting place for community residents, offenders, and ex-offenders. They make an ideal place to hold group meetings such as team planning sessions or a drug treatment group.

Before acting to secure such needed services in the community, it must be remembered that responsibility of parole personnel begins before an offender formally leaves an institution. They should work with institutional staff to assure that institutional programs are operating to meet the needs of the inmates. If an offender leaves an institution with all his needs yet to be met, the parole officer's task is an almost impossible one. In addition, while community involvement efforts are under way, the parole system may have to purchase services needed by parolees rather than trying to provide all of them directly. Funds for this purpose should be made available. Finally, to make sure that services are being provided which meet, as nearly as possible, the needs of the offenders released, parole staff must know what those needs are. They may find that needs vary over time and that many of the releasees at any given time have similar problems. Special teams should then be assigned to concentrate on providing services to groups of parolees with like needs.

References

1. Glaser, Daniel. *The Effectiveness of a Prison and Parole System.* Indianapolis: Bobbs-Merrill, 1964.
2. Keve, Paul. *Imaginative Programming in Probation and Parole.* St. Paul: University of Minnesota Press, 1967.
3. Lohman, Joseph; Wahl, Albert; and Carter, Robert. *The San Francisco Project.* Research Report No. 8. Berkeley: University of California, 1967.
4. Lohman, Joseph D.; Wahl, Albert; and Carter,

Robert. *The San Francisco Project: The Minimum Supervision Caseload.* Research Report No. 11. Berkeley: University of California, 1966.
5. Martin, John M., and Shattuck, Gerald M. "Community Intervention and the Correctional Mandate." Unpublished paper prepared for the President's Commission on Law Enforcement and Administration of Justice, 1966.
6. Stanton, John M. "Is It Safe to Parole Inmates Without a Job?" *Crime and Delinquency,* 12 (1966), 149.
7. U.S. Department of Health, Education, and Welfare, Community Services Administration. *Toward a Comprehensive Service Delivery System through Building the Community Service Center.* Washington: Government Printing Office, 1970.
8. Warren, Marguerite. *Correctional Treatment in Community Settings: A Report of Current Research.* Sacramento, Calif.: Human Learning Systems, 1970.

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 often are 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

1. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: ALI. 1962.
2. Arluke, Nat. "A Summary of Parole Rules: 13 Years Later," *Crime and Delinquency,* 15 (1969), 267.
3. Giardini, G. I. *The Parole Process.* Springfield, Ill.: Charles C. Thomas, 1959.
4. Glaser, Daniel. *The Effectiveness of a Prison and Parole System.* Indianapolis: Bobbs-Merrill, 1964.
5. National Probation and Parole Association. *Parole in Principle and Practice: A Manual and Report of the National Conference on Parole.* New York: NPPA, 1957.
6. Robinson, James, and Takagi, Paul. "The Parole Violator as an Organizational Reject," in Robert Carter and Leslie Wilkins, eds., *Probation and Parole, Selected Readings.* New York: Wiley, 1970.

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 to 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 entering 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

1. Adams, Stuart. "Some Findings from Correctional Caseload Research," *Federal Probation*, 31 (1967), 48.
2. Benjamin, Judith G.; Freedman, Marcia K.; and Lynton, Edith F. *Pros and Cons: New Roles for Non-Professionals in Corrections*. New York: National Committee on Employment of Youth, 1965.
3. California Department of Corrections, Parole and Community Service Division. *Work Unit Program, 1971*. Sacramento, 1971.
4. Havel, Joan. *Special Intensive Parole Unit, Phase IV: The Parole Outcome Study*. Research Report No. 13. Sacramento: California Department of Corrections, 1965.
5. Joint Commission on Correctional Manpower and Training. *Perspectives on Correctional Manpower and Training*. Washington: JCCMT, 1970.
6. Joint Commission on Correctional Manpower and Training. *A Time to Act*. Washington: JCCMT, 1969.
7. Joint Commission on Correctional Manpower and Training. *Volunteers Look at Corrections*. Washington: JCCMT, 1969.
8. Lohman, Joseph; Wahl, Albert; and Carter, Robert. *The San Francisco Project*. Research Report No. 8. Berkeley: University of California, 1966.
9. Lohman, Joseph; Wahl, Albert; and Carter, Robert. *The San Francisco Project*. Research Report No. 11. Berkeley: University of California, 1967.
10. O'Leary, Vincent. "Some Directions for Citizen Involvement in Corrections," *Annals of the American Academy of Political and Social Science*, 381 (1969), 99.
11. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington: Government Printing Office, 1967.
12. Warren, Marquerite Q. "The Case for Differential Treatment of Delinquency." *Annals of the American Academy of Political and Social Science*, 381 (1969), 48.

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.[1] 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.[2] 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 approxi-

[1] These reports, one for each State, were prepared by the Statistics Division, National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration. For explanations of the limitations of the data and definitions see the Appendix of this report.

[2] These figures are provided by the LEAA reports. Percentages and other interpretations were extrapolated from the original figures.

mately 12 percent of adult correctional facilities in the Nation are provided at the State level, while the remaining 88 percent are provided by city and county governments. Juvenile correctional facilities are distributed more equally. Approximately 45 percent of them are provided at the State level, with the remaining 55 percent supported almost exclusively by county governments. With regard to probation and parole agencies, approximately 30 percent are administered by State governments, with the remaining 70 percent at the local level. As in the case of juvenile correctional facilities, the county governments perform the majority of the local functions.

While the statistical description of correctional services confirms claims of fragmentation, isolation, and multiple levels of delivery of services, further insights into the scope of the problem can be gained through an examination of a 1971 report by the Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System*. The information provided by this report details the broad spectrum of organizational arrangements that presently characterizes our correctional agencies and reinforces the image of corrections established by the national statistics cited earlier. (See Appendix.)

Major Issues in Organization

The summary of the Advisory Commission's major findings indicates that in the area of organizational and jurisdictional problems, the following major issues have been identified.

All but four States have highly fragmented correctional systems, vesting various correctional responsibilities in either independent boards or noncorrectional agencies. In 41 States, an assortment of health, welfare, and youth agencies exercise certain correctional responsibilities, though their primary function is not corrections.

In over 40 States, neither State nor local governments have full-scale responsibility for comprehensive correctional services. Some corrections services, particularly parole and adult and juvenile institutions, are administered by State agencies, while others, such as probation, local institutions and jails, and juvenile detention, are county or city responsibilities.

More than half of the States provide no standard-setting or inspection services to local jails and local adult correctional institutions.[3]

The States that exercise control over all correctional activities within their systems have become five in number since the report was written. They are: Alaska, Connecticut, Delaware, Rhode Island, and Vermont.

[3] Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System* (Washington: Government Printing Office, 1971), p. 15.

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 organizations from closed, hierarchical systems oriented to retribution and restraint into open and flexible systems capable of rehabilitating and resocializing the offenders committed to them.

Coordination is needed not only among correctional agencies, but between them and the other components of the criminal justice system. Moreover, the interrelationships between correctional agencies and other organizations concerned with human problems (e.g., mental health, social welfare, poverty reduction) are of vital importance. Linkages must be established with the private as well as the public sector. Paradoxically, intimate relationships between corrections and law enforcement may impede the ability of corrections to develop reciprocities with the health, education, and welfare complex. Thus, coordination and unification are delicate functions, requiring finesse as well as firm use of available sanctions.

The problem of financing correctional improvements is of critical importance. Ironically, the greatest fiscal capability has existed within large and senior government units, while the services most needed are at the level of local government, whose fiscal impotence is known to everyone.

As to the problem of rigid, stratified, and encapsulated forms of correctional organization, it must be remembered that these organizations were in many cases established in the late 18th or early 19th century. Consequently their structures follow the traditional authoritarian model—one that was appropriate to achieve the then-held goals of revenge and restraint. However, correctional organizations have superimposed additional goals since that time—rehabilitation and, more recently, reintegration of offenders into the community. It is probably impossible to achieve these goals in a traditional organizational milieu. The incompatibility of these more recent trends with the traditional physical plant and organizational structures 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 finances be reallocated and new funds generated? Are there ways of changing closed and hierarchical systems? There are no easy answers, but there are directions that can be taken with the assurance of significant improvement over the present inadequate scheme.

To begin with, there can be a more rational and coordinated distribution of tasks and missions among the various governmental jurisdictions involved. The Federal Government should relinquish most direct correctional services for offenders, retaining only those which cost-benefit analyses indicate are inappropriate for State and local governments.[4]

At the same time, the Federal level should greatly increase its role in providing financing, standard setting, technical assistance, and manpower development to the correctional services carried on locally. Leadership, stimulation, knowledge discovery, information, coordination, and catalytic influence should be key features of the new Federal role. There are encouraging indications that the Law Enforcement Assistance Administration is moving in this direction. It is less apparent that the Federal Bureau of Prisons and Federal probation services are prepared to divest themselves of major elements of operating responsibility.

The major arena for reintegrative 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.

The key to 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 strong effort to strengthen county services and reduce reliance on State institutions. Experimentation with varied subventions, grants, and other forms of intergovernmental 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 intergovernmental agreements and flexible administrative arrangements which bring offenders to the optimal location for supervision and rehabilitation.

The solution to the traditional reliance of corrections upon hierarchical, authoritarian forms of organization lies in breaking that mold in favor of more creative systems. Instead of large, isolated, custodial institutions operating as self-sufficient baronies, there is a need for small, community-oriented facilities, linked in myriad ways with the resources required for successful reentry to legitimate life.

Instead of jails which operate as appendages of law enforcement and *at best* merely "warehouse" the misdemeanants sentenced to them, the need is for jails which are a part of integrated correctional services, tied closely to probation and parole, and providing such obvious services as medical aid, educational and employment assistance, and attention to the gross, statistically overwhelming problems of alcoholism, drug abuse, and social alienation.

It should be noted that, while the accomplishment of these organizational changes is a formidable task, certain trends and innovations already are taking place. Examples of such activities are provided in the following statement from a previously quoted report of the Commission on Intergovernmental Relations:

Nine States have established regional juvenile detention facilities while regional jails and correctional institutions have been established in at least seven others.

Over ten States provide inspection services for juvenile detention facilities, jails, and local correctional institutions, and a comparable number of States have stipulated minimum standards for jails, local institutions, and juvenile and misdemeanant probation services.

In four States, a single State department administers all juvenile activities; in three States, the same agency is responsible for administering both juvenile and adult correctional services.[5]

The Commission believes that unification of all correctional programs within a State will allow it to coordinate programs that are essentially interdependent, better utilize scarce human and fiscal resources, and develop more effective programs across the spectrum of corrections. This concept is elaborated in Chapter 16, The Statutory Framework of Corrections, particularly in Standard 16.4, Unifying Correctional Programs.

In this section an effort has been made to examine the organizational arrangements that characterize corrections today. Some general perspectives and directions for change have been noted.

The following sections approach the development and improvement of correctional administration in a broader context. Several recent theories of how to secure organizational growth and change are applied to the problems of the correctional field.

[4] Examples of appropriate activities might be: development of regional Federal facilities for female offenders; and the development of special facilities for "mentally ill offenders," a group which has fallen between psychiatric and correctional institutions.

CORRECTIONAL ORGANIZATIONS

Corrections is a "human resource" organization;

[5] *State-Local Relations in the Criminal Justice System*, p. 17.

that is, its material is people, its product, behavior. The unique features of this type of organization complicate its structural design and management and make both a central part of implementing programs discussed in other chapters of this report.

Unlike a manufacturing operation, the "production process" consists of trained specialists operating on intangibles, and so organizational design must consider the added interpersonal dimension of employee-client relationships. Behavioral 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, organization analysis begins with a set of diagrams rather than a detailed analysis of the problem as a description of alternative functional groupings 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 attitudes 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 evaluative research and management action.

The management of corrections as a human resource organization must be viewed broadly in terms of how offenders, employees, and 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 concept called organization development (OD). 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, markets and challenges and the dizzying rate of change itself."[6] Demands for innovation, the trend toward integrated services, and disagreement over objectives suggest that OD programs are applicable to the correction field. 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 concentrate on three areas considered to be of top priority in corrections today: organization analysis, management by objectives, and planning. However, ideally and for completeness, any contemplated activity in these areas should not be considered apart from the broader concept of OD.

Organization development is based on two sets of ideas: one relating to groups and organizations, and the other to individuals.[7] Organizational development views organizations as many interrelated subsystems mutually affecting each other. Problem solving, therefore, is interdependent. In corrections, a simple example would be a change in the industrial production schedule that limited the time offenders could spend in counseling programs.

A distinction is made between tasks or functions and the processes used to perform them. A planning function, for example, can be performed by a task force or a planning office, and it may begin at the operating level or the executive level. OD emphasizes *how* things are done, on the assumption that *what* is done will be determined in large part by the process. In turn, the work climate (e.g., the leadership styles discussed later) is a determinant of which processes are selected.

Reflecting OD's social science origins, anonymous questionnaires and interviews are used to collect data on work group interrelationships, employees' attitudes, etc. Findings then are discussed with employee groups to improve their insights into such organization processes as line-staff and executive-staff communications, location of decisionmaking, and perceived roles.

Within the organization, individuals are encouraged to develop mutual trust, be candid, openly discuss conflict, and take risks. A premium is placed on the individual's self-actualization fulfillment of his needs within the organization's overall goals and objectives.

A variety of specific interventions are used to implement these ideas and are limited only by the creativity of the change agent. Team building, intergroup problem solving, surveys, reorganization, training in decisionmaking and problem solving, modifying work flows, and job enrichment are examples of the types of techniques frequently employed.[8] An OD program usually involves an outside consultant to begin with, but it is essential to have (or develop) a capability for continuing the program within the organization. Generally, these techniques and processes are used in the work situation—the functions to be performed—to integrate the factors necessary for employee effectiveness (interpersonal skills, individual performance objectives, etc.) with the goals of the organization. OD practitioners feel that this complex process 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 whose direct personal knowledge of the organization is limited. On the other hand, the analyst should realize that reorganization may have salutory political effects by giving the appearance of change while everything remains the same.

The historical correctional proclivity for fads should be avoided in organizational design. Calling for simple unification of institutions, parole, and probation into a State department of corrections has become a frequent suggestion. While in some situations this will improve correctional services, it is a delusion to believe that tinkering can, by itself, effect the functional integration desired. Frequently, sub-units 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 all operational problems; formally redefining roles does not automatically change actual operations.

There are many types of organizational structures and many ways to analyze them. Depending on the assumptions, an organization may be divided on the basis of region, line-staff relationships, functions, or missions. These divisions rarely appear in pure form; for example a regional organization may be subdivided on the basis of functional groupings. In corrections, it is not unusual to base organizations on the sex, age, and offense of the clientele. Regardless of the type chosen, the correctional manager should recognize that the specific structure should be evaluated in terms of its relation to decisionmaking, the objectives of the organization, and the environment in which it operates.

As one organization analyst states, "Among the first things to consider in the organization of work are basic, underlying assumptions. All too frequently work is organized in terms of solutions, practices, even theories; yet basic beliefs about individuals who make up the organization are either ignored, or are merely implied." [9]

Principles of organization analysis are as numerous as the structures they produce. How phenomena are interpreted depends on the way they are analyzed. In one view, the organization is conceived as an "organism," the critical features of which are its ability to (1) test reality, (2) interpret the test, and (3) adapt to changes.[10] Another model focuses on the psychology of the individuals who make up the organization (motivations, desires, gratification, etc.).[11] A sociological view would identify the various groups comprising the organization, the norms governing their interaction, and the prevailing value systems.[12] A more mechanical interpretation of organizations sees subunits as carefully integrated contributors to the production process which perform their assigned duties routinely without regard for the work of other units.

Any reorganization problem should be viewed from all these perspectives to draw out the possible implications or 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, two basic principles frequently violated by correctional organizations are "unity of direction" and "equality of authority and responsibility." Interposing a policy board between 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. Policy authority is divorced from operational authority, even though there may originally have been sound reasons for this departure from "principles."

Similarly, overlapping responsibilities are not, per se, undesirable. In some situations, in fact, they may positively contribute to a stated organizational objective. For example, the Air Force does not have sole

[6] Warren G. Bennis, *Organization Development: Its Nature, Objectives, and Prospects* (Addison-Wesley, 1969), p. 2.

[7] Much of the following discussion is drawn from Arthur C. Beck and Ellis D. Hillman, eds., *A Practical Approach to Organization Development through Management by Objectives* (Addison-Wesley, 1972).

[8] Robert E. Blake et al., "Breakthrough in Organization Development: Large-scale Program That Implements Behavioral Science Concepts," *Harvard Business Review*, 42 (1964), 133–155; and Warner W. Burke, "A Comparison of Management Development and Organization Development," *Journal of Applied Behavioral Science*, 7 (1972), 569–579.

[9] Hugh Estes, "Some Considerations in Designing an Organizational Structure," in Mason Haire, ed., *Organization Theory in Industrial Practice* (Wiley, 1962), p. 15.

[10] Mason Haire, "Biological Models and Empirical Histories of the Growth of Organizations" in Mason Haire, ed., *Modern Organization Theory* (Wiley, 1959), pp. 272–276.

[11] Rensis Likert, "A Motivational Approach to a Modified Theory of Organization and Management" in Mason Haire, ed., *Modern Organization Theory* (Wiley, 1959), pp. 184–217.

[12] Rensis Likert, *New Patterns of Management* (McGraw-Hill, 1961).

responsibility 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 support of ground maneuvers. When visibility 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 wants a meal 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 disenchantment with reorganization usually arises because these processes are ignored.

An organization's objectives partially determine its most effective structure. Although offenders are affected, corrections' retribution objective relates primarily to serving society. A rehabilitation or reintegration objective focuses directly on the individual, and consequently organizational arrangements must be different from those focusing on retribution.

The emphasis on opening institutions to the community increases the number of employees whose primary frame of reference is external to the organization.[13] Such "boundary persons" typically have attitudes more congruent with persons outside the organization, a fact which 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 a more independent organizational subunit 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.

[13] Thomas Mathiesen, *Across the Boundaries of Organizations: An Exploratory Study of Communications Patterns in Two Penal Institutions* (Glendessary, 1971).

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 "penal systems" or "prison systems." Currently, the phrases "correction systems" or even "criminal justice systems" are favored. This long-term and widespread use of the word "systems" has tended to obscure the fact that most correction jurisdictions are neither designed nor 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 correction organization. Many such organizations also have policy manuals, job descriptions or position profiles for staff, job specifications, other organizational and personnel documents, 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 separatism 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 operational boundaries of "correctional" responsibility to the time span between sentencing to institutional custody and release from institutional custody. What may occur earlier is perceived as the responsibility of legislative bodies, police, courts, and probation. Whatever may occur subsequent to conditional release from institutional custody is perceived as the responsibility of parole.

Among the negative consequences occurring directly or indirectly from the acceptance by most correction managers of the legal frame of reference are these:

- Managerial thinking has tended to become constricted and reactive to the emergence of problems, rather than innovative and anticipatory.
- The boundaries of the corrections field largely have been accepted as statutorily and bureaucratically defined, rather than creatively probed and, where appropriate, professionally challenged. For example, definition and prevention of crime tend to be seen as the responsibility of others. Relatively few correctional administrators have been concerned professionally with the existence of wide disparities in the law and court practice regarding sentences.
- Input of offenders into correction organizations tends to be accepted without demur, the attitude of correctional managers too often being "we take what they send us and do the best we can." This acquiescence frequently has resulted in the sentencing of juveniles to adult institutions, imprisonment of offenders who need psychiatric or other mental health care in institutions that lack competent staff and adequate facilities, and acceptance from the criminal justice process of inordinately large numbers of the black and the poor.
- The focus of correction organizations tends to be institutional, reflecting the emphasis in the criminal justice process on whatever facility is perceived as the "appropriate" extension of the court of jurisdiction: the training school for the juvenile offender, the prison for the convicted adult violator.

Traditionally, the institutional focus has been custodial, whatever may be the philosophic rhetoric of the correction jurisdiction. This orientation too stems from an historic perception of the institution as the "holding" extension of the courts.

The nonorganization of corrections also results from political arrangements. The Federal Government, through the Department of Justice and the judiciary, operates three distinct correctional agencies: the Bureau of Prisons, the Board of Parole, and the Probation Service. As noted earlier in this chapter, each of the 50 States operates a corrections "agency." And, through bureaucratic subdivision, many operate several separate agencies; for example, juvenile corrections, adult corrections, probation, and parole. Local governments present varied organizational patterns, ranging from a relatively complex correctional organization in New York City to simple detention facilities in small city police stations or rural courthouses.

Further separatism is the product of bureaucracy. Even within those States with administratively grouped correctional responsibility, there nonetheless is the tendency to establish bureaucratic subjurisdictions. Administratively these may be divided into probation and parole, juvenile corrections, and adult corrections.

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 political jurisdiction tends to emphasize separate institutions for the adult offender, subdivided in turn into minimum, medium, and maximum security facilities for men and women. Until recently, State correction agencies and local facilities segregated each category of offender on the basis of race, often in separate institutions for each offender category.

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 inmates, frequently working at cross-purposes to the formal goals of the organization.

Fragmentation hampers the ability of an organization or a group of organizations to respond to new environmental forces and stress. An organization's ability to achieve specified objectives is contingent on its detection of and responsiveness to changing environmental factors. It first must recognize and accurately assess changes that affect its operations (e.g., public attitudes toward alcoholism) and then develop a response consistent with overall objectives (e.g., treat alcoholism as a medical problem). Similarly, as the general population's education level increased, correctional agencies were required to provide college-level programs for offenders.

The corrections field already is being substantially affected by dramatic changes occurring in American society. The incidence of crime nationwide has risen at an alarming rate, and younger persons comprise a disproportionate amount of this increase. Therefore, it reasonably can be expected that the number of offenders requiring services will rise substantially in the immediate future. Because of the national pattern of high birth rates from the end of World War II into the mid-1960's, the average age of offenders probably will decline somewhat, at least in the immediate future.

There have been perceptible shifts in public opinion regarding correctional operations and their effects on offenders. This has been reflected in growing legislative criticism and demands for reform. The judiciary has extended the application of civil and constitutional rights to almost all aspects of corrections. Professional groups such as the American Bar Association have assumed an active role in advocating reform and direct services to offenders.

The field of corrections faces a period of rapid and dramatic change with a highly fragmented organization and a substantially inappropriate management orientation. Considerable evidence exists to suggest that the organizational arrangements and managerial approaches that largely characterize the corrections field today did not serve well the relatively stable situation of the past. There is every reason to believe that they will serve even less well in the dynamic and fluid environment of tomorrow.

MANAGEMENT BY OBJECTIVES

Management by objectives (MBO) emphasizes a goal-oriented philosophy and attitude. Goal-oriented

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 results.

The purpose of management by objectives is to: (1) develop a mutually understood statement regarding the organization's direction and (2) provide criteria for measuring organization and individual performance. The statement is a hierarchical set of interrelated and measurable goals, objectives, and subobjectives. If properly conducted, the process may be as important as the objectives themselves because it improves vertical and horizontal communication and emphasizes interdepartmental integration.

For an MBO system to be implemented successfully, it must be based on a participative management philosophy and fulfill several specific conditions.[14]

First, the full support of top management is essential. Indeed at each level of management the superior's degree of acceptance of this managerial approach will determine substantially whether or not subordinates accept the system and try to make it work.

A second necessary condition is a goal-oriented management philosophy. The motivational value of an MBO approach depends in great part upon giving each manager and employee responsibility to carry out a job without constant supervision and then assessing him on his degree of accomplishment.

Third, each superior-subordinate relationship should be characterized by the highest degree of cooperation and mutual respect possible.

Fourth, managerial focus should be on any deviations from agreed-upon levels of goal attainment, not on personalities; and the evaluation system should report any such deviations to the manager or employee establishing the goal, not to his superior.

The fifth condition is feedback. If managers are to be evaluated on the results they obtain, they require timely and accurate readings of their progress to take corrective action when necessary. Further they need substantially accurate projections and interpretations of demographic, technical, social, legal, and other developments likely to affect their progress and performance.

Finally, to be successful, an intensive training program must precede organizational implementation. A followup consultative service should be available to organizational members or units requiring assistance in implementing this system.

[14] David Schreiber and Stanley Sloan, "Management by Objectives," *Personnel Administration*, 15 (1970), 20–26.

Implementing MBO

Designing and implementing management by objectives requires the achievement of the following sequential steps:

1. An ongoing system capable of accurately identifying and predicting changes in the environment in which the organization functions.
2. Administrative capability through a management information system to provide data quickly to appropriate organizational members, work groups, or organizational units for their consideration and possible utilization.
3. Clearly established and articulated organizational and individual goals, mutually accepted through a process of continuous interaction between management and workers and between various levels of management. Unilateral imposition of organizational goals on lower echelon participants will not result 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 organizational system for effective and efficient service delivery. In such a system, goal-oriented collaboration and cooperation are organizationally facilitated, and administrative services fully support efforts at goal accomplishment.
6. A managerial and work climate highly conducive to employee motivation and self-actualization toward organizational goal accomplishments. Such a climate should be developed and nurtured through the application of a participative style of management, 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 do not engage in planning in the fullest sense. While many have a general notion of where they are going and some engage in specific aspects of planning such as facilities construction, few are engaged in the full planning process. This process involves development of integrated long-range, intermediate-range, and short-range plans for the complete spectrum of their administrative and operational functions.

Several rationalizations are offered to account for the lack of comprehensive planning. Perhaps the most common is "We can't tell what the legislature is going to do." This "explanation" ignores the fact that what the legislature does (or does not do) often comes about precisely because no practical, planned, and documented alternative has been proposed by corrections management. Also commonly heard is the rationalization, "There is simply not enough time—our organization is already overworked and understaffed." But corrections management always finds the time and staff resources to deal with crises rising in the system.

Planning, contrary to the opinion of many, is not something new and difficult. To paraphrase the historian Arnold Toynbee, "One of the characteristics of being human is that one makes plans." While the efficiency experts of World War II and the PPB (Planning, Programing, Budgeting) experts of the mid-1960's may lay claim to a large share of the limelight and insight, planning is something that all men engage in to varying degrees. One need only recall the past 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 to 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 (PPB and PMS) and application to human resources programs.

Too frequently, planning has been left to an isolated office staffed with technicians, and the organization has received their product with reluctance. Failure to differentiate types of planning (e.g., strategic 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 subunits. In fact, it is neither. The planning process should involve input (information, objectives, progress, etc.) from all organizational units, but the major decisions regarding goals and resource allocations are the responsibility of top management.

Role of the Planner

The effective planner is not an ivory tower technician, but some unique features of his role should be recognized and supported. His effectiveness depends in part on a sensitivity to 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 operations. The planner is a "devil's advocate" and questions the basic assumptions and operating practices 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 sometimes contributes to his own alienation by not recognizing that large organizations always contain conflicting opinions that must be reconciled by the chief executive. There are pragmatic restrictions on what ideally should be a rational process. Even though management decisions may be at odds with the "compelling evidence," the planning function should at least make the reasons for the decisions explicit.

The planner should be a participant-observer in the short-term decisionmaking of top management. Only in this way can he be in a position to point out the relationships between daily action and long-range intentions. Planning can be called a manager's technique 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 opportunities and avoid the risks. It would appear, however, that planning more clearly is the rational process of directing today's decisions toward the accomplishment of a set of predetermined short- and long-range goals. This process depends upon how problems are 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 resource uses, presumably balancing public needs and organizational 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 everyone does including the wealthy. We budget our time, money, food, entertainment, and other requirements 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 distinction largely is related to differences in timing (annual vs. long-range), degree of uniqueness (ongoing requirements vs. one-time expenditures),

and differentiated financing arrangements (annual tax collection vs. bonded indebtedness).

The distinction 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.

The line-item budget 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 1960's, 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, designed.

Next, each such program would be analyzed. In existing programs, the analysis would be in terms of the extent to which they were oriented to achievement of the organization's objectives. Reference would 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 as to their respective costs and anticipated benefits. Should an alternative, on the basis of such a cost-benefit analysis, be deemed preferable to an existing program, the latter would be discarded and the alternative adopted.

Implicit in this management system is a longer-range programming perspective coupled with a continuous process of reevaluation of objectives, programs, and budgetary amounts as circumstances change.

Regardless of how organized and formal an organization's planning, there are six criteria by which managers may 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 functional 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 far enough ahead?
- 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 more universal.

"One of the great challenges facing . . . [the planner] is the necessity of coordinating knowledge, influence, and resources on a scale commensurate with the human problems he is addressing. . . . [These] problems are interrelated, complex and resistant to piecemeal efforts." [15] Clearly, a logical, systematic planning approach is needed that recognizes problem complexity, changing concepts, and changing priorities, and provides a means for developing more effective programs.

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 employee resistance obstruct its implementation. Employees react negatively to changes imposed from above. So access to decisionmaking is important, even though the chief executive's leadership responsibilities require that innovations cannot always be vetoed by subordinates.

As human resource agencies, corrections must make a 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 in which employee, offender, and the organization needs are met in a compatible way.

MANAGEMENT STYLE AND ORGANIZATION CLIMATE

The administrative climate prevailing in an organization system is substantially the consequence of the management style favored and practiced by the small group of top managers.[16] If these managers are autocrats, the system below them will reflect this fact. If, on the other hand, they are democratic and participative, and consciously share with the men under them the making of decisions and the rewards of organizational accomplishment, the organization likely will become more democratic and participative.

Tradition is, of course, a factor to be reckoned with in organizations. Attitudes and modes of organizational behavior favored by previous administrations carry forward and influence attitudes and behavior in subsequent administrations. Still it is true that new management at the top can significantly alter an organization's climate.

Inasmuch as the managerial style of key decisionmakers determines in a major way the climate of an organization or subparts of it, it is appropriate to consider management style and organizational climate simultaneously. Four quite different management styles and organizational climates may be identified: bureaucratic, technocratic, idiosyncratic, and participative.

Bureaucratic Style

The bureaucratic management or organizational climate is rule-oriented, position-focused, and downward-directed in communication flow.[17] Examples are military organizations and paramilitary systems, such as many corrections agencies are. Dedicated bureaucratic managers perceive their jobs as requiring loyal, unswerving, unquestioning execution of organizational policy.

The bureaucrat's tendency is to avoid development of personal relationships with subordinates in the belief that personal involvement weakens his "authority." Real organizational input in the form of suggestions, ideas, innovations, and danger signals usually is restricted to those few persons in high office. Consequently, reality feedback to the top from operating organizational levels is slow at best. It occurs with considerable difficulty, if at all. Identification of problems and performance monitoring are gained by the top decision group almost exclusively through statistical reports and compilations. These reports may be incomplete, inaccurate, or even deliberately misrepresentative 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, responding to it, and gaining and holding member 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 largely discounts the importance of hierarchical position or rank, which he associates with "administration" (i.e., paper work), preferring 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 in expertise, 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 corrections field, psychologists and social workers frequently are technocratic in their managerial application.

Within the larger technical organization where a

[15] Robert Perlman and Arnold Gurin, *Community Organization and Social Planning* (Wiley, 1972), p. 238.

[16] The following discussion relies heavily upon an unpublished paper prepared by Kenneth Henning, University of Georgia, for the U.S. Bureau of Prisons in connection with its contribution to the National Advisory Commission on Criminal Justice Standards and Goals.

[17] Warren G. Bennis, *Changing Organizations* (McGraw-Hill, 1966), pp. 5–10.

number of specialties are operating simultaneously (as in mental hospitals), a "pecking-order" of expertise customarily develops, certain types of experts having higher status than other types. Within each specialty, other personnel arrange themselves in descending order of expertise or seniority in accordance with the status model. When certain higher hierarchical positions in the organization are occupied by individuals with lower expert status, functional and communications bypasses develop, significantly altering the designed or intended structural relationships.

Idiosyncratic Style

The idiosyncratic or "big daddy" manager views his role as administering organizational rules and regulations flexibly to orient them to specific individuals. In the best sense, he manages by attempting to stimulate, guide, and develop individual subordinates to carry out their responsibilities to the best of their abilities. But he may also manage by personal manipulation. The idiosyncratic manager is likely to reserve a substantial amount of decisionmaking 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 personalities or even upon his charm.

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 those areas of little or no personal interest to him, he relegates rather than delegates. Decisionmaking is delayed while subordinates wait for his decisions. Second, the idiosyncratic manager makes his choices more on the basis of personal interest or the personalities involved than on information or the organizational significance of the decision. Third, in the more manipulative applications of this style, the organizational consequences are likely to be either that the organization will lose its more interpersonally skillful subordinates or that it will tend to deteriorate in a pathology of intrigue.

For example, custodial and treatment staff, under the watchful eye of an efficiency-minded administrative officer, begin to vie for position by playing to the manager's idiosyncracies. Rather than assembling and organizing data for a rational argument, they try to shade the issues so that the outcome they prefer appears to be a natural consequence of the decisionmaker's predispositions. A request for more caseworkers, for example, is justified in terms of how counseling may contribute to institutional security and order by providing an outlet for inmate grievances.

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 an informal, friendly relationship with all employees as individuals or, in the larger organization, as groups. Besides sharing information with them, he solicits and respects their opinions about the work situation. Sometimes this manager becomes too concerned, even sentimental, about his organization. Since he dislikes conflict and lack of harmony, he may tend on occasion to sacrifice the organization's work requirements in his efforts to gain or hold member acceptance and cooperation.

Classic Styles in Correctional Management

The two management styles most frequently used in the history of corrections, particularly in institutional management, are the bureaucratic and idiosyncratic. But, as specialized intensive treatment institutions more characteristic of juvenile corrections spread to the adult field, the technocratic style may become more prevalent, particularly if the rigid hierarchical features of the bureaucracy are retained. While the idiosyncratic style may result in an effective managerial application in organizations of limited size and both the idiosyncratic and bureaucratic may do so under conditions of substantial stability, neither is ideally suited to the administration of large, complex systems under conditions of rapid change.

The idiosyncratic correctional manager is less insistent on lines of authority than the bureaucrat but retains much of the decisionmaking authority by coopting subordinates informally. He likes to "tour" the institution casually, not to make a grand inspection but to keep in close touch with operations. The general is sacrificed for the specific. He devotes too much time to cases and neglects overall population characteristics and organization progress. Decisions, consequently, are based on anecdotal experiences rather than aggregate data. His "recidivism" statistics are Christmas cards from ex-offenders.

The idiosyncratic manager prides himself on knowing each inmate and has an index with names, pictures, etc., readily available in his office. The bureaucrat's zeal for reports and statistics is replaced by the idiosyncratic manager's error of omission. Some subordinates must indulge the manager's unwillingness to abandon his career specialty. The former food service administrator may have the best kitchen but neglects postrelease job placement of graduates from the bakers' training program.

The control function traditionally assigned to corrections may account in large measure for the prevalence of a bureaucratic organization climate. When coercion is the prime objective, it is efficiently administered by codifying prohibited behavior and making routine the application of sanctions. A more noble objective of "equality" frequently is cited for uniformly following disciplinary procedures that may, for a particular case, be inappropriate. Even a "treatment" purpose implies a limited degree of coercion, because the individual has been sent to a corrections unit to endure his "illness." If a deviation from routine is passed to the bureaucrat for decision, he self-assuredly asserts, "Rules are rules, and if we make one exception, everyone will want to do it."

A significant part of corrections' fragmentation can be explained by the pervasiveness of a bureaucratic mentality. Postrelease adjustment is considered the parole board's problem. Probation is a court function. Halfway houses are run by a community services unit.

A bureaucratic management style is particularly inappropriate for a human services organization, because it focuses on organizational processes rather than what is being processed—people. The manager's intentional aloofness from his subordinates is reflected by the sort of inmate-staff relations that view programs as done *for* the offender, not *with* him. The organization has established certain activities to which individuals are assigned, regardless of appropriateness.

Adding behavioral change to corrections' traditional control function requires a structural organizational change to permit integration of more functional specialties. This is almost impossible in an organizational climate that insists on a rigid categorization of functions and the undesirability of shared responsibility. A treatment team composed of different specialists is an attempt to superimpose an interdepartmental procedural arrangement on a functional categorization. Even taking officers out of uniform or allowing the teacher to participate in disciplinary decisions does not obscure the fact that critical judgments regarding their job performance, promotions, etc., are made by their functional supervisors. Under these conditions, the individual's frame of reference probably will be his specialty, which may or may not be consistent with what are perceived as the team's objectives.

It should be noted that these managerial styles seldom appear in their pure form. As pointed out in *Leadership and Exchange in Established Formal Organizations,*[18] the effective manager and his subordinates do recognize their role differentiation but, at the same time, share in the decisionmaking process.

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 skills of the occupants of the positions. 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. The strains between the two finally become so severe that an "emotional" separation of these two components occurs. Following such division, the lower echelons usually organize, as in the case of a union, and formally represent themselves to the authorities as an opposing organization. Their goals are to redress grievances and bring about a more equitable balance between the burdens the organization imposes and the rewards and satisfaction it offers.

Managerial Requirements of the Future

To function effectively in today's dynamic and fluid environment, correctional organizations must be flexible. If a system knows exactly what it needs to accomplish and how best to accomplish it, and is administered with benevolence and esprit de corps, a bureaucratically managed organization probably is the most efficient delivery system.

Under conditions of rapid environmental change,

[18] T. O. Jacobs, *Leadership and Exchange in Formal Organizations* (Alexandria, Va.: Human Resources Research Organization, 1970).
[19] Douglas McGregor, *The Human Side of Enterprise* (McGraw-Hill, 1960), p. 68.

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 a capability for determining and interpreting forces impacting upon them.[20] This requires effective problemsolving processes, employee participation in setting organizational objectives, access to the decisionmaking 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 membership also will 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. This theory assumed that:

> The average human being has an inherent dislike of work and will avoid it if he can.
>
> Because of this human characteristic of dislike of work, most people must be coerced, controlled, directed, and threatened with punishment to get them to put forth adequate effort toward the achievement of organizational objectives.
>
> The average human being prefers to be directed, wishes to avoid responsibility, has relatively little ambition, wants security above all.[21]

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 does not dislike work inherently.
>
> External control and the threat of punishment are not the only means of bringing about effort toward organizational objectives. Man will exercise self-direction and self-control in the service of objectives to which he is committed. The average human being learns under proper conditions, not only to accept but to seek responsibility. Avoidance of responsibility, lack of ambition, and emphasis on security generally are consequences of experience, not inherent human characteristics.
>
> Commitment to objectives is a function of the rewards associated with their achievement.
>
> The capacity to exercise a relatively high degree of imagination, ingenuity, and creativity in the solution of organizational problems is widely, not narrowly, distributed in the population. Under the conditions of traditional life, however, the intellectual potentialities of the average human being are utilized only partially.[22]

The assumptions of McGregor's Theory Y are being augmented and modified as greater insight into human complexity is gained from research. Students 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 possessed of many neeeds and potentials, but he is also likely to differ from his neighbor in the patterns of his own complexity." [23] 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 motives arranged in some sort of hierarchy of importance to him, but this hierarchy is subject to change from time to time and situation. Furthermore, motives interact and combine into complex motive patterns (for example, since money can facilitate self-actualization, for some people economic strivings are equivalent to self-actualization).
>
> Man is capable of learning new motives through his organizational experience. Ultimately, his motivation pattern and the psychological contract he establishes with the organization is the result of a complex interaction between initial needs and organizational experiences.
>
> Man's motives in different 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 union or in the informal organization. The job may engage some motives while other parts engage other motives.
>
> Man can become involved productively with organizations on the basis of many different kinds of motives; his ultimate satisfaction and the ultimate effectiveness of the organization depends only in part on the nature of his motivation. The nature of the task to be performed, the abilities and experience of the person on the job, and the nature of the other people in the organization all interact to produce a certain pattern of work and feelings. For example, a highly skilled but poorly motivated worker.
>
> Man can respond to many different kinds of managerial strategies, depending on his own 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 in certain forward-looking organizations recently has shifted fundamentally because of the demands of contemporary society. The change is reflected most of all in the following three areas:

- A new concept of *Man*, based on increased knowledge of his complex and shifting needs, which replaces the oversimplified, innocent push-button or inert idea of man.
- A new concept of *power* based on collaboration and reason, which replaces a model of power based on coercion and fear.
- A new concept of *organizational values*, based on a humanistic, existential orientation, which replaces the depersonalized, mechanistic value system.[24]

The history of recent organizational experience clearly reveals that only those managements 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 willl be conducive to assessing change, deciding where to go, and selecting a method to get there.

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.

Labor organizations for public employees have grown rapidly since collective bargaining was authorized by States and cities, beginning in 1958.[25] By 1970, one-third of all public employees were members of unions. Indeed, one of the fastest growing unions in the country is the American Federation of State, County, and Municipal Employees, which has organized in many correctional institutions.

Union growth is reflected in the increase in work stoppages by public employees. In 1958, 15 work stoppages, involving 1,720 workers, resulted in 7,520 lost man days. A decade later, 254 stoppages, involving 201,800 public employees, resulted in 2,545,000 lost man days.[26]

Not only correctional employees are, or wish to be, organized. Demands by inmates for representation by unions in matters of pay, training opportunities, complaints, and grievances are being heard in increasing numbers. It is therefore essential for correctional managers to have some familiarity with the development of public employee unions.

Labor organization in the United States has passed through three distinct periods. The period from 1900 to the mid 1930's saw formation of craft unions. Semi-skilled and unskilled manufacturing unions were formed and became powerful forces spurred by the depression and "New Deal" between the mid-1930's and 1950's. And the 1960's brought the organization of white collar and service employees, with substantial representation of public employees.

During the early 1960's, public employees became aware of their potential power. Urbanization, a service economy orientation, and the emphasis on education increased the demand for their services. The political climate of the time was receptive, and the civil rights movement provided a significant spark. Public employees long had witnessed the effectiveness of private sector unions in making important gains in wages and benefits.

New York State acted in 1958 to recognize public employee organizations, and Wisconsin recognized public employee collective bargaining in 1959. By the end of 1970, 40 States had legislation authorizing some form of union activity by public employees. Eight of the remaining States had no legislation, and two had legislation specifically prohibiting union activity of any kind.[27]

Two recent legislative developments involve provisions for strike and compulsory arbitration when all else fails. The Pennsylvania Public Employee Relations Act of 1970 provides for collective bargaining and the mediation of impasses. Strikes are permitted if procedures for impasse situations are exhausted and if they are not enjoined as a clear and present danger or threat to public health, safety, or welfare. The scope of collective bargaining under this act extends to wages, hours, and working conditions. New York City has authorized compulsory arbitration for its municipal employees in the case of deadlocked disputes.

For years it was assumed that public employees would not and could not strike. However, since 1958, public employees have exercised the strike tool (sometimes thinly disguised as "blue flu" or other absenteeism) in many cases, despite specific statutory prohibitions. Such action was necessary, unions said, because public managers (1) fail to consult with unions before adopting policies and procedures that affect them, (2) assert management prerogatives even when employee aims are to improve service to clients, and (3) are not responsive unless shocked or driven to action by militant, aggressive public employee behavior.

Collective bargaining traditionally has focused on matters of wages, benefits, and working conditions. Public employees have extended the limits of such

[20] For a discussion of these prerequisites for organizational health, see Bennis, *Changing Organizations*, pp. 52–55.
[21] McGregor, *The Human Side of Enterprise*, pp. 33–34.
[22] McGregor, *The Human Side of Enterprise*, pp. 47–48.
[23] Edgar Schein, *Organizational Psychology* (Prentice-Hall, 1965), p. 60.
[24] Bennis, *Changing Organizations*, p. 188.
[25] Anthony V. Sinicropi, "Employee-Management Relations," in *Managing Change in Corrections* (College Park, Md.: American Correctional Association, 1971).
[26] Advisory Committee on Intergovernmental Relations, *Labor-Management Policies for State and Local Government* (Washington: Government Printing Office, 1969), p. 24.
[27] Joseph P. Golden, "Public Employee Developments in 1971," *Monthly Labor Review*, 95 (1972), 63.

bargaining substantially in recent years; and the future appears to hold further surprises for the public manager. Organized professionals seek greater influence in matters of policy, goals, and staffing, previously held to be the province of managers alone. Teachers, for example, are making collective bargaining issues of such matters as the need for teacher aides, reduction of class sizes, elimination of double shifts, textbook selection, and policymaking.

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 thus 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 or 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 grossly 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

1. Carlisle, Howard M. "Are Functional Organizations Becoming Obsolete?" *Management Review*, 58 (1969), 2–25.
2. Drucker, Peter F. *The Effective Executive*. New York: Harper & Row, 1967.
3. Jacobs, T. O. *Leadership and Exchange in Formal Organizations*. Alexandria, Va.: Human Resources Research Organization, 1970.
4. Nelson, E. K. and Catherine Lovell. *Developing Correctional Administrators*, Washington: Joint Commission on Correctional Manpower and Training, 1969.
5. Kepner, Charles H., and Tregor, Benjamin B. *The Rational Manager*. New York: McGraw-Hill, 1965.
6. Street, David; Vinter, Robert D.; and Perrow, Charles. *Organization for Treatment*. New York: Free Press, 1966.

Related Standards

The following standards may be applicable in implementing Standard 13.1.

14.6 Personnel Practices for Retaining 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 employee and ignored by another. As needs of special offenders are emphasized, the organization will be required to respond in a unified way. Organizational subunits must be viewed as temporary work groups with a mutually accepted objective.

References

1. Argyris, Chris. "Effectiveness and Planning of Change" in *International Encyclopedia of the Social Sciences*. New York: Macmillan, 1968. Vol. II, pp. 311–319.
2. Bennis, Warren G., ed. *The Planning of Change*. 2d ed. New York: Holt, Rinehart and Winston, 1969.
3. Dale, Ernest. *Planning and Developing the Company Organization Structure*. New York: American Management Association, 1955.
4. Hendricksen, Eldon S. *Accounting Theory*. Homewood, Ill.: R.D. Irvin, 1965.
5. Le Breton, Preston P. *General Administration: Planning and Implementation*. New York: Holt, Rinehart and Winston, 1965.
6. Littleton, Ananias, and Zimmerman, V. K. *Accounting Theory, Continuity and Change*. Englewood Cliffs, N.J.: Prentice-Hall, 1962.
7. Miller, Robert W. "How to Plan and Control with PERT," *Harvard Business Review*, 40 (1962), 93–104.
8. Mockler, Robert J. "Theory and Practice of Planning," *Harvard Business Review*, 48 (1970), 148–159.
9. Odiorne, George. *Management Decisions by Objectives*. Englewood Cliffs, N.J.: Prentice-Hall, 1965.
10. Pfiffner, John M., and Sherwood, Frank P. *Administrative Organization*. Englewood Cliffs, N.J.: Prentice-Hall, 1960.
11. State and Local Finance Project. *Planning, Programming and Budgeting for City, State, and County Objectives*. Washington: George Washington University, 1968.

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, continuing 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, managerial 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 managements 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

1. Advisory Commission on Intergovernmental Relations. *Labor-Management Policies for State and Local Government*. Washington: Government Printing Office, 1969.
2. Center for Labor Management. *Negotiation and Public Administration*. Iowa City: University of Iowa, 1970.
3. *Monthly Labor Review*, January 1972.
4. *Public Administration Review*, March–April, 1972.
5. *Public Personnel Review*, January 1972.

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 insure that the public, other correctional staff, or 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 employers 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. It

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 responsibiiity 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 insure the safety and well-being of any employees not participating in the job action.

References

1. Advisory Commission on Intergovernmental Relations. *Labor-Management Policies for State and Local Government*. Washington: Government Printing Office, 1969.
2. Center for Labor and Management. *Negotiation and Public Administration*. Iowa City: University of Iowa, 1970.
3. Sinicropi, Anthony V. "Employee-Management Relations" in *Managing Change in Corrections*, Proceedings, Correctional Administrators' Workshop. College Park, Md.: American Correctional Association, 1971.

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 also are 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 solution of 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 need 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 members were used almost entirely in paramilitary capacities, even in the State "schools" for juveniles and youths. Parole officers were more akin to law enforcement officers than to "helping service" 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 evident as this militaristic system is confronted today by persons urging adoption of modern organizational concepts.

At times, corrections has moved toward rehabilitation. Educational, vocational, and individual and social therapy programs, with attendant staff, have been introduced. As various rehabilitation strategies gained prominence in other fields, they were imported to corrections. The history of correctional management is dotted with treatment fads and cults, among them psychiatric and psychoanalytic programs, religious conversion, Dale Carnegie courses, guided group interaction, transactional analysis, group therapy, psychiatric casework, reality therapy, encounter groups, hypnosis, behavior modification, and operant conditioning. Reviewing staff training programs over the past 30 years is like thumbing through the pages of survey texts in psychology and sociology.

As correctional practice developed haphazardly, so did its goals and philosophy. Every informed observer since Tocqueville has remarked on the confusion and contradictions that exist within the American correctional system. And this confusion has profoundly affected the recruitment and performance of personnel. People who work in corrections—and the public which employs them—are uncertain as to whether the system is supposed to punish lawbreakers or to rehabilitate them, to protect society or to change social conditions, or to do some or all of these things under varying circumstances. Employees who have no clear concept of their roles—and disagree among themselves as to what their roles should be—are unlikely to perform well or to find satisfaction in their work. This state of affairs can only be made worse as the public holds them increasingly accountable for the failures of the system.

It is difficult to plan staff training programs or to recruit personnel from specialized disciplines when conflict over organizational goals and training mission is the rule, rather than the exception. For years, training has been routine and superficial.

Corrections started with closed, secure institutions, then added field services in the form of probation and parole. In efforts to make the institutions corrective in nature, professionals from education, vocational programs, behavioral sciences, medicine, and psychiatry were recruited. In the rush to professionalize, different correctional agencies have followed the beats of different drummers. Professionalization could not be achieved under these circumstances.

As this report has made clear, corrections is a multifaceted field. There are dehumanizing prisons, overcrowded jails, expensive and excessively staffed reception and diagnostic centers, halfway houses, youth industrial schools, experimental community treatment programs, and field services such as probation and parole. Each of these settings requires several types of personnel, and a variety of ways have been used to prepare staff. Often the programs have operated in conflict, internally as well as with each other.

EMERGING ISSUES THAT AFFECT MANPOWER

Out of the changes taking place within the correctional system and within society as a whole have emerged several issues with profound effects, and potential effects, on correctional manpower.

Disenchantment with Prisons

Although institutions 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 maldistribution 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 his address to the National Conference on Corrections at Williamsburg, Va., in December 1971, President Nixon said:

> Our prisons are still colleges of crime, and not what they should be—the beginning of a way back to a productive life within the law. . . . Locking up a convict is not enough. We must offer him the keys of education, of rehabilitation, of useful training, of hope—the keys he must have to open the gates to a life of freedom and dignity.[1]

This statement reflects the widespread and growing disenchantment with the ability of closed, security-oriented institutions to "change" offenders, a disenchantment shared by the public, corrections officials, and prisoners. Many are asking why a system that shows such poor results should be allowed to continue.

If, as is to be hoped, institutions play a decreasing role in corrections, there will be corresponding shifts in manpower needs. Moreover, the education and training appropriate for the staff of the developing correctional programs will differ sharply from what was needed in the past.

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 traditional institutions, as the juvenile training schools were closed in Massachusetts in 1972, more offenders will be treated in the community. As probation and parole subsidy programs succeed, as they have in California and Washington, correctional action will center increasingly in the offender's home community. As youth service bureaus are established to meet youth problems in urban areas, new patterns of service delivery emerge.

With these shifts toward community programs, new and different manpower demands will develop. Staff now engaged in helping inmates will do so in community settings. New requirements will bring new persons into the field who may help provide a new image for corrections. The image of the staff member oriented to the military and to law enforcement will give way to that of the community correctional worker. He will be armed with different skills. He will not be preoccupied with custody, control, and regimentation but intent on using community resources as the major tool in his rehabilitative mission.

Less than one-third of all correctional staff members presently are employed in community corrections programs, where they serve three-fourths of all offenders. It is estimated that by 1975 more than 80 percent of all offenders will be served in some type of community-based program.[2] It is mandatory that existing staff be reallocated and additional staff hired to meet the obvious needs of community correctional programs.

[1] *We Hold These Truths*, Proceedings of the National Conference on Corrections (Richmond: Virginia State Department of Justice and Crime Prevention, 1972), p. 5.

Racial Strife

Emergence of racial strife is a major concern in all 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 explosive racial situations. Staff members in some States spend more hours of training in riot control than in human communications or organizational development.

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 Chicanos. In the total New York State system, 56 percent of all inmates are blacks or Puerto Ricans. At least one-third of all Federal offenders are members of minority groups.[3] American Indians are still being arrested and confined in alarmingly high numbers in both Dakotas, in the Southwest, and in Alaska, as they were in 1967.[4]

In most States, the proportion of minority group members confined is much greater than the proportion of such persons 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 reported to be black, poor, and without jobs. In jails in the Nation's capital, 90 to 95 percent of the inmates are black. Juvenile institutions in the Southwest detain proportionately far more Chicano youths than are found in the general State population. Illinois confines three times more black youths than whites.[5] Obviously it is immediately necessary

[2] Allen F. Breed, statement in *We Hold These Truths*, p. 91.

[3] State and Federal data from presentations at the National Conference on Corrections.

[4] Joint Commission on Correctional Manpower and Training, *Differences That Make the Difference* (Washington: JCCMT, 1967).

[5] Hans W. Mattick, "The Contemporary Jails of the United States: An Unknown and Neglected Area of Justice" in Daniel Glaser, ed., *Handbook of Corrections* (Rand McNally, forthcoming).

to increase the number of correctional personnel who come from minority groups.

Political Activisim 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. Offender 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 unnerved correctional staff more than politicalization of the offender. Staffs, 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 organizational 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 subjected 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.

Untapped 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 sometimes called, actually are resources that have always been at hand but have not been used effectively by corrections administrators.

While corrections once 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, physical strength was a primary prerequisite for positions.

This long-cherished tradition has been challenged and is giving way. As the social distance between the keepers and the kept has decreased, a push to utilize once-untapped resources has surfaced.

Utilization of ex-offenders, women, and volunteers will introduce different skills, as well as help change the custodial image of the corrections 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 corrections 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, persons working in corrections 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.[6] 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 corrections' poor public image and in part to the reluctance of some correctional administrators to recruit actively the 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 capture the enthusiasm and vitality of the present generation of students, the Joint Commission was unable to uncover any broadscale effort in corrections. Only 26 percent of correctional employees are under 34 years old, a statistic that is particularly disconcerting in view of the fact that juveniles make up about one-third of the total correctional workload and are being referred to correctional agencies at a greater rate than adults. Generation gap problems between workers and young correctional clients will no doubt increase if efforts are not made to recruit young people into the field.[7]

Staff Retention

Once staff are recruited and prove to be capable employees, the system should try to keep them. Corrections has failed in the past to retain many of its highly trained, young, and creative staff members, particularly those who come from minority groups.

An anticipated outcome in the effort to improve corrections personnel systems is a change in the image of the correctional worker—and this image needs changing. A Louis Harris survey in 1968 revealed that both the public and correctional workers themselves had a relatively poor image of corrections and persons working in the field.

In a public opinion poll conducted in California by the Field Research Corporation, corrections fared somewhat better, but the results were hardly encouraging. Thirty-five percent of the adults queried had no impression of the kind of job being done by probation officers, 43 percent as to parole officers, and 42 percent as to correctional officers. Only 2 percent of the adults thought that any of these correctional workers were doing an "extremely good job." The reaction among teenagers was somewhat more favorable. But of all positions in the criminal justice field—district attorneys, judges, police, correctional officers, etc.—teenagers as well as adults felt that the correctional officers were doing the poorest job.

As corrections moves toward community-based programs and the institutions adopt participatory management, the image of personnel working behind bars should change to an image of helping offenders help themselves to return to society successfully.

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 1966 to 1969. The same issue exists today, relieved only slightly 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 the 1960's will not suffice in the 1970's.

Several problems block a simplistic solution to the educational problems of corrections. Correctional programs vary widely, ranging from maximum security incarceration to voluntary drug abuse treatment. Educational requirements for personnel to run these programs overlap in some areas, differ significantly in others. Because of this confusion, development of a core discipline that could prepare a person to work in corrections or the broader criminal justice system has been slow.

Corrections has low status in most academic circles, and most faculty members have not encouraged students to seek correctional employment. The field generally has been viewed as a confusing array of services, personnel, clients, and settings that befuddle perspective researchers, academicians, and employees.

Improving Educational Programs

To improve education for existing and prospective corrections employees, the Joint Commission made the following recommendations:

1. The undergraduate degree should be the standard educational requirement for entry-level work in probation and parole agencies and for comparable counselor and classification positions in institutions. Preferred areas of specialization should be psychology, sociology, social work, criminology/corrections, criminal justice, education, and public administration.

2. Correctional agencies should adopt a career strategy, allowing persons with high school education or less to enter the field and participate in combined work-study programs to work their way up in the system.

3. Community colleges should expand their programs to provide educational opportunities for correctional personnel.[8]

Some progress has been made toward achieving these recommendations. The bachelor's degree generally is accepted as the minimum degree for a professional position in corrections. Career ladders have been developed in several systems, and LEEP has provided funds and some direction to community colleges.

Also needed is a criminal justice curriculum to unify knowledge in criminology, social control, law, and the administration of justice and corrections. This will require correctional and educational leaders to agree on at least the basic elements of such a curriculum. It should not include the training content and functions that can be handled more appropriately by the subsystems of criminal justice—police, courts, and corrections. The continued involvement of criminal justice practitioners should be maintained to assure that the theoretical content of the curriculum keeps up with rapid developments in the field.

Clues for the development of a criminal justice curriculum can be taken from the graduate schools 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 purpose is to develop a fundamental understanding of basic

[6] Joint Commission on Correctional Manpower and Training, *Corrections 1968: A Climate for Change* (Washington: JCCMT, 1968), p. 33.

[7] Joint Commission on Correctional Manpower and Training, *A Time to Act* (Washington, JCCMT, 1969), p. 31. Publication referred to hereinafter by title.

[8] *A Time to Act*, p. 30.

fields in criminal justice, using background materials in supporting disciplines. They provide opportunities for research. In general, they supply the base for professional advancement to positions of policy determination and agency leadership. Further development of such programs is discussed in the Commission's report on The Criminal Justice System.

When the criminal justice curriculum is refined and established, it should include degree offerings from associate of arts through the doctorate. 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 and training 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 persons in or preparing to enter the field of corrections. Such a program should provide scholarships, fellowships, guaranteed loans, research and teaching assistantships, work-study programs, educational opportunity grants for disadvantaged persons, and forgivable loans to help defray costs 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 a college-level course. 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 as well as some institutional positions.
3. Sparse, if any, financial assistance in the form of loans or scholarships was available to preservice or inservice personnel.
4. Institutions of higher education rarely provided more than token assistance to staff development efforts in nearby correctional programs.

The picture has changed considerably since LEAA became operational in late 1968. Thousands of inservice correctional staff have taken advantage of LEEP loans and grants. A smaller number of preservice personnel have participated. The largest number have been line workers studying for an associate of arts degree. After achieving that degree, some have continued work toward the bachelor's degree. Many field service and treatment staff have taken advantage of LEEP loans and grants to pursue master's degrees. Although most LEEP funds at first went to law enforcement staff members, in 1972 the balance was shifting to provide more equitable assistance to correctional manpower.

States are now beginning to consider incentive plans to stimulate correctional employees to undertake relevant academic work. A bill authorizing such a plan was introduced in the Connecticut State legislature in 1971 but failed to pass. When such incentive plans are realized, it will be necessary to insure that personnel departments reclassify on the basis of their recently acquired skills those persons who have undertaken such education.

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 at all. 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 that study, but staff ranked it as no more than routine when queried in a Harris survey. At that time, very little Federal funding was provided to support staff development in corrections.

Because educational preparation for various aspects of correctional work is in a confused state, and for most persons in corrections is not even a reality, 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 in most correctional agencies.

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 get staff together for training because employees are not or cannot be released during regular working hours and overtime is expensive. Thus the barriers against training are great in adult corrections.

In the juvenile institutions field, training usually is the responsibility of the assistant superintendent who also has little preparation for this function. The end result is meager training with unclear objectives. In the Joint Commission surveys, 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 management feels keeping up with the field has low priority.

National Institute of Corrections

The proposed National Institute of Corrections can help redirect staff development efforts. The impetus for the institute came from the U.S. Department of Justice. In December 1971, the Attorney General proposed establishment of a national corrections academy to serve as a center for correctional learning, research, executive seminars, and development of correctional policy recommendations.

The idea of a national correctional center of this type has been expressed over the years by numerous groups, most recently in 1969 by the Joint Commission, which recommended after 3 years of study:

> A network of national, regional, and state training programs should be created to develop programs and materials as well as to provide technical assistance and other supportive aids to correctional agencies. Such centers should have manpower development rather than a limited definition of training as their focus, and should develop close working relationships with colleges and universities as well as with private training organizations. Federal and state funds are urgently required for the development and ongoing support of these centers.[9]

The National Institute of Corrections still is in the planning stage. But the concept is a very important one, and the fact that it has developed to the point of implementation represents a significant step forward.

Purchase of Services

Frequently large salaries are provided to correctional management to hire a psychiatrist, a clinical psychologist, or an education specialist. Corrections should reassess 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 traditional organizational system of corrections.

Purchasing the services of highly trained professionals will allow corrections to draw upon the best persons available, rather than having to settle for those persons willing to work full-time within the correctional setting. In addition to specialists commonly associated with corrections, a concentrated effort should be made to secure the services, as needed, of 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 1970's, innovations are inevitable.

Some correctional systems are already experimenting with participatory management. They are bringing 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 decisionmaking or planning organizational operation. As the reorganization of corrections proceeds, many roles for staff, offenders, and managers will change, forcing new trends in manpower development as well as providing a new view of manpower needs. Daniel Glaser predicts, "Within 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 trends noted portend much for correctional change and reflect dramatic need for changing correctional manpower and training, 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 before the prison yard, but lessons must be learned from this phenomenon. A priority in corrections must be participa-

[9] *A Time to Act*, p. 79.

[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:

- Assessment of manpower needed to meet the agency's goal.
- Redesigning of present jobs on the basis of task analysis.
- Development of methods to recruit additional manpower needed.
- 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. Unnecessarily 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 repel 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 defect. 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 unconstitutional in many cases. Yet they persist in several States as requirements for some correctional positions.

A challenge to unfair testing procedures for employment was 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 were identified, and the appropriate training for each skill proposed. The report on the task analysis outlined 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 his task when possible.
> (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 none has been validated to determine whether 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 reassignment 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.

Consideration should also be given to hiring staff on a part-time basis. Most correctional jobs today are full-time positions. If part-time employment were available, qualified individuals, particularly women, could be recruited. Part-time employees, properly utilized, could render valuable service in corrections as they do in other social agencies. Part-time staff could be most easily recruited for community-based programs such as probation, where they could ease current workloads and make real contributions as members of the community into which offenders need to be reintegrated.

Recruitment of qualified personnel is restricted by lack of opportunity for lateral entry into the correctional system in many States. While no one would challenge the merits of promotion from within, it is also obvious that oftentimes it is desirable to hire a specially qualified person from another jurisdiction. If 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."

References

1. *Criminal Justice Universe Conference: Proceedings.* Washington: Law Enforcement Assistance Administration, forthcoming.
2. *Griggs* v. *Duke Power Company,* 401 U.S. 424 (1971).
3. Joint Commission on Correctional Manpower and Training. *Corrections 1968: A Climate for Change.* Washington: JCCMT, 1968.
4. Joint Commission on Correctional Manpower and Training. *Perspectives on Correctional Manpower and Training.* Washington: JCCMT, 1969.
5. Joint Commission on Correctional Manpower and Training. *A Time to Act.* Washington: JCCMT, 1969.
6. National Civil Service League. *The Model Public Personnel Administration Law Proposal.* Washington: NCSL, 1970.
7. Western Interstate Commission for Higher Education. *An Operational Analysis of the Parole Task.* Boulder, Colo.: WICHE, 1969.

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.

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 8 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.

Startlingly 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 prerequisite of long years in correctional systems may be the least valuable of all requirements. It is certain to eliminate most minority applicants.

Excuses 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 are other problems 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 an identity crisis with minority offenders. As black, Chicano, 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 Chicano 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.

The need for a role model to admire and emulate undeniable. All youth need heroes. So do adults. Corrections should provide them among its staff, rather than weed them out. Both white and minority staff must be trained to accept this program goal.

References

1. *Criminal Justice Universe Conference: Proceedings.* Washington: Law Enforcement Assistance Administration, forthcoming.
2. Doig, Ivan. "Five Days in the Street Prison." *Kiwanis,* 57 (1972), pp. 18 ff.
3. Joint Commission on Correctional Manpower and Training. *Differences that Make the Difference.* Washington: JCCMT, 1967.
4. Joint Commission on Correctional Manpower and Training. *A Time to Act.* Washington, JCCMT, 1969.
5. Mattick, Hans W. "The Contemporary Jails of the United States: An Unknown and Neglected Area of Justice," in Daniel Glaser, ed., *Handbook of Corrections.* Chicago: Rand McNally, forthcoming.
6. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections.* Washington: Government Printing Office, 1967.
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 the correctional work force. 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:

The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception: (1) the refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general, (2) the refusal to hire an individual based on stereotyped characterizations of the sexes.

Thus the principle of nondiscrimination recognizes that persons must be considered on the basis of individual capabilities and not on the basis of any stereotyped characteristics attributed to particular groups. In the area of corrections employment, the guidelines as specified by the commission should be given considerable weight.

These guidelines make clear that women should be hired for virtually any position in corrections. However, given the current situation in most institutions, sex may be a consideration in making certain assignments.

Serious objections to implementing this standard are anticipated. Prejudices run deep, particularly in the adult institutional field. Correctional administrators must take a strong leadership role in seeing that policies, practices, and attitudes are changed substantially. Corrections must become an equal opportunity employer.

References

1. *Criminal Justice Universe Conference: Proceedings*. Washington: Law Enforcement Assistance Administration, forthcoming.
2. Joint Commission on Correctional Manpower and Training. *A Time to Act*. Washington: JCCMT, 1969.
3. Glaser, Daniel. "Changes in Corrections During the Next Twenty Years." Unpublished paper prepared for Project STAR, American Justice Institute, 1971.
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 hiring agencies, 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 corrections now recruits its personnel. The fear of failure should not cause governmental units to discriminate in hiring against those with criminal records. . . . Correctional agencies and other governmental units have a clear responsibility to set a pattern for less discriminatory employment practices in regard to offenders and ex-offenders.

References

1. *Career Development.* Washington: Human Services Press, 1970 to date (a quarterly publication concerning New Careers).
2. Joint Commission on Correctional Manpower and Training. *Offenders as a Manpower Resource.* Washington: JCCMT, 1968.
3. Joint Commission on Correctional Manpower and Training. *Perspectives on Correctional Manpower and Training.* Washington: JCCMT, 1969.
4. Joint Commission on Correctional Manpower and Training. *A Time to Act.* Washington: JCCMT, 1969.
5. Norman, Sherwood. *The Youth Service Bureau: A Key to Delinquency Prevention.* New York: National Council on Crime and Delinquency, 1972.
6. *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 14.4.

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 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 contribution 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

1. Adams, Charles, and Smith, Judy. *The Volunteer in Washington State Adult Corrections.* Olympia: Washington Department of Institutions, 1970.
2. Joint Commission on Correctional Manpower and Training. *A Time to Act.* Washington: JCCMT, 1969.
3. Joint Commission on Correctional Manpower and Training. *Volunteers Look at Corrections.* Washington: JCCMT, 1969.
4. National Clearinghouse for Volunteers in Courts. *Newsletter.* Ivan Scheier, ed. Boulder, Colo. (Produced in cooperation with the Boulder, Colo., County Court.)
5. *The Royal Oak, Michigan, Project.* (Series of reports on the volunteer program of the Court of Royal Oak, Mich., since 1966.)
6. *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 14.5.

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 reexamine and revise personnel practices to create a favorable organizational climate and eliminate legitimate causes of employee dissatisfaction in order to retain capable staff. Policies should be developed that would provide:

1. Salaries for all personnel that are competitive with other parts of the criminal justice system as well as with comparable occupation groups of the private 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 provide opportunities for lateral entry and promotional mobility within jurisdictions and across jurisdictional lines.

3. Elimination of excessive and unnecessary paperwork and chains of command that are too rigidly structured and bureaucratic in function, with the objective of facilitating communication and decisionmaking so as to encourage innovation and initiative.

4. Appropriate recognition for jobs well done.

5. Workload distribution and schedules based on flexible staffing arrangements. Size of the workload should be only one determinant. Also to be included should be such others as nature of cases, team assignments, and the needs of offenders and the community.

6. A criminal justice career pension system to include investment in an annuity and equity system for each correctional worker. The system should permit 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 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 general working 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 their goal.

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 organization. The manager who wishes to make the best use of his employees will be on the alert to spot those who have experience 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 has 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 manpower needs and utilization. The creative use of manpower has never been a characteristic of the corrections 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 caseloads, 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.

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 administrators therefore should support Federal legislation and an interstate compact that would establish a system of this kind.

References

1. California Department of Corrections. *The Work Unit Parole Program.* Sacramento: 1968.
2. *Criminal Justice Universe Conference: Proceedings.* Washington: Law Enforcement Assistance Administration, forthcoming.
3. City College System of New York, John Jay College. "Portable Pensions." Unpublished report, 1971.
4. Joint Commission on Correctional Manpower and Training. *A Time to Act.* Washington: JCCMT, 1969.
5. Joint Commission on Correctional Manpower and Training. *The Public Looks at Crime and Corrections,* Washington: JCCMT, 1968.
6. Joint Commission on Correctional Manpower and Training. *Perspectives on Correctional Manpower and Training.* Washington: JCCMT, 1969.
7. Lohman, Joseph; Wahl, Albert; and Carter, Robert. *San Francisco Project: Classification Criteria for Establishing Caseload Models.* Research Monograph No. 12. Berkeley: University of California, 1967.
8. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections.* Washington: Government Printing Office, 1967.
9. Washington Board of Prison Terms and Parole. *Parole Supervision Study.* Olympia: 1972.

Related Standards

The following standards may be applicable in implementing Standard 14.6.

8.4 Juvenile Intake and Detention Personnel Planning.
9.6 Staffing Patterns.
10.4 Probation Manpower.
12.8 Manpower (Parole).
13.3 Employee-Management Relations.
16.1 Comprehensive Correctional Legislation.
16.5 Recruiting and Retaining Professional Personnel.

Standard 14.7

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 decisionmaking 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 self-control and self-direction for persons within the organization.
9. 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

1. Advisory Committee on Intergovernmental Relations. *Correctional Reform.* Washington: Government Printing Office, 1971.
2. Center for Organization Studies, NTL Institute for Applied Behavioral Science, Bethesda, Md., publications since 1965.
3. Committee on Alternatives to Incarceration. *Alternatives to Incarceration for Adult Offenders.* Washington: CAI, 1971.
4. French, Wendell. "Organization Development: Objectives, Assumptions, and Strategies." *California Management Review,* 12 (1969) 39.
5. Gellerman, Saul W. *Management by Motivation.* New York: American Management Association, 1968.
6. Gerstl, Theodore, *From Do Your Own Time to Let's Get it Together.* Olympia: Washington Department of Institutions, 1971.
7. Herzberg, Frederick. *Work and the Nature of Man.* Cleveland: World, 1966.
8. Joint Commission on Correctional Manpower and Training. *A Time to Act.* Washington: JCCMT, 1969.
9. Nelson, Elmer K., and Lovell, Catherine H. *Developing Correctional Administrators.* Washington: Joint Commission on Correctional Manpower and Training, 1969.
10. Norman, Sherwood. *The Youth Service Bureau: A Key to Delinquency Prevention.* New York: National Council on Crime and Delinquency, 1972.
11. *Struggle for Justice: A Report on Crime and Punishment in America.* Prepared for the American Friends Service Committee. New York: Hill and Wang, 1971.

Related Standards

The following standards may be applicable in implementing Standard 14.7.

7.1 Development Plan for Community-Based Alternatives to Confinement.
9.1 Total System Planning.
10.2 Service to Probationers.
11.2 Modification of Existing Institutions.
12.6 Community Services for Parolees.
13.2 Planning and Organization.
15.1 State Correctional Information Systems.
15.5 Evaluating the Performance of the Correctional System.
16.14 Community-Based Treatment Programs.

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 staffing 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

1. Advisory Committee on Intergovernmental Relations. *Correctional Reform.* Washington: Government Printing Office, 1971.
2. American Justice Institute. *Project STAR: A Report.* Sacramento: AJI, 1971.
3. California Criminal Justice Council. *California Criminal Justice Report.* Sacramento: CCJC, 1971.
4. Committee on Alternatives to Incarceration. *Alternatives to Incarceration for Adult Offenders.* Washington: CAI, 1971.
5. *Criminal Justice Universe Conference: Proceedings.* Washington: Law Enforcement Assistance Administration, forthcoming.
6. Fels, Marshall. *The Community—Site and Source of Correctional Rehabilitation.* Olympia: Washington State Department of Corrections, 1972.
7. Glaser, Daniel. "Changes in Corrections During the Next Twenty Years." Paper prepared for Project STAR. American Justice Institute, Sacramento, 1971.
8. Joint Commission on Correctional Manpower and Training. *Perspectives on Correctional Manpower and Training.* Washington: JCCMT, 1969.
9. Joint Commission on Correctional Manpower and Training. *A Time to Act.* Washington: JCCMT, 1969.
10. Norman, Sherwood. *The Youth Service Bureau: A Key to Delinquency Prevention.* New York: National Council on Crime and Delinquency, 1972.
11. *Struggle for Justice: A Report on Crime and Punishment in America.* Prepared for the American Friends Service Committee. New York: Hill and Wang, 1971.
12. *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 14.8.

7.1 Development Plan for Community-Based Alternatives to Confinement.
9.1 Total System Planning.
10.2 Services to Probationers.
11.2 Modification of Existing Institutions.
12.6 Community Services for Parolees.
13.2 Planning and Organization.
15.1 State Correctional Information Systems.
15.5 Evaluating the Performance of the Correctional System.
16.14 Community-Based Treatment Programs.

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 inservice 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."

2. *Criminal Justice Universe Conference: Proceedings*. Washington: Law Enforcement Assistance Administration, forthcoming.

3. Joint Commission on Correctional Manpower and Training. *A Time to Act*. Washington: JCCMT, 1969.

4. Law Enforcement Assistance Administration. *Annual Report: 1970*. Washington: Government Printing Office, 1970.

5. Law Enforcement Assistance Administration. *Second Annual Report: 1971*. Washington: Government Printing Office, 1971.

6. National Advisory Committee on Manpower Development. *Minutes*. Washington: Law Enforcement Assistance Administration, 1971.

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 from the criminal justice system. Through internship and work-study programs students can participate in correctional practice and reform at the grassroots—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

1. *Criminal Justice Universe Conference: Proceedings.* Washington: Law Enforcement Assistance Administration, forthcoming.
2. Joint Commission on Correctional Manpower and Training. *A Time to Act.* Washington: JCCMT, 1969.
3. Law Enforcement Assistance Administration, Manpower Development Assistance Division. *Report on Internship Program.* Washington: 1972.
4. Oberholtzer, Dwight. *Beyond Experience—An Undergraduate Internship in Adult Corrections.* Olympia: Washington Department of Corrections, 1972.
5. Western Interstate Commission for Higher Education. *Summer Work-Study Programs.* Boulder, Colo.: WICHE, 1970.

Related Standards

The following standards may be applicable in implementing Standard 14.10.

7.2 Marshalling and Coordinating Community Resources.
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.

a. All top and middle managers should have at least 40 hours a year of executive development training, including training in the operations of police, courts, prosecution, and defense attorneys.

b. All new staff members should have at least 40 hours of orientation training during their first week on the job and at least 60 hours additional training during their first year.

c. All staff members, after their first year, should have at least 40 hours of additional training a year to keep them abreast of the changing nature of their work and introduce them to current issues affecting corrections.

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 counterparts 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 others. 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 these duties. Also, the training function may be placed so far down the organizational ladder as to achieve little 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 excused entirely from such activities.

Failure to train managers is coming to be seen in private enterprise as a real obstacle to the progress of an organization. The trend in business now is to give top and middle managers annual training in 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 are 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 trainees will have to work are located. For example, one Colorado program to train employment service professionals for work with hard-core unemployed was centered in 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 packager 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

1. American Society for Training and Development. *Reports.* Madison, Wis.: American Society for Training and Development, 1968 to date.
2. Community Resources Training Programs, Washington Department of Corrections. *Annual Report.* Olympia: 1970.
3. Connecticut Department of Corrections. *Connecticut Corrections Training Academy at Haddam.* Hartford:1971.
4. *Criminal Justice Universe Conference: Proceedings.* Washington: Law Enforcement Assistance Administration, forthcoming.
5. Higman, Howard; Hunter, Robert; and Adams, Tom. *The Colorado Story.* Boulder: University of Colorado, 1964.
6. Joint Commission on Correctional Manpower and Training. *A Time to Act.* Washington: JCCMT, 1969.
7. Joint Commission on Correctional Manpower and Training. *Perspectives on Correctional Manpower and Training.* Washington: JCCMT, 1969.
8. Joint Commission on Correctional Manpower and Training. *Targets for In-Service Training.* Washington: JCCMT, 1968.
9. National Training Laboratory. *Reports.* Bethesda, Md.: NTL, 1965 to date.
10. Nelson, Elmer K., and Lovell, Catherine H. *Developing Correctional Administrators.* Washington: Joint Commission on Correctional Manpower and Training, 1969.
11. *We Hold These Truths,* Proceedings of the National Conference on Corrections. Richmond: Virginia Department of Justice and Crime Prevention, 1972.
12. Western Interstate Commission for Higher Education. *Report on Correctional Programs.* Boulder, Colo.: WICHE, 1970.

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. This record of accomplishment will be used as a foundation for new approaches to the use of information in the disposition of offenders.

Two complementary sources of research are 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 concerned 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 reality as unsparingly as an unretouched 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 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 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 [1] initiated the empirical test of programs by examining the experience of those exposed to them over considerable periods. This theme continues to 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 conclusions 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 overestimated. 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

[1] Sheldon and Eleanor Glueck, *500 Criminal Careers* (Knopf, 1930).

the interaction of persons with sets of events so that outcomes may be predicted.

From this level of understanding, it sometimes is possible to modify the system to obtain a predictably different outcome. Such a modification is called "innovation." In addition, the explanatory procedure facilitates evaluation of process, developing criteria for measuring success in goal attainment.

If evaluative research is the first strand in correctional self-study, experimental research also has produced fundamental change. There has been far too little experimentation in corrections, perhaps because theorists have been slow to recognize the value of the correctional system as a laboratory. Experiments conducted by Warren [2] in California, McCorkle [3] in New Jersey, and Empey [4] in Utah have demonstrated the relative feasibility of various alternatives to incarceration. Each of these innovating researchers based his program assumptions on well-developed behavioral science theory. None of the theoretical positions supporting their innovations survived empirical test without major revision. Nevertheless, each innovation has shown clearly that wide ranges of offenders can be programmed safely for maintenance in the community. Recidivism attributable to community programs has not exceeded results obtained by extended incarceration at vastly greater expense. Program changes based on these findings have been slow in coming, but the impact of these studies on correctional thought is fundamental.

A third strand in the analysis of corrections is reflected by a series of studies of prison communities from widely varying viewpoints. The early work of Clemmer [5] documented the powerful forces that socialize confined offenders to the artificial circumstances of prison life. These observations were followed by the theoretically oriented investigations of Schrag; [6] Sykes and Messinger; [7] Studt, Messinger, and Wilson;[8] and Goffman.[9] These studies have documented the forces inherent in confinement which oppose favorable behavior change. They confirm clinical impressions of much longer standing and support the trend of evaluative research outlined above.

The combined impact of this research on correctional policy has been far-reaching and cumulative. In California it has caused the radical redistribution of offenders from institutional to community programs under the Probation Subsidy Act. Similarly, the deactivation 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. 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 seen 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 heavy emphasis on studies to improve the quality of management can be expected. Current management theory stresses continuous research for information, verification of results, and projection of future requirements. The work of Drucker,[10] Forrester,[11] and many other management scientists in the context of business administration has demonstrated the gains possible from management by objectives, performance budgeting, and accountability for results. (See Chapter 13.)

The historical role of the correctional agency was to administer punishment. The administrator was not expected to concern himself with results. Addition of industrial, vocational, and educational programs has been incidental to control of offenders. Administrators have seen that maintenance of control and absence of disorder and scandal have constituted the limits of public expectations of correctional service.

There is reason to believe that the situation is changing. The executive and legislative branches of government, the press, and other influential groups are becoming aware of the benefits of the new managerial approach. The essence of this approach is that good management is measured by results. The stress on results requires information to document and verify them. In corrections, this emphasis will call for a different order of research from that of the evaluative studies and the experiments with innovation mentioned above.

Much attention must be given to design of information systems and creation of meaningful feedback loops. During the coming decade all large and middle-sized correctional systems in the country can be expected to install information systems to support objective-oriented management. Small agencies must adapt to accommodate this trend.

Research will bring about change in operations. The achievement of a significant internal review of operations requires all administrative functions to undergo a difficult transition. New categories of professional personnel must be introduced into correctional operations. Their criminal justice background will be minimal. They must be familiarized with their new environment before their technical expertise can be useful.

An even more difficult transition must be made by present management personnel. Positions that once called only for intuitive planning and decisionmaking must be adapted to requirements of a new style. For many executives, continued effectiveness will depend on completion of inconveniently technical retraining.

Hesitance in facing such rapid evolution in management style is understandable. Planning, budgeting, and administering research operations present opportunities for serious mistakes. Errors in personnel decisions are hard to rectify. Acquisition of expensive equipment that does not meet agency needs causes serious waste.

Establishment of standards will not prevent all possible mistakes, but their availability will at least form a basis for intelligent decisions in building research and statistics capability.

INFORMATION AND INFORMATION SYSTEMS

Language is a source of misunderstanding between layman and technician. In ordinary language, the word "information" refers to any knowledge, useful or not, pertinent or not. In research, the term is limited to specific facts that reduce uncertainty in decisionmaking. For computer technology, the term is further limited to data prepared for processing.

The significance of these definitions is obvious. Whereas in everyday life everyone is assailed with vast amounts of information, both relevant and irrelevant to his concerns and decisions, an operational agency must limit information processing to that which is essential to making advantageous decisions. Research must determine the characteristics of information that will increase a system's power to control its future. In this chapter, "information" means items of knowledge with a demonstrable utility in maintaining operational control.

An "information system" includes the concepts, personnel, and supporting technology for the collection, organization, and delivery of information for administrative use. Information divides into two main categories. "Standard information" consists of the data required for operational control. The daily count at a prison, payroll data in a personnel office, and caseload levels in a probation agency are obvious examples of standard information.

In addition, an information system must be capable of supplying "demand information." A manager does not need to know regularly how many prisoners will be eligible for release during the next 12 months by offense, length of term, and month of release, but an information system must be capable of generating such a report when required.

It follows that an information system should be capable of collecting data for statistical use and providing itemized listings for administrative action. Although the capabilities mentioned are conceptually simple, much is gained by organizing for computer operations. Recent studies by Hill [12] 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—their 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 they hardly seem to be decisions at all, but each action requires certain information for fairness and efficiency.

In virtually all correctional agencies these case determinations now are made on the basis of information from a cumbersome, usually disorganized file. Its use is so clumsy that record study often is supplanted by intuition. Clearly if decisionmakers

[2] Marguerite Q. Warren, "The Case for the Differential Treatment of Delinquents," *Annals of the American Academy of Political and Social Science*, 381 (1969), 47.

[3] Lloyd McCorkle, Albert Elias, and F. Lovell Bixby, *The Highfields Story* (Holt, 1958). See also H. Ashley Weeks, *Youthful Offenders at Highfields* (University of Michigan Press, 1958).

[4] LaMar T. Empey and Jerome Rabow, "The Provo Experiment in Delinquency Rehabilitation" in *Proceedings of the 90th Congress of Corrections* (American Correctional Association, 1960). See also LaMar T. Empey and Steven G. Labecic, *The Silver Lake Experiment* (Aldine, 1971).

[5] Donald Clemmer, *The Prison Community* (Rinehart, 1958).

[6] Clarence Schrag, "A Preliminary Criminal Typology," *Pacific Sociological Review*, 4 (1961), 11–16.

[7] Gresham Sykes and Sheldon Messinger, "The Inmate Social System" in G. A. Grosser, ed., *Theoretical Studies in the Social Organization of the Prison* (Social Science Research Council, 1960).

[8] Elliot Studt, Sheldon Messinger, and Thomas P. Wilson, *C-Unit: Search for Community in Prison* (Russell Sage Foundation, 1968).

[9] Erving Goffman, *Asylums* (Anchor Books, 1961), pp. 1–124.

[10] Peter Drucker, *Managing for Results* (Harper and Row, 1964).

[11] Jay Forrester, *Industrial Dynamics* (MIT Press, 1961).

[12] Harland Hill, *Correctionetics* (Sacramento: American Justice Institute, 1972).

are to benefit from information, a transition from intuition to rationality must be made.

Hill puts the problem aptly: "It is generally recognized . . . that information requirements for management have been difficult to identify. This is not so much because of management reluctance to specify its information needs but rather because management cannot always anticipate what it will need to know." [13] 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.[14]

The process 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 presentence investigations in a probation office or boys in a vocational training program can be projected as norms. A later check will determine how close performance was to the norms and can identify some of the causes of discrepancies. When there is close correspondence with projections, routine reports are delivered to the manager. When there is variance beyond established minimum tolerance, exception reports will be furnished to facilitate corrective inquiry.

The importance of quality control capability for the modernization of correctional management hardly can be exaggerated. If accountability for results is to be achieved, the administrator must have the means of knowing how well he is delivering on his commitments. Quality control capability assures that he is among the first to know when discrepancies between promise and performance begin to appear. He will not necessarily know whether the agency is achieving its goals. He will know whether the agency is carrying out programs intended to reach those goals.

[13] Hill, *Correctionetics*, p. 3.
[14] Hill, *Correctionetics*, p. 148.

Evaluation

Maintenance of internal quality control by an information system will facilitate evaluation of goal achievement. When program participation and execution are documented objectively, it is easy to assure that evaluation of goal achievement is tied to an operational reality. In the past, there has been reason for concern over the validity of evaluations that lacked certainty as to who participated in which program to what extent, or even whether some element of the program ever really existed. Design of an information system should provide confidence on these points.

Two levels of evaluation can be distinguished. At the first level, the manager needs to determine the statistical achievement of goals. For example, he must know whether a machinist training program is turning out qualified machinists. The individuals trained can be tracked after release to 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 in an agency will inordinately complicate the system and the reporting requirements that support it. However, the generic problem of correctional evaluation calls for a solution in terms of the classification of the population exposed. The intent of explanatory evaluation is to distinguish (1) those special features of a program that make a difference in outcome and (2) offenders 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 six-volume study, *Correctionetics*, 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 basically required and technically feasible:

- Point-in-time net results.
- Period-in-time reports.
- Automatic notifications.
- 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 in the data bank:

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 delivered 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 manager.

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 statement of flow and change over 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 and analysis.

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, his 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 events, i.e., transfers to alternate control, hearings by the parole board and actions taken by the board, and releases to parole.
2. Personnel summaries, including appointments, assignments, relief from assignments, and separations.
3. Event summaries by population characteristics.
4. Event summaries by personnel characteristics.
5. Fiscal events summarized by programs; for example, expenditures for facilities and equipment and personnel.

A system capable of routine period-in-time reports of these kinds also will be capable of a wide variety of demand information.

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 time in process. A standard time 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 expiration of the time limit.

This automatic notification system can be programmed to include requirements sufficient to inundate the administrator unless care is taken to establish tolerances of deviation from standards. Judicious 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 numbers of probation or parole failures chargeable to given programs. It may be of occasional interest to know how many offenders aged 40 or older violate parole, but a quarterly report on this relationship probably will be unnecessary. Regular reports should be programmed 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 which correctional personnel are so often charged is partly attributable to the inability of those who propose change to justify it.

The current information explosion profoundly affects the police, prosecutors, courts, and all other local, State, and Federal services. Effective participation of corrections in planning for criminal justice on one hand and for coordinated government services on the other depends on a fully developed capability for information processing.

Data characteristics required by correctional systems for construction of basic information systems are sufficiently generic that statewide systems should be feasible for the larger States. In such systems local and central correctional agencies of all sizes would be included. Regional systems can be established for smaller States, especially where there is a large flow of interstate traffic, as in New England.

The structure of the correctional information system generally lends itself to a uniform model of design, operation, and display. Much will be gained by standardizing correctional information technology for the entire Nation, with suitable provision for the special characteristics of local legislation and practice. For example, a State organized for statewide probation administration will have significantly different bases for input to the system than one that provides for county administration of services. Nevertheless, the processes of probation will be more alike than different. The same information system model can be adapted to both situations.

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 unreliable when it arrived on 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 get what he has asked for, which will be more than he can use unless he has been rigorously selective. He therefore must determine exactly 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, he must limit his appetite for its products to those he really needs. He must require his staff to do likewise.

The second danger is that the potential to free management from an unwieldy number of reports will be ignored because available material is interesting and suggestive. The significant service of an information system is that it can free 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 increase his consumption of reports simply because more reports are available, his style of operation is regressive. Use of the information system should reduce drastically the time devoted to report review.

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 program cannot be undertaken because the information system might have to be changed.

Administrative Controls

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 special codes. An information system that replaces manual operations without provision for verification and editing will be a dubious asset to administration.

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 procedures, human fallibility will continue to justify utmost vigilance. The administrator's active emphasis on accuracy is the most effective 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 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. Precaution should be taken to protect files and equipment from intrusion.

Intersystem Relationships

A useful correctional information system will provide for delivery of a large volume of case decision information and specialized management data of no significance outside the agency. As already suggested, the state of correctional information technology supports the development of statewide or regional information depositories. Terminals would serve cooperating agencies. In the interest of national uniformity of statistical reporting, standardization of information formats should be encouraged as far as practicable.

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 advantages in service or 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.

"Statistics" is defined here as a mathematical method of ordering, 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-

plication of professional expertise. This kind of skill always should be available in large systems. Mechanization of statistics cannot be expected to ferret out the meaning of unexpected events or to bring relevant and well-defined alternatives into consideration. The statistician benefits from the new information technology. He has not become obsolete. Just as the information system frees the administrator from the personal review of an array of manually produced reports, the statistician is freed from the production of routine compilations that hitherto have required his supervision and individual analysis. He now is able to assist the administrator in such functions as:

- Evaluation of program achievement.
- Determination of workload requirements.
- Projection of future requirements.
- Choice between decision alternatives.
- Construction of special statistical instruments.
- Analysis of problem areas.

Certainly these functions do not exhaust the possibilities of professional statistical services. Nevertheless, they illustrate the range of capabilities that the statistician can provide. Reliance on the information system alone will deny the administrator the depth of analysis needed for an understanding of operations status and effective development.

Evaluation of Program Achievement

Collaborating with operating staff and research social scientists, the statistician should be responsible for installing standard measures 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 devices are installed to facilitate comparison of expectations with observed outcomes.

This evaluation technique is well suited to standardized 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 of like subjects grouped by the statistical weighting of aggregated characteristics. Group expectancy for success or failure as determined by recidivism or other criteria can be expressed in percentiles.

Use of base expectancies 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 outcome 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, a prima facie indication of program effectiveness is established.

Such an indication affords the administrator some assurance that a program previously subjected to a controlled evaluation with similar results is continuing to be effective. It also may 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," comparison with a population containing a substantial number of subjects with a "bad attitude" will be invalid.

A second objection to the use of predictive devices in evaluation rests on the tendency of the predictive bases 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 at least every five years.

A third objection is that predictive devices can be used only for global indications of program effectiveness. They cannot tell the administrator anything about a particular individual or his participation in a program. The decisionmaker unfamiliar with the use of predictive devices may be tempted to seek prognosis of individual behavior as a basis for program refinement. It must be emphasized that the type of instrument under discussion cannot provide that kind of information. If it is desired to know whether some clients benefit from a program while others do not, a rigorous evaluation providing for classification of both experimental and control groups must be carried out.

The study of differential effectiveness is a particularly significant requirement in correctional evaluations. Where the differentiations are standard and can 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 unsuited to information systems must be designed and applied.

Despite these considerations, soft comparison can be recommended 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 later 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 foundered on 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 most classes of offenders from an average of more than two years to a one-year maximum. In this case recidivism rates at the end of one year closely approximated those at the end of two. Statistical analysis of experience 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 allocations as well as treatment. Some offenders require no service at all, even though committed to custody. 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 encountered in correctional administration. 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 correctional administrators do not have control over intake and outgo, workload prediction is especially difficult. Unexpected intake can result in disastrously overcrowded prisons and jails. No statistician can claim accuracy in forecasting 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 administrative amateur 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 dangerously overcrowded 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 suddenly in response to increases in some categories of reported crime. Fluctuations in the birth rate 15 years ago or changes in economic conditions must be considered for their impact on the commitment rate. It is a complex model, but it offers advantages in addition to accuracy in projection of requirements. Through consideration of contingencies the statistician can alert the administrator to options for legislative or policy change.

The projection of a 10-year plan for capital outlay is one of the most difficult assignments. Such plans may envisage construction involving many millions 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 the plan can be derived.

Any long-range plan not based on at least this level of statistical sophistication should not be considered a plan at all. The allocation of public funds 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 statistical study of process and outcome. If outcome does not correspond to goals, then modifications of process must be investigated.

It has long been a common procedure for the statistician to estimate the impact of changes in legislation or agency policy. Such estimates must be made in terms of a relatively small number of parameters, disregarding many consequences of administrative significance.

New simulation models and the kinds of analysis they make possible enable the statistician to increase the precision and applicability of his estimates. The decisionmaker is not relieved of responsibility for choice. Few decisions depend on quantifiable information alone. In many cases the imponderables will be more significant than the statistics. For example, it may be assumed that the penalty for a certain offense must 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 fiscal-management 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 area of correctional 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 study of noneconomic consequences 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 cited as an example of predictive instruments that can be used in an information system. Explorations leading to more useful predictive devices are under way. Predictive techniques are expected to become much more versatile than the versions of the base expectancy model now in use.

The statistician's role in development and maintenance of these devices is critical. Although the concepts are or can be standard, their application will depend in part on local conditions. A predictive device developed in California would have to be modified for use in New England by a study of the differing characteristics of the two populations. This kind of study requires statistical supervision.

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 continuities 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.

Perhaps the most important instrument to be designed by the statistician is hardly thought of as an instrument at all. An agency's annual statistical report is a handbook of permanent importance to the orderly evolution of policy. 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 areas for study, he should be guided by the statistician's recommendations for analysis and display.

Analysis of Special Problem Areas

The information system should be capable of responding to a broad range of special queries. It should be flexible enough to provide for cross-tabulations not included in the routine reporting schedule and to allow for rapid delivery of information in response to many administrative inquiries. The professional statistician's skill is called for when data are needed that have not been incorporated in the information system. This case may result from an experimental program requiring special information processing. It also may result from the perception of a new problem area; for example, the influence of methadone on probation and parole violations.

Although administrators and legislators may generate inquiries surpassing the capability of the information system, the main source of special problem analysis should be the exception reports the system will generate routinely. The report of a variance from expectations that exceeds planned tolerance almost always will require investigation of its causes and consequences. The statistician's responsibility for these studies will facilitate rational response to the situation.

Future of the Correctional Statistician

The information system, once activated, will greatly increase the need for professional statistical services. It also will change the character of these services. The adaptation of the generic correctional information system to the special situation of any correctional agency is a statistical responsibility. The professional staff carrying out that responsibility must be capable of systems analysis and design. 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.

The statistician will be freed of the managerial requirements of a manually operated system. The manual system stresses economical generation of the minimum statistics required for effective management. By contrast, in an automated information system the stress is on selecting, out of the enormous range of available data, the reports of greatest use to the administrator. The correctional statistician interprets the abundance of information rather than attempting to find significance in scarcity.

RESEARCH

The term "research" will be used in this discussion to include the *description* and *explanation* of human behavior. These closely related functions obviously are important to the effectiveness of the correctional process. Through documentation of criminal careers and consequences of correctional intervention, a basis is created for the explanation of behavior. Through the processes of confirmation, some explanatory theories are accepted, some rejected. Knowledge acquired through this process forms an empirically supported theoretical base for correctional practice. The key concept is empiricism, the reference of policy to experience as documented by observation. This concept is enlarged by the empirical perception that social change alters the meaning and significance of experience, so that policy decisions based on the experience of 20 years ago will not necessarily be sound today.

Introduction of empiricism for the support of theory is immensely important for the entire criminal justice system. No human institution is more tradition-oriented. The foundations of criminal control rest on unverified and conflicting assumptions about behavior motivation and change. For correctional practice, these assumptions result in decisions made with invalid justifications. For example, to justify incarceration by the expectation that those incarcerated will be rehabilitated thereby is to substitute wishful thinking for realism. To the extent that research has reduced the influence of such expectations on policymaking, both public protection and fairness to the individual have been served. Replacement of assumptions by empirically tested principles has started, but it is far from complete.

Description in Correctional Research

The element of description in correctional research deserves more discussion. The information system will capture a huge amount of detail about individual and group events. The detail can be examined for 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 explain and innovate. He does not always need such detail. 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 the information system. In assembling these data, the researcher provides for fuller description of the agency's process. His effort is guided by the experience of social scientists 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 an exceptional number of parole violations in a metropolitan center. The meaning of this change cannot be understood without accumulation of more descriptive detail. The researcher usually will have a good idea of what he is looking for. It may be a sudden change in employment conditions. It may be an excess of zeal by new parole officers. But until more facts are assembled for describing the situation, the explanation must be speculative.

If description is the process of accumulating

sufficient information to explain events and processes, then explanation is the use of descriptive information to produce the understanding necessary for modification of policy and practice. Understanding does not depend on the mere accumulation of 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 from his perception of reality. But 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 "tighten up," reversing the change 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 absolutely necessary to the description 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 anything 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 correctional agency. The effort to achieve 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 the printout tell him what actions he should take. His own inspections and review of operations may suffice for action, but many occasions will arise when evaluative research will be necessary for full understanding of program shortcomings. This use of research staff should be encouraged.

Evaluation is the measurement of goal achievement. It may be macroscopic and measure the agency's achievement of the overall objectives. This type of evaluation, for example, might determine whether an increased period of incarceration reduced the 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 indiscriminate macroscopic measurement 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 Kassebaum, Ward, and Wilner [15] 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 asked, however, was whether there was any reason to suppose that such a relationship might exist. The project staff also explored the more plausible proposition that group counseling might produce a better prison adjustment on the part of those exposed. Nothing of the sort could be demonstrated, probably because the program directors 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 program itself be sufficiently consistent in definition to establish a clear relationship to the objective.

Most 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 applied will be defined rigorously. A random selection produces an experimental group, to which the program is administered as an independent variable. All other conditions remaining constant for both experimental and control groups, the program's success is measured by a dependent variable. Almost always in correctional programs this variable will be recidivism. Guttentag [16]

[15] Gene Kassebaum, David Ward, and David Wilner, *Prisoner Treatment and Parole Survival* (Wiley, 1971).

[16] Marcia Guttentag, "Models and Methods in Evaluation Research," *Journal of the Theory of Social Behavior*, (1971), 75–95.

has pointed out the discrepancy in the assumption that a social action variable can be controlled in the same sense that a variable in the natural sciences can be maintained within defined limits of consistency. No satisfactory solution to this anomaly has been proposed. Its resolution at this stage seems to depend on classification of the population under study and controlled differentiation of program.

The work of Warren [17] illustrates the value of this approach. This project concerned design and test of a comprehensive community-based treatment program for a wide range of delinquents. The test consisted of nine substudies comparing treatment variables between comparable and well-defined experimental and control groups. All the experimental groups were treated in the community; all the control groups were confined in youth training schools. As a result of this elaborate design, the strengths and weaknesses of the total program of community treatment could be identified. Without these discriminations, both the positive and the negative findings in the groups treated would have been obscured.

Not all evaluative research lends itself to this kind of design. Nevertheless, it is a good rule to recognize and define the complexity of experience so that something can be learned from it. The virtues of simplicity in research are limited. Generally, the simpler the design, the less will be learned.

Hierarchy of Evaluative Research

A hierarchy of evaluative research illustrates this principle. The best analysis of this hierarchy is to be found in Suchman's authoritative work.[18] Suchman perceived that the utility of evaluation depended largely on the complexity of the measurement criteria. He defined five categories of criteria used in evaluation. A recapitulation of his analysis will illustrate the usefulness of controlled complexity in design.

1. 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 project studies. Information of this kind is essential to the study of a program's economics, but it tells us nothing about its usefulness. An example from correctional practice is a study of effort expended on a reformatory vocational training program. The equipment, personnel, and number of training sessions required to achieve a specified level of vocational proficiency for a varied class of trainees would be documented. This kind of study is not without value to the policymaker. He may not know what the program contributes to achievement of his goals, but 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 immediate goals of the program are achieved. In the case of the vocational training program, the success criterion would be the number of trainees reaching the planned level of proficiency within 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 comparison can be maintained by the correctional 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 number of trainees 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 much improved from current practice, individual followup of some kind will be necessary to deliver this level of assessment. The conceptual basis for this research is simple, and its relevance for planning is clear, but few such evaluations of correctional programs have been accomplished.

4. 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. 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 proficiency level and were employed at their new trade after release. 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

[17] "The Case for Differential Treatment of Delinquents."

[18] Edward Suchman, *Evaluation Research* (Russell Sage Foundation, 1967).

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 reached with a shorter, less costly, more intensive training? The policymaker, the vocational training director, and the researcher must collaborate carefully in identification and formulation of issues so answers will lead to constructive decisions.

5. Finally, the most elaborate form for evaluative research will include the study of *process.* A 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 example would begin by considering instructional 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 the 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 this program have adverse effects on subsequent conduct?

The third study dimension would require investigation of administrative variables. Did full-time assignment to the program for three months achieve better results than half-time assignment for six months? What was the effect of compulsory assignment to the program? Would 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 training for other dimensions of 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 because of a consensus that much more of it is needed. The costs will be high. The temptation to economize is universal; there is still an inclination to limit evaluation to the opinion of a visiting expert called in late in the day to meet a budgetary requirement for evidence to support the program's value. In such a situation, the most conscientious expert is limited to brief observations, a review of existing data, and perhaps a few interviews with staff and trainees. Sometimes such consultations are of great value, but they should not be mistaken for systematic, empirical evaluations.

In a time of great change, when policy is shaped by evidence, new evaluation standards should be established and maintained. Crude and oversimplified evaluation results in discrediting old programs without creating a basis for evaluation. At this point in correctional history, evaluative research is a dubious investment unless it is designed for the understanding of operations as well as their statistical assessment.

Innovation

In addition to program evaluation, research contributes to the improvement of corrections by facilitating innovation in policy and operations. The scope of innovation in corrections is relatively narrow. What can be done must be related to penal objectives. These essentially are maintenance of control over offenders and reduction of criminal behavior. A limited range of means is available to achieve these goals. Given the present structure of corrections and the underlying assumptions, the room for research maneuver is limited. It is a domain of research in which the number of alternatives provided by theory is relatively small. The challenge to the administrator and the social scientist is to explore existing alternatives in sufficient depth to gain an accurate knowledge of their potentials. A further survey of the issues is much less likely to be profitable.

There is an instructive contrast between the impressive success of innovations in control and the almost negligible success of innovations in behavior change. Diversification of control methods has moved rapidly from conception to implementation. The reduction of criminal behavior through programs administered by correctional agencies has yet to be convincingly demonstrated. The role of research has been decidedly different with respect to these two categories of innovation.

Numerous theoretical issues are involved in effective offender control. 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 alternatives to incarceration such as community treatment, work-release, and probation subsidy. The objective of each of these innovations was reduction of the enormous economic waste of incarceration 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 vaguely hope these relaxed controls will have rehabilitative effects in themselves, but the significant success criterion is a low level of criminal incidents involving program participants. The criterion supporting success is the conservative selection of offenders.

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 is little evidence of their effectiveness in domains other than corrections. Because change is so much to be desired, much effort has been given to adapting the practice of behavior change to the peculiar circumstances of the offender. Most of 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 most powerfully by administration of rewards and punishments. This belief is so deeply embedded in the general perception of human nature that our whole system of criminal justice depends on it. Despite popular consensus on the validity of the rewards-and-punishment theory, the punitive measures applied have never achieved predictable successes. The pattern of results from incarceration, fines, and public reprimand shows that, whatever the ultimate value of the theory, we do not know how to punish in a way that consistently achieves desired results.

The renaissance in behavioral psychology and its sociological correlates has indicated new avenues for correctional innovation. The history of corrections promises many interesting points of initiative for influencing behavior. Such applications as programmed learning and token economies are adapted from education and mental health. Except for some unpromising and unattractive attempts at aversive conditioning and behavior modification by electronic devices, little has been done to develop techniques for behavior modification that are native to corrections.

The second group of theories has generated the most research and probably the most disappointment. These theories are based on the idea that socialization is dependent on acquisition of insight, and on the associated idea that criminal behavior originates in defective socialization. A wide range of applications in counseling and therapy depends on these propositions. So far, conclusions on the value of treatments based on this group of theories have not borne out the hopes held by the clinical professionals. It is beyond the scope of this chapter to consider the reasons in the detail they deserve. The principal factors to which failure can be attributed are the involuntary aspect of treatment, the inapplicability 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 their failures and the cogency of the argument that well-defined reasons for failure can be identified, correctional therapy proponents have made a less than sufficient effort to refine theory to accommodate the unfavorable empirical findings.

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.[19] This set of ideas is based on the theory that a change in the nature of the offender's relation to the community, rather than a change in the offender himself, is to be sought. The focus therefore is on the interaction between the offender and his surroundings. The objective is to achieve a better "reintegration" than the integration that existed before the trouble occurred. The theory holds that nonoffenders share the same psychological abnormalities as offenders, and attempts at rehabilitation by psychological change are superfluous if the only intent is to reduce recidivism. The task of the correctional apparatus therefore should be to help the offender achieve the level of integration enabling him to choose a law-abiding career regardless of his psychological state.

The difficulty with these theoretical positions is that so far they have not lent themselves to a clearly identifiable operational technique. The a priori logic of the theory is persuasive, so far as it goes,

[19] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections* (Washington: Government Printing Office, 1967), p. 30–31.

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 corrections, but it does include those currently influential. Their limited value for operational use in correctional settings reflects a serious constraint on practical development. Two possible explanations 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 theory or group of theories to support the planned change of offenders or, alternately, to provide for their reintegration without change.

The second explanation is that some attributes of the current correctional experience and setting seem to rule out the possibility of such change or reintegration. A method for resolving these problems has yet to be devised. The importance of achieving a resolution is increasingly clear.

MAJOR CURRENT RESEARCH ISSUES

Measurement in Correctional Research—Recidivism

The paradox of correctional measurement is the existence of a criterion variable that is easily recorded, simple to measure, and logically relevant but that also obscures research. Unlike any other social service system, corrections possesses in recidivism a criterion whose salience is universally agreed upon.

There has been considerable variation in the way recidivism has been measured. A standard definition 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.

If the objective of the correctional apparatus is reduction of crime by reduction of recidivism, then all criminal acts committed by offenders who are or have been under correctional supervision should be counted as recidivism. But what is a reliable count? 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, on the basis that arrests represent observed behavior whereas the judicial process results in much illegal behavior being excluded from a recidivism count based solely on convictions. Correctional administrators argue that recidivism should be measured by convictions alone because many arrests may represent erroneous attribution of illegal behavior to the highly visible released offender or probationer.

In an integrated criminal justice information system, arrests will be related to prosecutions and convictions or acquittals. Until that time, the use of arrests as the data for recidivism is subject to the objection that neither the behavior of the offender nor its significance has been verified by court action. In a system of law based on presumption of innocence, such verification is essential.

Recidivism should be measured by reconvictions. A conviction is a well-defined event in which a recorded action has been taken by the court. Further, measurement by reconvictions is established 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 ex-offenders to release rates. The significance of such studies must be assessed in light of a realistic view of the nature and validity of the data used.

Another consideration 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 reflection of administrative practices and may indicate parole policy more than correctional effectiveness. (See Chapter 12.) Technical violations in which a sentencing 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 second major problem in recidivism measurement relates to the degrees of seriousness to be identified and their significance. The recidivist event may vary in seriousness from a booking and dismissal 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 between offenses. This logic is not persuasive. If the objective of the corrections system is to change behavior, or at least establish successful control, nothing in its operation can or should be aimed at converting major offenders into lesser offenders. A program aimed at resocialization or reintegration 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 not reduced the burden of crime. 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 offense groupings in a definition of recidivism. First, new groupings of crimes should be specified which divide criminal acts into categories based on the gravity of the offense. (See Chapter 16.) If this recommendation were implemented, it would be a simple matter to decide which of the offense categories should be included in recidivism rates. At the present time, however, there is no commonly accepted categorization. Different bodies utilize various groupings such as misdemeanors and felonies, violent and nonviolent offenses, crimes against property and against persons, or serious and nonserious offenses as defined in the FBI's "Uniform Crime Reports." Furthermore, these terms are used to specify different acts in different jurisdictions.

The second way criminal acts may be grouped for reporting is to differentiate on the basis of sentence received. For example, recidivism sometimes has been defined by criminal acts committed by probationers or released offenders that resulted in conviction by a court and sentence of not less than a certain number of days of confinement (usually 60, 90, or 180 days). Given the trend toward using confinement as the disposition of last resort, however, some fairly serious criminal acts may not result in confinement and would therefore be excluded from such a definition. A mechanism for recording more serious offenses which is not dependent upon confinement must be established.

This is not to say that measurement of recidivism necessarily should be divorced totally from the sentence imposed. Particularly while offense categories and sentencing practices are not standardized and practices such as plea bargaining are used widely, the sentence received may reveal more about the court's perception of the seriousness of the offense than its designation. Ideally, some factor that combines the offense category and the sentence received should be utilized.

The length of time offenders should be followed after their release from the supervision of the courts or the corrections system is the third important element in developing recidivism statistics. Measurement of recidivism should be pursued for three years after the release of the offender from all correctional supervision. This arbitrary figure is chosen because the few recidivism studies that have followed offenders more than three years have not revealed a significant difference between recidivism before and after the three-year point. Arbitrariness of the period is less important than the need to establish a standard measure with a specific time frame so that comparisons among programs and systems will have a consistent base. A figure should be set that will not undermine the ability to get feedback within a useful time frame and take corrective action. This is not meant to discourage reporting over longer periods, which provides valuable control information concerning reconvictions and their occurrence after the three-year period.

A Definition of Recidivism

To sum up the points made here, the following definition should be used.

> Recidivism is measured by (1) criminal acts that resulted in conviction by a court, when committed by individuals who are under correctional supervision or who have been released from correctional supervision within the previous three years, and by (2) technical violations of probation or parole in which a sentencing or paroling 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. In addition, it is important to report recidivism so that patterns of change can be discerned. At the minimum, it should be possible to ascertain from the statistical tables the number of recidivists in each annual disposition or release cohort at six-month intervals for the three-year followup period. Discriminations by age, offense, length of sentence, and disposition (probation, jail, prison commitment, etc.) are easy to make and will provide planners with trend lines for adjustment of policy.

The Measurement of Success

The definition of recidivism does not resolve all problems for which use of this variable is responsible. No matter how faithfully the definition is followed, only failure can be measured by using it. When recidivists are subtracted from the total cohort, the remainder are not necessarily to be credited to the system as successes. In rhetoric defending their programs, some administrators make statements to the effect that although 40 percent of their releases failed, 60 percent succeeded. Success is attributed to the system or the program to be defended. The argument is fallacious.

Although the failures of corrections can be differentiated on a wide range from the inevitable to the accidental, they nevertheless are failures. But it does not follow that the program succeeded with those who did not fail. There are several reasons for this paradox.

First, some offenders commit new offenses, but not in a jurisdiction that will report them to the agency that supervised or confined them. This common deficiency may be corrected when a national

retrieval of criminal histories becomes an actuality, but not before.

Second, even though 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 ex-offenders, while not technically correctional failures, can hardly be termed correctional successes.

The third, and by far the most frequent, fallacious inclusion in a success roster is the offender who endured the program without benefit but for various reasons managed to abide by the law or avoid detection in the commission of new crimes for the followup 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 inflation of fact.

It is not implied that there is no such thing 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 only 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 preclude a likelihood of a return to criminality. If we are merely comparing the incidence of recidivism from year to year, these distinctions hardly make a difference. But, if the task is to define a correctional program's effectiveness, inclusion of the certain failures and successes without distinguishing them from those with whom an element of chance was involved, the likelihood of proving anything is severely impaired.

The third problem is maintenance of relevance to the experience being measured. 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 offender is employed at the work 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 follow-up reporting is impractical and costly. Numbers in some groups 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 completed the program and obtained postrelease employment as well as those who were inappropriately assigned and dropped out during the first month of training. Unless the study discriminates success and failures at each point, nothing can be learned from whatever success 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 unrealized expectations. But preoccupation with failure and its explication obstructs the study of success. Avoidance of failure is not identical by any stretch of logic with promotion of success. No profession 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 successes 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 administrator. He has endured, or at least observed, a considerable number of assessments placing his professional opinions and judgments in jeopardy. A familiar and accepted evaluation model now exists. Comparison between experimental and control groups, from the latter of which a program has been withheld as an experimental variable, can lead toward assessment of program effectiveness. Depending on the program to be studied, much can be done to complicate this model with classification matrices and differential interventions. Much attention can be given to process, and with useful results.

It will not be argued that this model is anything but valuable and necessary. It has achieved many historic results, some of which have been recounted in this chapter. To learn what will not work, and why, is important in corrections, a field heavily encumbered with ineffective concepts and practices.

What is needed now is an armory of alternatives to the existing structure. Evaluation research no longer should be limited to measuring treatment variables in laboratory tests. The evaluative tools should be used instead to create a model of effective intervention including consideration of the wide range of offender careers with which the correctional apparatus must cope.

The experimental model of evaluation must be elaborated. It is not possible here to specify the nature of this elaboration or its minimum requirements, if only because its design has not been undertaken. The need can be stated, however.

Policy decisions depend on identification of the quantitative results of differential interventions in criminal careers. The characteristics of criminal histories differ widely. Few useful generalizations can be made.

But intervention in any career is the interaction of a finite number of controlled processes (a jail term, an assignment to group therapy, a vocational training agreement) on the life span of a single person. 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 categorized to determine which combination will lead to the most favorable set of results for the various categories of offenders defined by decision-makers. The task is difficult and must be approached with utmost caution.

Two reciprocal questions are asked:

Which distinctions among offenders make a difference in combinations of intervention?

And which combinations of intervention processes will lead to what changes affecting categories of offenders?

An example may clarify the inherent difficulties. A mature adolescent boy has been committed to custody for homicide. A second youth, otherwise comparable, has been committed for auto theft. Despite their resemblances, they may need to be included in different programs. The goal is to decide, from a study of a wide variety of program combinations, which will have the most likelihood of success. Under the present research model, researchers tend to aggregate both youths in a high-maturity group in order to study the effectiveness of a program like group counseling.

A new research paradigm stresses discovery of the interactions in the longitudinal careers of these two boys that will bring about the most favorable growth. The outcome of the interaction of all these interventions will be reflected in recidivism. But by the time the reflection is seen in recidivism, a much more profound understanding of what has happened to these two youths and others like them will have developed. From such an understanding comes discovery of the limits of what can be done to resocialize the offender and protect the public.

The rigorous belief in recidivism as the only true criterion of evaluation and in the experimental model as the only acceptable methodology will be increasingly unproductive for evaluative research. The frantic search for escapes from controlled investigations or for meaningless refinements of recidivism will lead only to pointless conclusions. The focus must be on creation of a methodology leading to understanding. This is a challenge requiring support of longitudinal research and a complex and untried methodology. The professional risks are considerable; this work easily can lead the researcher into blind alleys. But the need is imperative.

Study of Treatment

Research has cast doubt on the effectiveness of psychological treatment of offenders. The evidence now on hand indicates that some offenders can be helped by psychotherapy, but there is persistent uncertainty as to which offenders are helped and how much they are helped. The preponderance of the research strongly suggests that most offenders are not converted to law-abiding ways by psychotherapy.

The emphasis since World War II on programs derived from psychotherapeutic models thus comes into serious question. It is important that perspective be maintained and that research continuity be pursued 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 helping 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 intervention combinations, correctional administrators will not be in a good position to design innovations.

It therefore is appropriate to examine each of the pessimistically stated tentative conclusions about treatment in terms of the questions they contain. Thus:

If the involuntary element is the obstacle to treatment success, then what kind of treatment, conducted under what circumstances, should be made available? Studies prompted by this question must be initiated at an exploratory level before a procedure is ready for experimental trials.

If the self-concept of sickness is an obstacle to successful treatment for most offenders, what self-concepts can be expected to contribute to remedial socialization? How can these self-concepts be fostered?

If it is true that some offenders achieve actual gains from treatment, what is the process that produces these gains? Can a theoretical formulation be designed to account for them?

In addition to these issues, and underlying each, is the question of attribution of delinquent behavior to an identifiable psychological state. Conventional psychiatric thought traces delinquency to an ill-defined state designated by such terms as "psychopathy," "behavior disorders," or "sociopathy." No satisfactory accounting for the state has been achieved, nor has guidance been given for successful treatment of the condition. To an extent that must embarrass the thoughtful clinician, there is a circularity in a diagnosis that "discovers" that a subject's delinquency is symptomatic of the psychopathy that accounts for his delinquency. This state of affairs cannot contribute to effective rationale for treatment and control.

Behavior Modification Theory and Correctional Applications

The work of Goldiamond,[20] Cohen,[21] and McKee[22] among others, has led to the hope that through behavior modification techniques it will be possible to achieve the remedial socialization of some kinds of offenders. So far, the results of explorations do not produce a clearly favorable picture. One complication has been that most of these explorations were conducted in custodial situations. Use of behavior modification techniques in community-based corrections has been scant.

Most techniques of behavior modification have been generated either in the mental hospital or for 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 reinforcement repertory available in the correctional apparatus. Thus the use of tokens for behavior reinforcement in a reformatory may or may not be a suitable application of an approach that works well in mental hospitals, where the problems of manipulation for secondary gains are not so prominent.

The explorations conducted so far furnish a basis for continued study of an ancient correctional problem: the usefulness 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 development in operant psychology should be directed toward making behavior modification techniques available (subject to experimental scrutiny) to probation and parole officers and voluntary agencies engaged in the treatment of the offender in the community.

A familiar hazard lurks in this strategy. It is tempting to the correctional policymaker to hope for more than he can get from a promising intervention. Operant psychology will not transform corrections into a success story. Psychologists working in this field should not encourage the hope that all offenders will respond significantly to their approach. Much must be done before it can be certain that any will respond consistently enough for categorization.

[20] Israel Goldiamond, "Self-Control Procedures in Personal Behavior Programs," *Psychological Reports*, 17 (1965), 851-856.

[21] H. L. Cohen et al., *CASE II-Model: A Contingency-Oriented 24-Hour Learning Environment in a Juvenile Correctional Institution* (Silver Spring, Md.: Educational Faculty Press, 1968).

[22] John McKee, *Application of Behavior Theory to Correctional Practice* (Elmore, Ala.: Rehabilitation Research Foundation, 1971).

Study of Management and Staff Problems

Correctional administration has been relatively unaware of the services of management analysis and operations research. The principal gains from these services are financial savings and better allocation of personnel. Business, commerce, and defense have benefited in these ways, although the substance of service rarely is affected conceptually.

It may be a different matter in corrections. The enormous costs of incarceration have been compared to the modest outlays required by probation and parole. What seems to be a national movement has been generated by this contrast. The Probation Subsidy Act of 1965 in California may have been the first major departure toward the goal of reducing incarceration costs by minimizing prison sentencing. This kind of legislation not only has reduced prison population; it has also focused new attention on improvement of probation practice.

Other illuminations of correctional effectiveness can be expected from management analysis. Such topics as optimal sentencing, custodial supervision patterns, organization of probation services, and management of cost-effective prison industries certainly will respond to operations research. The need for studies of this kind throughout the correctional apparatus is acute. Long years of haphazard planning, pressure on administrators to speed changes toward managerial efficiency, and increasing versatility of operations research as a discipline combine to make the study of correctional administration an attractive investment.

Perhaps the most compelling factor favoring management research in corrections is the serious inefficiency characterizing so many operations. This inefficiency wastes money and contributes to program ineffectiveness. Good services cannot be delivered by an inefficient agency.

ORGANIZATION FOR CORRECTIONAL RESEARCH

The Role of Agency Research

Implicit in the argument of this chapter is the expectation that correctional management must use research if the necessities of change are to be met effectively. This expectation easily can be misunderstood. Installation of a large scientific capability in every correctional agency is not required. For all but the largest agencies, the necessary research tools will be provided by a modest information and statistics section capable of periodic reports on the consequences of policy and decision-making. The need for complex evaluative studies will be occasional and can be satisfied by contract research.

Large agencies will benefit from the establishment of a professional staff capable of designing and executing special assessment studies to amplify and explicate reports generated by the information system. More sophisticated studies of process and innovations can be accomplished with a varied scientific staff.

Effective management requires periodic retrospective reports on the consequences of policies and decisions. These reports will form the basis for informed decisions about action alternatives. The manager's skill in using reports of this kind will determine how extensive his needs for specialized research will be. Manager and statistician should collaborate continuously in planning for a usable information system. Its dimensions should never be left solely to the statistician's imagination.

The necessity to defend correctional policy opens the question of the need for research done outside the agency. A legislative committee, a budget or fiscal office, and the press are all interested in the effectiveness of a correctional agency in achieving its goals. This interest may be satisfied by a review of internally generated statistics as interpreted by agency staff. But where major issues are at stake, an external review of findings and methods will always be appropriate. Naturally, such a review almost always will depend on the data the agency can supply. The reviewer's confidence in the integrity of the data will indicate the direction of his analysis.

Some kinds of research are beyond the proper scope of the most amply staffed agency research section. 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 an intramural research group to perform the supporting analysis. Regardless of the position researched, it would be executed under constraint of the agency's interests. Principles identifying conflict of interest apply to agencies as well as to individuals.

Research Organization in Larger Agencies

The minimum requirement of a research section is management of the information system and preparation of statistical reports. These requirements call for a manager-planner, who will be re-

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 programers 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 error seems 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 decisionmaking 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 uneconomic 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 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 staffs 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 often will be authentic. Unless they are trained, agency personnel will not 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 (multistate) 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 programers 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. Separate staffs 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.

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 users.

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 corrections 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 it 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

1. Hill, Harland, and Woodell, Marshall J. *Correctionetics: Modular Approach to an Advanced Correctional Information System.* Sacramento: The American Justice Institute, 1972.
2. South Carolina Department of Corrections. *Systems Study for a Correctional Information System, Phases I and II.* Columbia:1972.

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 all 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 administrative 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 responsibility 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 provide timely 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 communications—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

1. Conrad, John P. "Research and the Knowledge Base of Corrections," *Crime and Delinquency*, 13 (July 1967), 444-454.
2. National Council on Crime and Delinquency Research Center. *Uniform Parole Reports*. Annual Series. Davis, Calif.: 1966 to date.
3. National Institute of Mental Health. *Criminal Statistics*. Washington: Government Printing Office, 1972.

Related Standards

The following standards may be applicable in implementing Standard 15.2.

13.1 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. Organizational units, if any.
d. Personnel characteristics.
e. Fiscal data.

2. Period-in-time reports—a statement of flow and 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.
e. Fiscal events summarized by programs.

3. Automatic notifications—the system should be designed to generate exception reports for immediate delivery. Four kinds of exception reports are basic:

a. Volume of assignments to programs or units varying from a standard capacity.
b. Movement of any type that varies from planned movement.
c. Noncompliance with established decision criteria.
d. Excessive time in process.

4. Statistical-analytical relationships—reports of correlations between certain variables and outcomes, analysis of statistical results for a particular program or group of offenders, etc.

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 supplanted 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 informational 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, period-in-time 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-statistical system should be able to deliver routine analyses of program status—point-in-time net results. The point-in-time report freezes the data at a specific time, the demand date. The period-in-time report apprises the administrator of flow and change 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 programed, and responses to special queries should be readily retrievable.

References

1. Hill, Harland. *Correctionetics*. Sacramento, Calif.: American Justice Institute, 1972. Volume I.
2. South Carolina Department of Corrections. *Systems Study for a Correctional Information System, Phases I and II*. Columbia: 1972.

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 ascertained 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 codable 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-

tions. The data base must contain elements that produce information necessary for decisions. To satisfy the four service needs, the data base should 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 continuities 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 offenders 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 interstate 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 special codes. An information system that replaces manual operations without provision for verification and editing will be a dubious asset to administration.

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 times 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 new modules 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 base 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

1. Hill, Harland. *Correctionetics.* Sacramento, Calif.: American Justice Institute, 1972. Volume I.
2. California Department of Corrections. *California Prisoners.* Annual Series. Sacramento: 1947 to date.
3. South Carolina Department of Corrections. *Systems Study for a Correctional Information System, Phases I and II.* Columbia: 1972.

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 or who have been released from correctional supervision within the previous three years, and by (2) technical violations of probation or parole in which a sentencing or paroling 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 program 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 reviews should provide for classification of offenders by relevant types (age, offense category, base expectancy rating, psychological state or type, etc.) Evaluative measurement should be applied to discrete and defined cohorts. Where recidivism data are to be used, classifications should be related to reconvictions and technical violations of probation or parole as required in systems reviews.

3. Assertions of system or program 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 an 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 essential 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 reconvictions. A conviction is a well-defined event in which a recorded action has been taken by the court. Further, measurement by reconvictions is established practice 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 paroling 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 recidivating 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 would therefore be excluded from such a definition. Until these problems are resolved, all reconvictions 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 3 years of release from supervision. It is also important that results from followup of offenders be fed back to administrators as soon as 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 reconvictions 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 statistical measurement 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 overall 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 it. 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 include the study of process. A research design directed at the links between processes and results also will provide assessment of performance adequacy and efficiency. What is needed next is information on the relative contributions of process to goal achievement. There are four main dimensions of study with which process analysis usually must be concerned, including: 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.

Great caution should be used in making claims about correctional successes. 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," corrections 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 successes 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

1. Caro, Francis G. *Readings in Evaluation Research*. New York: Russell Sage Foundation, 1971.
2. Guttentag, Marcia. "Models and Methods in Evaluation Research," *Journal of the Theory of Social Behavior*, (1971) 175-95.
3. Kassebaum, Gene; Ward, David; and Wilner, Daniel. *Prison Treatment and Parole Survival*. New York: Wiley, 1971.
4. Lejins, Peter P. "Methodologies in the Evaluation of Correctional Programs" in *Proceedings of the Congress of Corrections of the American Correctional Association*. College Park, Md.: ACA, 1971.
5. Robison, James, and Gerald Smith. "The Effectiveness of Correctional Programs," *Crime and Delinquency*, 17 (1): 67–80.
6. Rossi, Peter H. "Boobytraps and Pitfalls in the Evaluation of Social Action Programs," in *Proceedings of the Social Statistics Section, American Statistical Association*. Washington: ASA, 1966.
7. Suchman, Edward. *Evaluative Research*. New York: Russell Sage Foundation, 1967.
8. Wilkins, Leslie T. *The Evaluation of Penal Measures*. New York: Random House, 1969.

Related Standards

The following standards may be applicable in implementing Standard 15.5.

6.1 Comprehensive Classification Systems.
13.1 Professional Correctional Management.
15.1 State Correctional Information Systems.

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 delimited, objectives are specified, and research priorities declared. 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 the 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.

3. Study of Trends in Correctional Program Change. Leadership of funding agencies is indispensable to coordination of research. An effort should be made to coordinate research with changes occurring as new programs and policies develop.

4. Facilitation of Innovation. Supporting research should be planned and implemented at the same time program innovations are started. Funding agencies should require that the study of process begin at the beginning, instead of tolerating scattered explorations after programs are operating. While not every project will warrant its own internal research and evaluation component, experimentation with special evaluative teams to assist numerous agencies, special demonstration projects, and similar strategies should be explored. Funding agencies also should provide a continuing strategy for development. There should be 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.

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 base for heuristic research. 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 corrections.

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 and new interventions, 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 document, reviewing the state 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 corrections.

These requirements indicate the need to concentrate the attention of funding agencies on four kinds of research support. The following four categories should constitute the national research strategy:

1. National Corrections 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 optimum 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 of the evolutionary changes were 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 use 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 becomes 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 ideas that never should have been 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 panacea planning and objectiveless 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 haphazard 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. Correctional 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 corrections.

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 this power is to be exercised. The legislature has the opportunity and the responsibility, in the first instance, to establish public policy on corrections—the ends sought and the means allowed.

Two possible functions for the correctional system are apparent: (1) punishment of individuals who break 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 sanctions are not properly applied by government, may stimulate private retributive actions. Thus government through the criminal law legitimatizes 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 assuage 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 basic 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 methodology 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 suspended. 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 the major sentencing alternative. It should become the standard sentence, with confinement reserved for the dangerous offender. On the other hand, probation staff will draw on institutional resources. The use in several jurisdictions 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 most of the week, with his leisure time spent in a residential correctional facility, 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 presentence investigation function from that of supervision of probationers. Studies indicate that where one officer does both, time-consuming investigations and report writing seriously interfere with his ability to supervise probationers. A person directly responsible to the sentencing court could perform the investigations as well as assist the court 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 if they agreed to supervision in the community. Parole also 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 reside at a halfway house, may involve institutional personnel directly. Effective and efficient parole planning and programming require close coordination with other correctional activities.

Juvenile and adult institutions developed independently and remain autonomous in several States. Numerous factors appear to account for this division of correctional organization. The public is more often willing to support new and innovative programs for juveniles than for adults. Proponents of juvenile programs find it politically expedient to retain their autonomy. Different approaches are authorized, at least implicitly, for juveniles.

It is assumed that adults need more punitive measures, provisions for tighter custody, and fewer correctional programs. Juveniles, on the other hand, are more salvageable. The agency designated to administer adult programs is thought to be custody-oriented. Juvenile programs, based more on the welfare model, are envisioned as directed more toward rehabilitation.

In addition, under juvenile court acts juveniles are not "criminals" and thus avoid the stigma of criminal conviction. They are viewed differently from adults who have committed the same offense but are tried as "criminals" rather than "delinquents." To compound matters, juveniles who have committed no criminal offense—those who are neglected, dependent, or in need of special supervision—often are confined with delinquents.

For some, the specter of housing juveniles and adults in the same facility—a common occurrence in some areas—inhibits consolidation of corrections.

Most major reforms in adult corrections are preceded by identical reforms in juvenile corrections. Where appropriate, techniques and programs proved successful for juveniles should be made available for adults and vice versa. For example, because of their delinquency status, juveniles remain eligible for licenses and other citizenship rights that adults lose on conviction of a felony. It is increasingly apparent that these collateral consequences of a criminal conviction are seldom appropriate for adults either. Success in juvenile corrections with group counseling, community-based programs, and imaginative aftercare supervision can be translated easily into similar programs for adults.

Adult and juvenile programs should be administered within a single agency. This would not prohibit the development of specialized programs for juveniles or adults. However, the efficient utilization of scarce resources and the integration of programs into a continuum of correctional processes require unification. In some States, adult and juvenile programs, although autonomous, have developed informal relationships fostering coordination. Where these are operating effectively, the formal unification of programs under one agency is less urgent.

Misdemeanant corrections is an essential component of any integrated correctional 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 had a history of misdemeanant convictions.[1] Thus the State correctional system inevitably must respond to the failures of misdemeanant correctional programs. Coordinated planning and administration will assure a consistent approach toward individual offenders who graduate through the system of corrections from the misdemeanant 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 expertise. Institutional management and custodial arrangements are often inadequate. (See Chapter 9, Local Adult Institutions.)

The most important, and perhaps the most difficult, step toward unification of corrections will be to integrate local misdemeanant facilities into the State correctional system. Such integration is imperative because, as the Crime Commission remarked, "it is not feasible in most States to expect that advances . . . will be made as long as jails and misdemeanant institutions are administered separately from the rest of corrections."[2]

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 interrelated; 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 for adults, juveniles adjudicated delinquent, 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 act to review institutional decisions. The board must be insulated from institutional pressures and perspectives in order to perform this function.

However, in view of 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 act to insure that they are staffed with persons having appropriate qualifications. The qualifications required for a given position will depend primarily on the goal and

[1] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections* (1967), p. 72.

[2] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967), p. 178.

methodology of corrections as enacted by the legislature. If punitive measures are to be the keystone 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 any governmental area. Recruitment and retention of competent staff require legislative action providing for three factors: adequate compensation, appropriate 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 elsewhere. Legislatures should avoid codifying 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 an arm of the government, corrections should be responsive to public attitudes. Political patronage is improper to the extent that unqualified persons are appointed. Appointment by the governor with the advice and consent of the legislature is a standard means of striking a balance. Statutory qualifications for a particular office are another.

Legislative attempts to dictate qualifications for correctional staff positions take several forms. Many States provide statutory qualifications for some top management positions including the chief executive officer of the correctional agency, probation or parole director, and parole board members. Such qualifications range from broad provisions directed toward assuring some minimum professional expertise [3] to specific requirements regarding academic and professional training and experience.[4]

Precise statutory qualifications for most positions are difficult to draft. The more specific they become, the more likely that some qualified persons will be ineligible. The system becomes more rigid and less adaptable to changes in the nature of correctional roles. General qualifications alone, without a procedure limiting the influence of political patronage, are meaningless.

Imposition of irrelevant qualifications is undesirable and nonproductive. Height, weight, and residency restrictions clearly do not foster any legitimate correctional goal.[5]

Legislatures also have experimented with negative qualifications—specific conditions automatically precluding a person from employment. These have generally frustrated, rather than assisted, efforts to recruit appropriately trained staff. The tendency to prohibit ex-offenders from occupational opportunities in the criminal justice system generally and in corrections particularly has hindered the utilization of persons who might have special qualifications for working with offenders.

Civil service systems, with their emphasis on promotion and seniority, impede attraction of qualified personnel to top or middle management positions as well as movement of personnel from one agency to another.

Protecting job security by legislation creates a dilemma of its own. Some job security is required to attract qualified professionals and to insulate professional judgments from political pressures. However, job security also creates risks of protecting incompetence.

Three basic systems are possible. In many States, top correctional officials serve at the "pleasure" of the appointing official. This system creates no job security.

In some States sensitive personnel are appointed for a specified term. This gives some security during the term and allows periodic review of the individual's competence. The security provided by the specific term appointment will depend on the causes listed for removal during the term. A standard phrase is that the official may be removed for "disability, neglect of duty, incompetence, or malfeasance in office." A hearing where cause for removal is asserted should be required. Political considerations can be minimized by providing terms that overlap that of the appointing official.

In a few jurisdictions a person may be appointed to a permanent position subject to removal for cause. Again, a procedure requiring a hearing should be provided.

The term and permanent appointment schemes strike the balance between security and competence and provide adequate protection from political patronage and influence.

Below top management positions, the legislature should authorize flexibility in procedures for the selection and dismissal of personnel. 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.

[3] The statutory qualifications for the director of corrections in South Carolina are: "qualifications and training which suit him to manage the affairs of a modern penal institution." S. C. Code Ann. Sec. 55-299 (1962).

[4] The statutory qualifications for the director of corrections of West Virginia are: "duly qualified by education and experience with a degree in sociology, psychology, social science, or some related field and with a minimum of three years experience in the field of correction or a related field." W. Va. Code Ann. Sec. 62-13-3 (1966).

[5] Tennessee, for example, requires the director of corrections to have resided in the State for 5 years. Tenn. Code Ann. Sec. 4-603 (1971).

Allocation and Regulation of Correctional Power: The Issue of Discretion

The most critical issues facing corrections involve the exercise and control of correctional power. To the extent that correctional programs are to provide an individualized response to criminal offenders, correctional decisionmakers require broad discretionary power. Legislatures generally have conferred such power. Sentencing statutes are delegated without real direction to the sentencing courts. Parole boards are instructed to grant or deny parole in the "interest of the public." This discretion has given correctional administrators vast and often unchecked power over the lives and property of offenders.

Discretion has played, and no doubt will continue to play, an important role in the correctional process. No system of government has been devised that can be operated solely by rules without the exercise of discretion. It has been argued that the existence of discretionary power creates hostility and resentment that undermine reform activities. The exercise of power without restraint certainly can be counterproductive. But the issue facing legislative reform efforts is not *whether* discretion should be granted—for its authorization is inevitable—but *when* and *how much*. Resolution of this issue should be the major objective of legislative drafters. A legislature can have its most constructive and dramatic impact on the correctional process through effective regulation of correctional power.

The Ramifications 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 applicable. 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 correctional system attempts to individualize programs. Offenders with little education are offered academic opportunities. Those who need skills to increase employability are provided vocational training. Some offenders require substantial custody; others only minimal supervision. These differences have no necessary relation to the offense committed, but rather to the particular offender. To provide individualized programs, discretionary power is needed.

The nature of correctional decisionmaking requires professional expertise. Professionalization of correctional personnel is a response to the expectation that corrections will do more than confine offenders. Reliance on rules alone makes expertise unnecessary. Discretionary power allows the adaptation and utilization of advances in knowledge throughout the correctional process.

A governmental agency cannot be creative without the flexibility that discretion provides. It 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 beneficently exercised, creates its own hazards. It is particularly susceptible to abuse and to arbitrary and mechanical decisionmaking. Disparity in the treatment of substantially similar offenders may breed tension and hostility toward the correctional staff. If the offender perceives the disparity to be unjustified, he probably will not be receptive to or cooperative with efforts made on his behalf.

Unnecessary power exercised by correctional staff leaves the offender little control over his own life, and he is continually at the mercy of his keepers. Where this occurs, the offender gains little insight into the responsibilities and decisions he will face on release. And the correctional staff loses its ability to perform any function other than custodial. 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 directly restrain the exercise of discretionary power. Our system of government creates a presumption against the exercise of

power, which can be set aside only for the most compelling reason.

In the context of criminal corrections, the thrust of legislation should be to authorize necessary discretion with appropriate restraints and protections against improper use. The legislature can achieve this goal by adapting to corrections certain techniques and procedures that have been tested and proved effective elsewhere.

One method of limiting discretion is through *legislative decisionmaking*. Here the legislature makes some decisions itself through statutory enactment, often in setting policy on matters of importance, such as determining the public policy of corrections. Another example would be a statutory unification of historically independent elements such as local jails and juvenile institutions; this not only requires specific legislative approval but is the type of major public policy decision the legislature should make. However, once the major organizational framework is established and the chains of command are firmly stated, the legislature should grant the administration discretion to make minor adjustments within the basic framework.

Some decisions required to protect an offender from abuse should be legislatively determined. Enactment of a code of rights for offenders removes discretionary action in certain areas. A statutory prohibition against corporal punishment is a noteworthy example; several States have enacted such laws. However, legislatures generally have been reluctant to codify provisions specifically protecting the interests of offenders. The absence of legislative guidance in this area has been a major factor in creating the need for judicial appraisal of correctional practices. Legislative provisions assuring basic freedoms and an acceptable level of humane treatment would have mitigated the need for expensive litigation and reduced the confusion and ambiguities that inevitably result from a judicial case-by-case declaration of offenders' rights.

Decisions requiring individualized responses should not be made by the legislature. Elsewhere in this chapter the value of mandatory sentences is questioned. Precluding individuals from various correctional programs because of the offense committed seriously undermines the ability of the correctional process to have a constructive impact on the offender.

Through *statutory criteria* the legislature can delegate a particular correctional decision to a correctional agency and, in addition, provide criteria and guidelines governing the agency's discretion. Most legislative delegations of power include some broad direction for its exercise. However, these are generally ineffective and authorize such wide discretion that it becomes almost impossible to determine whether the direction is followed.

Statutory criteria for decisionmaking should be specific enough so that a review of particular decisions can be effectively undertaken to assure compliance. Such guidance allows sufficient discretion for individualizing justice while assuring some protection against arbitrary or inappropriate decisions.

In corrections, sentencing decisions are particularly susceptible to direction through statutory criteria. These are decisions of direct public interest and have an immediate and substantial impact on the offender. The length of time over which the State exercises control of the offender and the relative degree of liberty or confinement imposed are basic to the correctional process and are critical from the offender's viewpoint.

Two decisions are appropriate for development of detailed statutory criteria. The first is the trial court's selection of the sentencing alternative to be imposed initially on the offender. The broader the range of sentences available, the more important become criteria to protect against disparate results. In most jurisdictions, the major decision for the court is between probation and confinement. Section 7.01 of the Model Penal Code (discussed later in this chapter) provides a useful model for the development of criteria for this determination. The code first recognizes that for most offenders probation will be the most appropriate alternative, with confinement to be used only as a last resort.

The section requires withholding a sentence of confinement unless the court finds that imprisonment is necessary for protection of the public because:

> (a) there is undue risk that during the period of a suspended sentence or probation the defendant will commit another crime; or
>
> (b) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
>
> (c) a lesser sentence will depreciate the seriousness of the defendant's crime.

The section then lists 11 factors to be weighted in favor of withholding a sentence of imprisonment. These include the fact that the defendant's crime did not cause nor threaten serious harm, the defendant acted under strong provocation, the victim induced the commission of the crime, or the defendant's conduct would be unlikely to recur.

The decision to parole is another sentencing decision susceptible to detailed statutory criteria. Section 305.9 of the Model Penal Code illustrates acceptable criteria for this decision. They are fundamentally similar to the criteria for initial sentencing.

The code lists 13 factors to be considered in determining whether a particular offender should be paroled. In addition, Section 305.10 lists particular information the parole board must consider, including such items as the presentence report, reports of physical or mental examinations, institutional reports, and the prisoner's parole plan.

These sections provide useful guidelines for development of statutory structure for parole decisionmaking. The proposed structure should minimize the possibilities for arbitrary decisions.

Articulation of these criteria, factors, and data tends to reduce the number of disparate decisions. It provides the offenders some measure of protection against capriciousness. However, the actual effectiveness of the criteria, factors, and data bases will depend on the procedures developed to enforce them.

Statutory criteria structure and confine discretion; they do not abolish it. Much must be left to *administrative rules and regulations*. Although the legislature can guide decisionmakers, it cannot legislate for every conceivable circumstance. Discretion, even though structured and confined, still will play a decisive role within the correctional system.

While research and experimentation are rapidly expanding our understanding of various assumptions, only tentative criteria can be developed. In these areas, flexibility is needed; and continuing review and alteration of professional judgments are warranted and essential.

The legislature should require for these decisions that correctional administrators structure their own discretion through formal adoption of administrative rules and regulations. By announcing in advance the criteria to be employed, the result to be sought, and the factors to be considered in a particular case, the potential for arbitrary action is reduced. When circumstances or new knowledge suggest different approaches, the rules and regulations can be changed quickly without the need for complicated and time-consuming legislative procedures. Legislatures generally have been lax in requiring correctional administrators to adopt rules governing their own actions.

The dramatic increase of administrative agencies during the last few decades has stimulated legislative concern for protecting the public from arbitrary administrative decisions. In 1946, the concern culminated in passage of the Federal Administrative Procedure Act. Shortly thereafter, the National Conference of Commissioners on Uniform State Laws promulgated a Model State Administrative Procedure Act for regulating State administrative agencies. The Model Act has been adopted in several States and used as a guide in others.

In some States, and on the Federal level, 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 that should be adopted and used by correctional agencies.

The thrust of the administrative procedure acts is to publicize agency action. A major protection against arbitrary or inappropriate decisionmaking in a free society is to require openness and full discussion. Under most acts, major policy decisions by an agency are first announced as proposed rules. 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 not otherwise regulated by statutory criteria are susceptible to some regulation through utilization of this procedure. The flexibility of rulemaking and the ease with which rules can be changed to adjust to changing circumstances would protect against unnecessary interferences with or disruptions of correctional programming. The procedure likewise would provide a valuable means of allowing offenders and the public to participate in and influence the formulation of critical correctional policies. Ability of offenders to participate in decisions directly affecting their liberty and property would do much to relieve the hostility and resentment the present system breeds.

Another task for the legislature is to determine whether and when there should be *a review of decisions*. For some decisions, promulgation of criteria or rules and regulations is sufficient assurance of responsible action. For others, some check on the exercise of discretion by a reviewing agency is both useful and necessary. The review, regardless of how it is conducted and by whom, should be designed to answer three questions: Did the decision follow statutory criteria and procedures? Did the agency abide by its own rules regarding both criteria and procedures? Is the decision consistent with constitutional requirements?

A prerequisite to review of any discretionary decision is a requirement that the decisionmaker state the reasons for his decision. Most judicial decisions contain findings of fact and conclusions of law to allow orderly appeals. Similar procedures within administrative agencies would facilitate review. Likewise they would lay greater emphasis on criteria, whether established by legislation or by agency rule.

Most governmental agencies institute internal review procedures to check on subordinates. These usually contemplate review by a superior. Some decisions are made by more than one person,

assuring a check on the actions of each. In some agencies review is periodic and informal. In others, there are formalized procedures for reviewing decisions 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 authorize this form of review, and rigid legislatively imposed procedures are not essential.

Review of decisions should be extended to all persons affected or likely to be affected by the decision. 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. There is 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 to allow the offender to challenge the factual 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 recognize 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. A procedure enabling an offender to relay a complaint to a superior of the decisionmaker constitutes a review procedure.

Some institutions may wish to experiment with an ombudsman system in which an official is specifically designated to receive and respond to offender grievances. The ombudsman should be an impartial 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 devices available for internal review are varied.

Review of discretionary 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 programs. However, as noted previously, in recent years courts have taken 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 rules and regulations, courts also could review discretion 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 minor 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 great concern 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 proceedings that could result in loss of "good time" credits can substantially extend an offender's sentence. Procedural safeguards against arbitrary action should be required, and, in the absence of formal and impartial internal procedures, judicial review seems appropriate.

A number of other decisions indirectly affect the offender's sentence and eligibility for parole. Assignment to a particular institution or selection for certain programs, including community-based programs, may delay his actual parole date substantially. An offender should have some protection from erroneous or arbitrary decisions of this nature.

The Model State Administrative Procedure Act 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 internal review procedures, may seek judicial review. Section 15, subsection (g) provides the basis for judicial review which seems appropriate for implementation in correctional decisionmaking.

> (g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because 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;
> (3) made upon unlawful procedure;
> (4) affected by other error of law;
> (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 reforming prison conditions and 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 sound factual information are good correctional decisions. Decisions that appear fair to those affected are good correctional decisions. Good correctional 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 of conduct that directly threatens life or property will result in a correctional clientele of young males, the group most prone to commit such offenses. Criminal prohibitions against homosexuality, if enforced, will result in a correctional clientele of homosexuals. Sanctions against drunkenness increase the alcoholic offender population.

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 use in confining 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 activity in the United States has overburdened the correctional process. The failure to discriminate between categories of conduct and to establish priorities for criminalization has forced the correctional system to spread resources thin 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 legislature should consider the following factors: (1) impact on the correctional system; (2) level of correctional resources required and available for the potential violators; (3) assignment of appropriate priority for utilization of correctional resources; and (4) potential for meeting the needs of certain offender types with traditional correctional programs.

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. Thus, a 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

sanction. The increased use of community-based supervision through probation and the development of partial confinement and other alternatives to incarceration recognize that total confinement is unnecessary and inappropriate for many offenders. Maximum and minimum terms thus will take on new significance 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 varying 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 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 intensity of retributive feelings in the community. 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. Differentiating the length of the sentence on the basis of the seriousness of the offense reflects societal notions of fairness as well. Retribution aside, it would appear unjust for an individual who shoplifts a $10 watch 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 individuals' lives as an evil to be avoided without good 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 restraints on correctional programs not related directly to needs 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 labor under grossly 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, increases the possibility of disparity in sentencing. Legislatively imposed maximum sentences are the first step toward equality of sentencing. To this extent, maximum limits established by law—although limiting the time available for correctional programs—tend to enhance the effect of correctional programming by increasing offender morale.

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 offenders who present a serious threat to others. American sentencing statutes now tend to set the maximum for a particular offense with the infrequent offender who represents a continuing threat to the community in mind. Maximums should be established for the vast majority of offenders and authority granted to extend such maximums when the facts warrant.

Long sentences impede correctional programming. An offender who faces a long sentence is not prone to accept and benefit readily from correctional programs. Moreover, valuable resources are consumed in the care and provision of services for many offenders who do not need extended correctional supervision. And finally, no study has yet indicated that, for the majority of offenders, any socially useful benefit is derived from long sentences.

Thus, although legislatively established maximum limits are useful for the development of correctional programs as well as for the equitable administration of criminal justice, the value of such maximums is lost if they are too long. The standards for statutory sentencing provisions, set forth here and in Chapter 5, reflect the need for legislatively imposed maximums of generally short duration with provisions for extended terms where justified. Legislatures should recognize that long sentences when applied to all offenders may adversely affect public safety rather than enhance it.

Effect of Minimum Sentences on Corrections

Legislatively established minimum terms serve a different function. Since the legislature may contemplate only the offense and not the individual offender when setting the limits of criminal sanction, the promulgation of minimum sentences is unrelated to correctional programming requirements. The diversity, length, and inconsistency of present maximum sentences may account for the present tendency 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 overconfinement 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.

The argument that a statutory minimum of 1 year should apply to all felonies represents the theory that a shorter period of confinement does not allow sufficient time for the development of a correctional program. Assuming that the corrections system cannot effectively operate in less than a year, the question remains as to which agency should make that decision. By imposition of a legislatively imposed 1 year minimum, all flexibility within that year is lost. When the judge makes a mistake in terms of correctional needs, the mistake cannot be rectified.

Whether the judge should be authorized to impose a 1-year minimum is a different question. The sentencing judge is in a position to determine on an individual basis if satisfaction of retributive feelings requires that a minimum be imposed. If imposed for that purpose, then judicially imposed minimums are justifiable, regardless of what effect they may have on correctional programming.

If the 1-year minimum is essential for correctional programming purposes, the wisest course would be to adopt by administrative rule a policy of not paroling individuals within the first year except in unusual situations. Thus, the minimum sentence decision based on correctional programming requirements would be made by those responsible and knowledgeable in those programs. This also would allow adequate flexibility for individualized justice.

Effect of Mandatory Sentences on Corrections

There are two important factors in fashioning sentencing provisions: the offender and the offense. The legislature, in enacting a penal code with penalty provisions, can deal only with the offense; the offenders who will be convicted under the provision over the history of its enactment will span the spectrum of guilt. Recently there has been an increase of laws which differentiate between the killing of a policeman and other homicides. The FBI Uniform Crime Reports indicate that persons who kill police officers range from husbands interrupted in the course of a family dispute to deranged persons lying in ambush. No legislature can determine in advance the nature of the offender who will be prosecuted under a particular penalty provision.

In a number of instances, however, legislatures have, because of public reaction to a particular offense, attempted to write mandatory sentences into law. These take the form either of specifying what sanction shall be applied or eliminating certain sentencing or correctional alternatives from consideration. Minimum sentences established by law operate as mandatory provisions since they generally postpone parole.

Legislators should not impose mandatory sentences. They are counterproductive to public safety, and they hinder correctional programming without any corresponding benefit. To the extent that the mandatory provision requires an individual offender to be incarcerated longer than necessary, it is wasteful of public resources. To the extent that it denies correctional programming such as probation or parole to a particular offender, it lessens the chance for his successful reintegration into the community. To the extent that mandatory sentences are in fact enforced, they have a detrimental effect on corrections.

However, mandatory sentences generally are not enforced. The Crime Commission's Task Force on Courts found "persuasive evidence of nonenforcement of these mandatory sentencing provisions by the courts and prosecutors." [6] Prosecutors who find that an unusually harsh sentence in a particular case is unjust will, through plea negotiations, substantially circumvent the provision. Where lengthy mandatory sentences are imposed, undermanned prosecutors may be forced to alter the charge to obtain guilty pleas, since mandatory sentences leave little incentive for the offender to plead guilty.

Mandatory sentences in fact grant greater sentencing prerogatives to prosecutors than to courts. The result increases rather than decreases disparity in sentences and subverts statutory provisions by a system designed to enforce them. The resulting disrespect for the system on the part of both the

[6] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts.* (1967), p. 16.

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 noted:

> A judge is more than just a finder of fact or an executioner of the inexorable rule of law. Ideally, he is also the keeper of the conscience of the law. For this reason the courts are given discretion in sentencing, even in the most serious felony cases, and the power to grant probation. We recognize 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 penal system or some other means, it can best be achieved by one fully advised of all the facts particularly concerning the defendant in each case and not by a body far removed from these considerations.[1]

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 institutionalization has numerous effects on correctional legislation. Many present statutory provisions were based on the assumption that, unless probation was granted, the sentence of the offender would be served behind walls. A small percentage would be granted "leniency" 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 earlier release. Since "imprisonment" was assumed to mean confinement behind walls, any type of program 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 epidemic. Specific legislation was thought to be required for trusties, for allowing offenders to travel 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 programs emanating from institutions should have specific statutory authority. Many sentencing statutes have been changed recently to provide for sentencing offenders to the custody of the director of corrections. Under these statutes, it could be argued that no further authority is necessary for assignment of an offender to any location, including the community, as his site of custody. However, to allay any questions of authority or responsibility, community-based programs should be authorized by statute.

This does not mean that each type of program need be specified. With increasing knowledge and experience, new and different programs will continually be developed. Essentially, the statute should authorize the director of corrections or other appropriate official to "extend the limits of confinement" of a committed offender for a wide range of purposes. 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 corrections, such broad authority would authorize foster homes and educational and other programs with a community orientation.

Correctional administrators need broad discretion in developing community programs and selecting offenders to participate in them. These programs need the active support of community members. The community's traditional suspicion of offenders makes it necessary to plan carefully and negotiate skillfully to obtain community cooperation and resources. The correctional administrator will need flexibility to move into programs as such resources become available. Legislative restraints on the nature or type of community-based programs can impede the development of these programs substantially.

Administrative Discretion

In authorizing community-based programs, the legislature will face a number of questions involving the exercise of administrative discretion.

- How best can the public safety be protected by limiting participation in these programs to offenders who represent no threat to the community?
- How best can the legislature assure fairness in the selection of offenders for such programs?
- How best can the legislature assure fairness in the revocation of community-based privileges?

The legislature's response to each of these difficult questions in the long run will influence the level of success of community-oriented programs.

The legislature cannot by statutory edict insure the proper selection of offenders to participate in such programs. Since the legislature has before it only the offense and not the individual offender, any conclusions it might make regarding public safety must be the result of a generalization from the offense itself. Such generalizations cannot enhance public safety; they can only impede it.

Community-based programs are short-run risk-taking programs. Lengthy confinement without graduated programs of release creates greater risks. An offender, while confined, represents a lesser risk to the public safety than one living in the community. But the offender who participates in a gradual return to society through a variety of community-based programs represents a lesser risk in the long run than the offender who serves a long prison term and then is released abruptly without supervision.

There is certainly the temptation to exclude persons convicted of certain offenses from participation in these programs, as has been done in the case of probation and parole. All such temptations should be resisted. There are sufficient practical and political restraints operating against the overuse of community corrections.

- As long as resources are scarce, correctional administrators will tend to select the "best risks" for available programs.
- Any correctional administrator will tend toward the conservative use of these programs because, in the last analysis, he personally bears the responsibility for failure.

Requiring fairness in the selection of participants for community programs presents two separate issues:

1. Where resources are scarce, how is the administrator to select participants from among all of those qualified?
2. Where resources are available, does the offender have an appeal from an administrative decision refusing to place him in such programs?

These two issues are based on assumptions that community-based programs are, from the offender's point of view, preferable to continued total confinement, and that the advantages of such programs are substantial enough to create some legal interest in the manner in which they are allocated. These advantages may include direct pecuniary gain because, at present, offenders participating in work-release programs are paid full market wages, whereas offenders working in institutional industrial programs are paid substantially less.

The first issue, the selection for limited spaces in available programs from similarly qualified individuals, is one peculiarly appropriate for administrative discretion. The most the legislature can expect to accomplish is to define generally the criteria for determining the class of qualified individuals. A legislative statement that community-based programs are authorized to facilitate the offender's reintegration would guide the correctional administrator in establishing the offender class from which participants in these programs should come.

The second issue is subject to more legislative control. Institutional administrators often may place excessive value on institutional adjustment. If a committed offender adjusts to prison life without "causing trouble," he is assumed to be ready for more demanding assignments in the community. However, adjustment to the close controls of prison life may have little bearing on adjustment in the free society. Thus there may be offenders for whom community programs are both appropriate and required, who are not assigned to these programs for reasons unrelated to their potential for success.

The legislature can respond to this problem by recognizing the changing role of the parole board caused by the expanding use of community-based programs. Historically, the board of parole was the only agency with statutory authority to release a committed offender before the expiration of his sentence.

Parole Board Functions

As correctional administrators obtain through legislation more discretion in utilizing community resources—particularly the authority to house offenders within the community—the parole board will take on different functions. It will, under these circumstances, act more as a reviewing agency to determine which offenders ought to be participating in community-based programs but are not because of correctional administrators' refusal to assign them to such programs. It would seem proper and advisable to view the parole board in this role. It would require some modification in present statutes establishing the board.

1. The concept of parole eligibility, if it restricts the jurisdiction of the board in all cases, should be restructured to allow the board to act prior to eligibility dates for purposes of approving participation in community-based programs other than parole supervision.
2. The parole board should be given authority to assign offenders to community-based programs other than those historically designated as "parole" programs. Thus, halfway houses, work release, and educational release programs should become available resources for the parole board as well as the director of corrections.
3. A procedure should be authorized allowing an offender not assigned to a community-based program to initiate a review by the parole board. This can be accomplished either by allowing an offender to

[1] *State* v. *McCoy*, 94 Ida. 236, 486 P. 2d 247 (1971).

initiate a hearing before the board for the specific purpose of testing the administrator's refusal to assign him to a community-based program or by requiring the board periodically to review the record and history of each offender. The latter would allow a review of not only community-based participation but also parole eligibility.

4. The fourth issue—fairness in revocation of community-based privileges—lies at the heart of the growing tension between legal requirements and correctional expediency. 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 varied community-based 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.

With less dramatic import but with similar impact on the offender, the revocation or modification of community-based privileges demands some legal restraints on governmental arbitrariness. If current trends continue, judicial decisions will eventually require the development of such restraints. Case-by-case statement 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 establishing procedures that will protect the offender's interest and at the same time will allow the efficient operation of correctional programming.

An offender should not 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" in our society contemplates certain procedural requirements: (1) the offender should know what the reason is; and (2) he should be able to present information 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 administrator to utilize 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 sentence, punishing for escape, maintaining control, 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. Does 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 distribution of the arrest 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 immunities and privileges of 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 except for intentional misconduct, 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 convicts or prisoners on parole or probation." [8] State laws generally prohibit the sale or offer for sale of goods or merchandise manufactured wholly or in part by prisoners "except convicts or prisoners 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 directly apply to work-release programs, 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 felons from obtaining governmental licenses of all sorts. In many jurisdictions, restrictions prohibiting those convicted of crimes from entering a given occupation have proliferated far beyond any legitimate occupational 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 in any way detract from the offender's integration into the community will reduce the effectiveness of community-based programs without serving any societal interest.

[8] 18 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 thrust of this chapter 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 references 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 accessible.

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, Proposed Official Draft, 1962 is available from The American Law Institute, 101 North 33rd St., Philadelphia, Pa. 19104.

The Model Penal Code, promulgated by the American Law Institute, is the foundation for most other model acts 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 recognized that the definition of criminal conduct was inextricably linked with the sanction imposed. Thus the code contains articles on the disposition of offenders, the authority of the court in sentencing, and relatively extensive provisions regulating the organization and administration of probation, imprisonment, and parole. It illustrates how the corrections system can be merged into an effective and coordinated response to criminal corrections.

The code's most significant achievement for correctional practices was development of statutory criteria for sentencing decisions. The standards in this chapter urge that comparable provisions be enacted in all jurisdictions.

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 modest 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 Model Penal Code. The various relevant acts are as follows:

1. Model Sentencing Act (1963). This model covers presentence investigations and sentencing alternatives for felonies. Alternative provisions for sentencing minors also are included. The act does not provide for the organization of any correctional agency but is limited to the actual imposition of sentence. Criteria for each sentencing alternative are very general and do not approach the specificity of the Model Penal Code.

The Model Sentencing Act was promulgated specifically in response to certain features of the Model Penal Code. Where 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 rejects the additional term.

The Model Sentencing Act is currently being revised.

2. Standard Act for State Correctional Services (1966). This model provides a basic structure for correctional organization and some modest provisions authorizing correctional programs. Although useful as a model for specific provisions, it is not a comprehensive act. It is inconsistent with some standards proposed in this chapter in that it provides for a lay board of corrections to establish departmental policy.

3. Standard Probation and Parole Act (1955). This proposal 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 contemporary Model Penal Code.

4. Model Act for the Annulment of a Conviction of a Crime (1962). This act is a useful model provision for annulling criminal convictions to minimize the collateral consequences.

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 inhumane treatment, regulates solitary confinement, outlines disciplinary 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 exercise, 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

Illinois Unified Code of Corrections (Tentative Final Draft 1971), promulgated by the Illinois Council on the Diagnosis and Evaluation of Criminal Defendants, is available from the Council, 175 W. Jackson Blvd., Chicago, Ill. 60604.

In June 1972, the Illinois Legislature enacted, in large part, the Illinois Code proposed by the Council on the Diagnosis and Evaluation of Criminal Defendants. Some amendments were included. The code, as enacted with appropriate commentary, is scheduled for publication. When published it will be available from the Council. References throughout this chapter to the Illinois proposal are to the tentative final draft without the legislative changes. It is important to recognize that most of the provisions are now governing Illinois corrections.

The Illinois draft is perhaps the most complete and comprehensive model available for correctional code reform. All major elements of the correctional code are included from sentencing through release. Correctional organizations are included.

The Illinois proposal is also the most detailed of any model act. It provides statutory provisions and standards regulating every facet of correctional administration.

The proposal reflects the increasing concern with protecting the interests of offenders. Procedures are required which provide the offender with substantial opportunities to challenge administrative action where it substantially affects his sentence or treatment.

The Illinois proposal is a useful checklist of appropriate provisions in enacting a comprehensive correctional code, and its basic approach is sound.

Nebraska Acts and Study

The Nebraska Treatment and Corrections Act (Neb. Rev. Stat. Sec. 83–170 et. seq. (Reissue 1971)).

The Nebraska Probation Administration Act (Neb. Rev. Stat. Sec. 29–2246 et seq. (Supp. 1971)).

"The Handbook for Correctional Law Reform," unpublished study.

In the Nebraska Treatment and Corrections Act, the Nebraska legislature has enacted provisions patterned after the Model Penal Code. Although some amendments were made, the basic thrust of the code remains intact. Statutory criteria are established for parole decisions. Organization of the correctional agency was unified, with the exception of probation and local misdemeanant facilities.

The Nebraska Probation Administration Act, while retaining judicial control, provides for State-level administration of all probation services and provides criteria for sentencing alternatives reflecting the philosophy that probation generally is the most appropriate sanction, with imprisonment to be utilized as the last resort.

The Nebraska provisions in some instances do not adequately protect the interests of offenders, and no system of administrative review or code of offenders' rights is provided.

The Nebraska provisions, other than those governing probation, have been analyzed in the "Handbook for Correctional Law Reform," a study developed for the Law Enforcement Assistance Administration. The provisions are set out with appropriate commentary. The laws of the 50 States are compared to the act, section by section. The Handbook also includes essays on correctional law reform and criticisms of existing State statutes.

New Federal Criminal Code

Study Draft of a New Federal Criminal Code, National Commission on Reform of Federal Criminal Laws, 1970, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The study draft, 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 Hawaii and New Hampshire.

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 related programs short of incarceration. To the extent that the act authorizes the juvenile court to administer these programs directly, it is in conflict with the standards presented in this chapter.

State Correction Department Act

The State Department of Correction Act promulgated by the Advisory Commission on Intergovernmental Relations, 1971, is available under the title "For a More Perfect Union—Correctional Reform," from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency promulgated by the Youth Development and Delinquency Prevention Administration, U.S. Department of Health, Education, and Welfare is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The proposed guide is in two parts. The first contains legislation establishing a State-administered program of juvenile delinquency prevention and treatment. It considers many of the issues contained in the standards of this chapter as they relate specifically to juvenile delinquents. Included are provisions for probation, confinement, community-based treatment programs, and parole. This part of the guide is the most detailed model available that is specifically directed at juvenile corrections.

The second part of the guide contains modifications to authorize a program administered in part by the State and partly by local authority. Such a modification would make it inconsistent with the standards proposed herein, which contemplate State control.

Most of the provisions of Part I of the guide are consistent with the standards proposed by this chapter and are useful illustrations of solutions to correctional problems relating to juvenile services.

The guide was designed to mesh with the provisions of an earlier document entitled *Legislative Guide for Drafting Family and Juvenile Court Acts* published by the Children's Bureau of the same department. The latter is available from the Superintendent of Documents under Children's Bureau publication number 472–1969.

STANDARDS FOR CORRECTIONAL LEGISLATION

The standards developed herein relate to improving the statutory framework for the correctional system. 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 prefatory 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 "aftercare" 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 in correctional facilities. The confinement often results from defects in release procedures. No reform of bail and other pretrial release, however, contemplates that all offenders will be returned to the community to await trial. Some accused persons will remain confined. Others may be released subject to supervision by correctional personnel.

The development and applicability of standard correctional programs to persons awaiting trial creates some difficulties. The presumption of innocence limits the ability of correctional administrators to require participation. However, correctional programs, particularly those authorizing community-based supervision, should be made available to those not yet convicted.

The standards developed herein do not address specifically the problems arising from persons awaiting trial. The standards protecting convicted offenders from arbitrary power should, in all events, be considered applicable to these persons.

Standard 16.1

Comprehensive Correctional Legislation

Each State, by 1978, should enact a comprehensive correctional code, which should include statutes governing:

1. Services for persons awaiting trial.

2. Sentencing criteria, alternatives, and procedures.

3. Probation and other programs short of institutional confinement.

4. Institutional programs.

5. Community-based programs.

6. Parole.

7. Pardon.

The code should include statutes governing the preceding programs for:

1. Felons, misdemeanants, and delinquents.

2. Adults, juveniles, and youth offenders.

3. Male and female offenders.

Each legislature should state the "public policy" governing the correctional system. The policy should include the following premises:

1. Society should subject persons accused of criminal conduct or delinquent behavior and awaiting trial to the least restraint or condition which gives reasonable assurance that the person accused will appear for trial. Confinement should be used only where no other measure is shown to be adequate.

2. The correctional system's first function is to protect the public welfare by emphasizing efforts to assure that an offender will not return to crime after release from the correctional system.

3. The public welfare is best protected by a correctional system characterized by care, differential programming, and reintegration concepts rather than punitive measures.

4. An offender's correctional program should be the least drastic measure consistent with the offender's needs and the safety of the public. Confinement, which is the most drastic disposition for an offender and the most expensive for the public, should be the last alternative considered.

Commentary

With few exceptions, current statutes organizing and authorizing correctional programs are piecemeal efforts put together over many decades. They reflect correctional thinking of differing times, of differing public moods, and of differing economic conditions. They often are internally inconsistent in basic purposes or effect. It is difficult for correctional administrators to obtain any concise statement of the goals, purposes, or approaches envisioned for the correctional system.

The correctional process no longer should be comprised of separate entities, each performing distinct

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 competing 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 atttitudes 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 punitively treating 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 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

1. American Correctional Association. *Manual of Correctional Standards*. 3d ed. Washington: ACA, 1966. Ch. 1.
2. American Law Institute. *Model Penal Code: Proposed Official Draft*. Philadelphia: ALI, 1962.
3. Council on the Diagnosis and Evaluation of Criminal Defendants. *Illinois Unified Code of Corrections: Tentative Final Draft*. St. Paul: West, 1971.
4. Federal Bail Reform Act of 1966, 18 U. S. C. Sec. 3146.
5. *Legislative Guide for Drafting Family and Juvenile Court Acts*. Washington: U.S. Department of Health, Education, and Welfare, 1969.
6. *Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency*. Washington: U.S. Department of Health, Education, and Welfare, 1972.
7. Morris, Norval. "Lessons From the Adult Correctional System of Sweden," *Federal Probation*, 30 (1966), 3.
8. National Conference of Commissioners of Uniform State Laws. "Uniform Juvenile Court Act," in *Handbook*. Chicago: NCCUSL, 1968. Sec. 1.
9. National Council on Crime and Delinquency. *Model Sentencing Act*. New York: NCCD, 1963.
10. National Council on Crime and Delinquency. *Standards and Guides for the Detention of Children and Youth*. New York: NCCD, 1965.
11. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington: Government Printing Office, 1967.

Related Standards

The following standards may be applicable in implementing Standard 16.1.

5.1–5.19 Sentencing.
6.1 Comprehensive Classification Systems.
9.1 Total System Planning.
9.4 Adult Intake Services.
10.2 Services to Probationers.
11.3 Social Environment of Institutions.
12.6 Community Services for Parolees.

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 action 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 been, 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 thrust 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 develop 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 professional. 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

1. American Correctional Association. *Manual of Correctional Standards*. 3d ed. Washington: ACA, 1966. Ch. 15.
2. Breitel, Charles D. "Controls in Criminal Law Enforcement," *University of Chicago Law Review*, 27 (1960), 427.
3. Cohen, Fred. *The Legal Challenge to Corrections*. Washington: Joint Commission on Correctional Manpower and Training, 1969.
4. Council on the Diagnosis and Evaluation of Criminal Defendants. *Illinois Unified Code of Corrections: Tentative Final Draft*. St. Paul: West, 1971.
5. Davis, Kenneth C. *Discretionary Justice*. Baton Rouge: Louisiana State University Press, 1969.
6. Federal Administrative Procedure Act, 5 U.S. C. Sec. 551–59, 701–06.
7. Goldfarb, Ronald, and Singer, Linda. "Redressing Prisoners' Grievances." *George Washington Law Review*, 39 (1970), 175.
8. Hirschkop, Philip J., and Milleman, Michael A. "The Unconstitutionality of Prison Life," *Virginia Law Review*, 55 (1969), 795.
9. Kadish, Sanford. "The Advocate and the Expert: Counsel in the Peno-Correctional Process," *Minnesota Law Review*, 45 (1961), 803.
10. National Conference of Commissioners on Uniform State Laws. "The Model State Administrative Procedure Act" in *Handbook*. Chicago: NCCUSL, 1961.
11. President's Commission on Law Enforcement and Administration of Justice. *The Challenge of Crime in a Free Society*. Washington: Government Printing Office, 1967.
12. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington: Government Printing Office, 1967.
13. United Nations Department of Economic and Social Affairs. *Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations*. New York: UN, 1958.

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 beneficence 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.

The vast majority of cases defining the rights of criminal offenders have been brought by adults. Little judicial attention has been given to the rights of juveniles subject to State supervision. It should be particularly noted that, where appropriate, this standard is applicable to juvenile offenders.

References

1. Cohen, Fred. *The Legal Challenge to Corrections*. Washington: Joint Commission on Correctional Manpower and Training, 1969.
2. Goldfarb, Ronald, and Singer, Linda. "Redressing Prisoners' Grievances," *George Washington Law Review*, 39 (1970), 175.
3. National Council on Crime and Delinquency. *A Model Act for the Protection of Rights of Prisoners*. New York: NCCD, 1972.
4. South Carolina Department of Corrections. *The Emerging Rights of the Confined*. Columbia: 1972.

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. Probation supervision.

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.

4. Evaluation and assessment of the effectiveness of its functions.

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 interdependent 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 preclude individual offenders from community programs. In this review capacity, the board should retain its independence from institutional control and influences.

The correctional agency should be granted broad discretion and powers to develop, organize, and administer its programs. The kinds of powers considered in connection with this standard are those essential for the administration of the agency. Although the responsiveness of the agency and its adaptability to changing 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 including 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 flexibility of administration is a useful tool and since no one system of organization is clearly most appropriate for a given correctional agency, it seems more advisable to grant the top management of the agency latitude to organize along the lines deemed most appropriate. More importantly, it would appear advisable to allow modifications of the internal organization as new techniques are developed. The rigidity of statutory enactment is counterproductive; the absence of it creates no real risk of abuse.

Every governmental agency has certain inherent authority to conduct activities essential to the function of the agency. However, some powers must be granted specifically, and the delineation of implied powers in legislation may act as an incentive to concentrate resources toward that function. Thus, although correctional agencies undoubtedly have authority to train their personnel, the specific statement of that power in statutes 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

1. American Correctional Association. *Manual of Correctional Standards*. 3d ed. Washington: ACA, 1966.
2. American Law Institute. *Model Penal Code: Proposed Official Draft*. Philadelphia: ALI, 1962.
3. Council on the Diagnosis and Evaluation of Criminal Defendants. *Illinois Unified Code of Corrections: Tentative Final Draft*. St. Paul: West, 1971.
4. *Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency*. Washington: U.S. Department of Health, Education, and Welfare, 1972.
5. Morris, Norval. "Lessons from the Adult Correctional System of Sweden," *Federal Probation*, 30 (1966), 3.
6. Nebraska Treatment and Corrections Act, Neb. Rev. Stat. Sec. 83–107 et seq. (Reissue 1971).
7. President's Commission on Law Enforcement and Administration of Justice. *The Challenge of Crime in a Free Society*. Washington: Government Printing Office, 1967.
8. Thomas, Mason P., Jr. "Five Issues Confronting Juvenile Corrections," *Juvenile Court Journal*, 22 (1971), 17.

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.

9.1 Total System Planning.
9.2 State Operation and Control of Local Institutions.
10.1 Organization of Probation.
12.1 Organization of Paroling Authorities.
15.1 State Correctional Information Systems.

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

1. American Correctional Association. *Manual of Correctional Standards*. 3d ed. Washington: ACA, 1966.
2. Joint Commission on Correctional Manpower and Training. *Offenders as a Correctional Manpower Resource*. Washington: JCCMT, 1968.
3. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington: Government Printing Office, 1967. Ch. 9.

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 that, when the first State no longer wishes to exercise custody over 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 they would 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 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 community-based programs, he will be integrated into a community to which he is not likely to 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 family 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 if the resources needed are to be provided at all.

Solutions to these interstate problems have been provided and in many instances adopted by the States. In 1934, 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 legislation.

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

1. Council of State Governments. *Handbook on Interstate Crime Control*. Rev. ed. Chicago: CSG, 1966.
2. Council of State Governments. *The Law and Use of Interstate Compacts*. Chicago: CSG, 1961.
3. National Conference of Commissioners of Uniform State Laws. "Uniform Juvenile Court Act," in *Handbook*. Chicago: NCCUSL, 1968. Secs. 40–42.
4. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington: Government Printing Office, 1967.
5. Wendell, Mitchell. "Multijurisdictional Aspects of Corrections." in H. Perlman and T. Allington, eds. *The Tasks of Penology*. Lincoln: University of Nebraska Press, 1969.

Related Standards

The following standards may be applicable in implementing Standard 16.6.

5.6 Multiple Sentences.
6.1 Comprehensive Classification Systems.
9.2 Total System Planning.
10.2 Services to Probationers.
12.6 Community Services for Parolees.

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 adapted 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 succcessfully 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 statutorily established term for most felonies. 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

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968.
2. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: ALI, 1962. Art. 6.
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.
4. National Council on Crime and Delinquency. *Model Sentencing Act.* New York: NCCD, 1965.
5. Smith, Charles E., M.D. "Recognizing and Sentencing the Exceptional and Dangerous Offender." *Federal Probation,* 30 (1971), 3.

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

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 determination is 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 guilt 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.

Thus, legislation should establish the 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 its 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 a person convicted of a criminal offense should be considered in many cases. This disposition would be appropriate in cases in which the nature of the offense is so minor or the circumstances such that no useful purpose would be served by imposition of a more drastic sanction. For some offenders, criminal processing and trial may have a decided impact in and of themselves, particularly for first offenders.

2. Conditional release. Judges in some jurisdictions are experimenting with shaping sanctions to fit the offense and to avoid the use of incarceration. In some cases, a sentence to confinement is suspended on the 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 charity programs. Such sanctions 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 practice, 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 which the criminal justice system should not tolerate. A fine, followed by imprisonment for nonpayment, discriminates 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 a fine is unconstitutional.

Studies have found that a large percentage of persons in urban jails were committed for nonpayment of fines. On the other hand, properly employed, the fine is far less drastic, far less costly for the public, and perhaps more effective than imprisonment or community supervision. Legislatively imposed criteria requiring that the fine be levied in an amount that can be paid and statutory authorization for payment in installments 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 choose between total confinement and total freedom. The trend toward use of community-based programs for offenders after a period of incarceration suggests that community-oriented programs with State control over leisure time are a valuable tool that should not be preconditioned in all cases on a period of total confinement. In addition, there may be resources available in the 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 education during all but leisure time. This form of sanction has been used predominantly for misdemeanants sentenced to a jail term. In some cases, offenders return every evening to the jail and in others, they return only for the weekend. This arrangement serves to punish and deter without totally disrupting the individual's family life, employment, and other ties in the community. Jails and other institutions are now operating such programs, many without having specific statutory authorization. Thus, while formal authorization may not be required, it would be desirable for legislatures to affirmatively authorize this form of sanction.

7. Total confinement. The proposed standards contemplate a qualified version of indeterminate sentencing with judicial power to impose a maximum below that established by statute. The indeterminate sentence has been attacked as resulting in gross sentencing disparity, and vesting unbridled power in correctional administrators to make arbitrary decisions affecting the liberty of offenders. Elsewhere, this chapter discusses the values and disadvantages of discretionary decisionmaking and suggests methods of limiting the abuse of that power. The major value of the indeterminate sentence is to allow some individualization of program related, in theory at least, to the needs of a given offender in terms of his ability to adjust to a law-abiding life style.

The standard here proposed, retaining the concept of the indeterminate sentence, must be read in light of other standards that provide: (1) for appellate review of sentencing and other devices to eliminate unjustified sentencing disparities (Standard 5.11); (2) legislatively established criteria for decisions (Standards 16.10 and 16.15); (3) greater use of administrative rules and regulations establishing criteria for decisions in advance and allowing offender participation in development of such criteria (Standard 16.2); and (4) reduction in legislatively allowed maximum sentences that should correspondingly reduce the discretion of correctional agencies (Standard 16.7).

Judicially imposed minimum sentences relate either to retribution or to the need to assure the community that a dangerous offender is properly restrained. Minimum sentences generally preclude consideration for parole which, in a given case, may extend the period of confinement beyond an offender's needs. In the rare case where the community needs such assurance, the standard authorizes the judge to impose a minimum but also provides devices to alleviate the inflexibility of such sentences by allowing the court to revoke its minimum at any time. In addition, the alternative of a judicial recommendation against early parole is provided.

The authority for the court to impose a minimum sentence should be limited to those cases where the defendant is particularly dangerous. Standard 5.3 in Chapter 5, Sentencing, provides specific criteria for a determination of dangerousness sufficient to authorize a minimum sentence. Legislation should be consistent with that standard.

For many reasons, accused persons in the past have awaited—and in the future will await—trial in jail. If current reforms in bail and pretrial release procedures are adopted, the liberty of the accused no longer will depend to the extent it now does on financial means. Proposals for preventive detention, if adopted, will provide for certain persons to remain confined prior to trial. No proposal assumes that every accused person will remain at liberty until conviction.

At present, approximately 24 States provide statutory authority for granting credit for jail time served. In many, it is discretionary with the courts. Where statutory authority does not exist, many courts will take into consideration the time served in jail prior to conviction.

Failure to grant credit for time served prior to trial under present pretrial release procedures discriminates against the indigent. Where detention results solely from a person's inability to make bail due to lack of financial resources, the constitutional demand for equal protection is particularly applicable.

Courts in increasing numbers have found constitutional defects in the failure to grant credit for time served prior to trial or in statutes granting discretion in awarding such credit. In *Workman* v. *Cardwell,* 338 F. Supp. 893 (N.D. Ohio 1972), the court voided the conviction of an offender who was not awarded credit for time served. Simple justice dictates that an offender receive credit for time spent in pretrial detention.

References

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Report, 1968, and authorities cited therein.
2. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: ALI, 1962.
3. Dawson, Robert C. *Sentencing: The Decision as to Type, Length, and Conditions of Sentence.* Boston: Little, Brown, 1969.
4. *Legislative Guide for Drafting Family and Juvenile Court Acts.* Washington: U.S. Department of Health, Education, and Welfare, 1969.
5. National Conference of Commissioners on Uniform State Laws. "Uniform Juvenile Court Acts," in *Handbook.* Chicago: NCCUSL, 1968. Sec. 31.
6. National Council on Crime and Delinquency. *The Model Sentencing Act.* New York: NCCD, 1963.
7. Nebraska Treatment and Corrections Act, Neb. Rev. Stat. Sec. 83–150 (Reissue 1971).
8. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Courts.* Washington: Government Printing Office, 1967.
9. Schornhorst, F. Thomas. "Presentence Confinement and the Constitution: The Burial of Dead Time." *Hastings Law Journal,* 23 (1972), 1041.

Related Standards

The following standards may be applicable in implementing Standard 16.8.

5.2 Sentencing the Nondangerous Offender.
5.3 Sentencing to Extended Terms.
5.4 Probation.
5.5 Fines.
5.6 Multiple Sentences.
5.8 Credit for Time Served.
5.9 Continuing Jurisdiction of Sentencing Court.
5.11 Sentencing Equality.
16.7 Sentencing Legislation.
16.11 Probation Legislation.
16.15 Parole Legislation.

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 of delinquency matters 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 diversionary 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, to 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 allegations 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

1. Empey, LaMar T. *Alternatives to Incarceration*. Washington: U.S. Department of Health, Education, and Welfare, 1967.
2. *Legislative Guide for Drafting Family and Juvenile Court Acts*. Washington: U.S. Department of Health, Education, and Welfare, 1969.
3. *Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency*. Washington: U.S. Department of Health, Education, and Welfare, 1972.
4. National Conference of Commissioners on Uniform State Laws. "Uniform Juvenile Court Act," in *Handbook*. Chicago: NCCUSL, 1968.
5. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Juvenile Delinquency and Crime*. Washington: Government Printing Office, 1967.

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 releasees 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 to 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 shown to be unfounded.

References

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Probation.* New York: Office of the Criminal Justice Project, 1970, and authorities cited therein.
2. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968.
3. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: ALI, 1962, Sec. 707.
4. *Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency.* Washington: U.S. Department of Health, Education, and Welfare, 1972.
5. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: The Courts.* Washington: Government Printing Office, 1967.
6. *State* v. *Kunz,* 55 N.J. 128, 259 A.2d 895 (1969).
7. Zastrow, William G. "Disclosure of the Pre-Sentence Investigation Report," *Federal Probation,* 30 (1971), 20.

Related Standards

The following standards may be applicable in implementing Standard 16.10.

5.14 Requirement for Presentence Report and Content Specification.

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 a range of specified 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 factors 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 subpena 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 without 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 subjected to constitutional standards. It was held in *Mempa* v. *Rhay,* 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 unchecked 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 judges' 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

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Probation.* New York: Office of the Criminal Justice Project, 1970, and the authorities cited therein.

2. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: ALI, 1962.

3. *Legislative Guide for Drafting Family and Ju-*

venile Court Acts. Washington: U.S. Department of Health, Education, and Welfare, 1969.
4. *Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency.* Washington: U.S. Department of Health, Education, and Welfare, 1972.
5. Nebraska Probation Administration Act, Neb. Rev. Stat. Sec. 29–2246 (Supp. 1971).
6. Note, *Columbia Law Review,* 67 (1967), 181.

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 to 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

1. Advisory Commission on Intergovernmental Relations. *State Department of Correction Act.* Washington: ACIR, 1971.
2. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: ALI, 1962.
3. Cohen, Fred. *The Legal Challenge to Corrections.* Washington: Joint Commission on Correctional Manpower and Training, 1969.
4. Council on the Diagnosis and Evaluation of Criminal Defendants. *Illinois Unified Code of Corrections: Tentative Final Draft.* St. Paul: West, 1971.
5. *Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency.* Washington: U.S. Department of Health, Education, and Welfare, 1972.
6. National Council on Crime and Delinquency. *Standard Act for State Correctional Services.* New York: NCCD, 1966.

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 enterprise 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 1958, 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 325–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 private enterprise, with its managerial techniques, may provide resources to prison industrial programs unattainable elsewhere. There may be sound reasons for experimental if not wholesale adoption of programs whereby private enterprise establishes 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

1. Glaser, Daniel. *The Effectiveness of a Prison and Parole System.* Indianapolis: Bobbs-Merrill, 1964. Ch. 11.
2. Morris, Norval, and Hawkins, Gordon. *The Honest Politician's Guide to Crime Control.* Chicago: University of Chicago Press, 1969.
3. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections.* Washington: Government Printing Office, 1967.
4. *The Role of Correctional Industries.* Iowa City: University of Iowa Center for Labor and Management, 1971.

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.

f. Utilization of community medical, social rehabilitation, vocational rehabilitation, or similar resources.

g. Furloughs of short duration to visit relatives and family, contact prospective employers, or for any other reason consistent with the public interest.

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-use 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; now institutional 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 progam.

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

1. Carpenter, Lawrence. "The Federal Work Release Program," *Nebraska Law Review*, 45 (1966), 690.
2. Cohen, Fred. *The Legal Challenge to Corrections*. Washington: Joint Commission on Correctional Manpower and Training, 1969.
3. Council on the Diagnosis and Evaluation of Criminal Defendants. *Illinois Unified Code of Corrections: Tentative Final Draft*. St. Paul: West: 1971.
4. Empey, LaMar T. *Alternatives to Incarceration*. Washington: U.S. Department of Health, Education, and Welfare, 1967.
5. Federal Prisoner Rehabilitation Act of 1965, 18 U. S. C. Sec. 4082 (1965).
6. *Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency*. Washington: U.S. Department of Health, Education, and Welfare, 1972.
7. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections*. Washington: Government Printing Office, 1967.

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 1975 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 procedures for the granting of parole to both adults and juveniles the legislation should require:

1. Parole decisions by a professional board of parole, independent of the institutional staff. Hearing examiners should be empowered to hear and decide parole cases under policies established by the board.

2. Automatic periodic consideration of parole for each offender.

3. A hearing to determine whether an offender is entitled to parole at which the offender may be represented by counsel and present evidence.

4. Agency assistance to the offender in developing a plan for his parole.

5. A written statement by the board explaining decisions denying parole.

6. Authorization for judicial review of board decisions.

7. Each offender to be released prior to the expiration of his term because of the accumulation of "good time" credits to be released to parole supervision until the expiration of his term.

8. Each offender to be released on parole no later than 90 days prior to the expiration of his maximum term.

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 continued 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 successful return to the community.

4. Not require a favorable recommendation by the institutional staff, the court, the police, or the prosecutor before parole may be granted.

In establishing criteria for parole conditions, the legislation should be patterned after Sec. 305.13 of the Model Penal Code and should:

1. Authorize but not require the imposition of specified 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 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 should 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 for him 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 parolee, in advance 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 the evidence relied upon.

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.

4. Judicial review of parole revocation decisions should be available to offenders.

In defining the term for 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 necessary to serve 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 paroling authority now is undergoing change. With a blurring of the distinctions between institutional confinement and community supervision, many offenders have participated in various community-based programs prior to their release on parole. As the trend toward community-oriented programs continues, the decision to parole, at least under traditional notions of parole, becomes less critical for the offender. As community-based programs ranging from halfway houses to nonsupervised work- and education-release programs expand, the role of the parole board will become increasingly one of reviewing institutional decisions that deny certain offenders access to community-based programs. Under present circumstances, the parole board has some direct influence over all confined offenders.

Legislation in many States grants broad discretion to paroling authorities with few statutory criteria to guide them and yet precludes 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 prohibitions against parole for some offenders are as unwise as mandatory sentencing provisions generally. They can take into account only the offense, never the offender.

With 99 percent of institutionalized offenders returning to the community, the question for legislators and paroling authorities is not whether a person will be released, but when and under what conditions. In practice, the choice is between parole—release with supervision and assistance of the State during the critical stage of reentry into society—or outright release with no such supervision and assistance. Prohibitions against parole of certain offenders tend to be found most often in regard to crimes of violence—committed generally by offenders more in need of parole supervision than offenders committing nonviolent offenses.

In most States, parole eligibility begins when the minimum sentence is served. This report proposes the elimination of all legislatively imposed minimum sentences and the infrequent use of judicial minimums. With the exception of those 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 through 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. Incarceration should be viewed as the last alternative at the time of sentencing and continued incarceration undesirable unless there is no other choice. Thus, confined offenders should be assured that at regular reasonable intervals the paroling 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 the choice is between outright 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 revocations 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 that 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 indigents. 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 be provided not only to meet constitutional standards but also to insure sound 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 more years in confinement unless again paroled. In other States, parole time is deemed to be part of the sentence. The latter is the preferable course. With development of community-based 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 thus may refuse parole. Likewise, parole revocation can have a dramatic effect on lengthening the time that the State exercises control over the offender. Parole, if considered as 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 he is assigned to a parole program. The Model Penal Code does provide a "parole term" that is above and beyond the maximum term imposed by the court. The major argument for this extension is that the offenders most 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

1. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: ALI, 1962.
2. Cohen, Fred. *The Legal Challenge to Corrections.* Washington: Joint Commission on Correctional Manpower and Training, 1969.
3. Council on the Diagnosis and Evaluation of Criminal Defendants. *Illinois Unified Code of Corrections; Tentative Final Draft.* St. Paul: West, 1971.
4. Glaser, Daniel. *The Effectiveness of a Prison and Parole System.* Indianapolis: Bobbs-Merrill, 1964.
5. Jacob, Bruce R., and Sharma, K.M. "Justice after Trial: Prisoner's Need for Legal Services in the Criminal Correctional Process," *University of Kansas Law Review,* 18 (1970), 493.
6. *Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency.* Washington: Department of Health, Education and Welfare, 1972.
7. Nebraska Treatment and Corrections Act, Neb. Rev. Stat. Sec. 83–170 (Reissue 1971).

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 paroling 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.

It may be inappropriate to circumscribe the pardon discretion with criteria and other types of checks and balances. With discretion exercised in most instances by elected officials, the political process serves that function. In that context, political considerations in the exercise of the power are proper.

On the other hand, procedures to insure that access to the pardon authority is equally available to all should be enacted into legislation. Any procedures that will publicize the exercise of the pardon powers to allow the electorate to exercise its checking influence would be appropriate.

References

1. Cozart, Reed. "The Benefits of Executive Clemency," *Federal Probation,* 32 (1968), 33.
2. Nebraska Treatment and Corrections Act, Neb. Rev. Stat. Sec. 83–170 et. seq. (Reissue 1971).

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.

Standard 16.17

Collateral Consequences of a Criminal Conviction

Each State should enact by 1975 legislation repealing all mandatory provisions depriving persons convicted of criminal offenses of civil rights or other attributes of citizenship. Such legislation should include:

1. Repeal of all existing provisions by which a person convicted of any criminal offense suffers civil death, corruption of blood, loss of civil rights, or forfeiture of estate or property.

2. Repeal of all restrictions on the ability of a person convicted of a criminal offense to hold and transfer property, enter into contracts, sue and be sued, and hold offices of private trust.

3. Repeal of all mandatory provisions denying persons convicted of a criminal offense the right to engage in any occupation or obtain any license issued by government.

4. Repeal of all statutory provisions prohibiting the employment of ex-offenders by State and local governmental agencies.

Statutory provisions may be retained or enacted that:

1. Restrict or prohibit the right to hold public office during actual confinement.

2. Forfeit public office upon confinement.

3. Restrict the right to serve on juries during actual confinement.

4. Authorize a procedure for the denial of a license or governmental privilege to selected criminal offenders when there is a direct relationship between the offense committed or the characteristics of the offender and the license or privilege sought.

The legislation also should:

1. Authorize a procedure for an ex-offender to have his conviction expunged from the record.

2. Require the restoration of civil rights upon the expiration of sentence.

Commentary

Early English jurisprudence imposed numerous indirect sanctions on criminal offenders including forfeiture of all property and deprivation of any attributes of citizenship. Today, all States apply some indirect sanctions to criminal offenders. In 13 States, an offender is deemed civilly dead, which prohibits the right to contract and to sue and be sued. In most States, an offender is deprived of the right to vote, to hold public office, or to serve on juries. In some, his testimony is precluded in judicial tribunals.

More significant from the offender's viewpoint, every State and the Federal government make it difficult for persons convicted of a felony to obtain licenses to practice occupations regulated by the government. In many instances, conviction of a felony is automatic grounds for denial of a license. In others, although not mandatory, it is in practice impossible 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 reformative 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 denials of that participation serve 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 restraints 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 precluded 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

1. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: ALI, 1962.
2. Miller, Herbert S. *The Closed Door: The Effect of a Criminal Record on Employment with State and Local Public Agencies.* Report prepared for Manpower Administration, U.S. Department of Labor, 1972.
3. National Conference of Commissioners on Uniform State Laws. "Uniform Act on the Status of Convicted Persons" in *Handbook.* Chicago: NCCUSL, 1964. (The act has become law in New Hampshire (N.H. Rev. Stat. Ann. c. 607A), and in Hawaii (Hawaii Rev. Stat. c. 716 (1971 Supp.).
4. National Conference of Commissioners on Uniform State Laws. "Uniform Juvenile Court Act" in *Handbook.* Chicago: NCCUSL, 1968. Sec. 57 (Sealing Records of Juveniles).
5. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: Corrections.* Washington: Government Printing Office, 1967, p. 88.
6. Special Project, "The Collateral Consequences of Criminal Conviction," *Vanderbilt Law Review* 23 (1970), 929. A useful compendium of the statutory laws creating disabilities for convicted offenders.

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.
- 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 reflect the belief that such practices are unlawful and counterproductive to instilling respect for the law in offenders and other citizens.

Until recently, an offender as a matter of law was deemed to have forfeited virtually all rights upon conviction. Whatever comforts, services, or privileges the offender received were a matter of grace. For the most part, the courts refused to intervene on the grounds that correctional administration was a technical matter to be left to experts.

The past few years have witnessed an explosion of requests by offenders for judicial relief from the conditions of their confinement or correctional program. More dramatic is the increased willingness of the courts to respond. A series of decisions has begun to hold correctional administrators accountable for their decisionmaking, especially where such decisions affect first amendment rights (religion, speech, communication), the means of enforcing other rights (access to counsel or legal advice, access to legal materials), cruel and unusual punishments, denial of civil rights, and equal protection of the law.

While the real ferment for judicial intervention has come in the lower courts, particularly in the Federal district courts, the U.S. Supreme Court decided eight cases in 1971 and 1972 that directly affected convicted offenders and at least two others that have implications for correctional practices. In all eight cases directly involving corrections, the offender's contention prevailed. It is clear that the hands-off doctrine that used to insulate correctional administrators from judicial accountability is fast disappearing.

Despite the courts' obvious willingness to take action, the major responsibility for protecting and affirming rights must lie with those who administer corrections systems. Implementation of offenders' rights is consistent with good correctional practice. The fact that 99 percent of those persons sentenced to confinement will one day return to free society requires that offenders be prepared for reintegration. The illogic of attempting to train lawbreakers 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 must be limited in order to carry out the criminal sanction or to administer a correctional facility or agency. Applying criminal sanctions is the most dramatic exercise of state power over individuals. Actions necessary for maintaining social order do not require general suspension of basic rights. Since criminal sanctions impinge on the most basic right—liberty—it is imperative that other restrictions be used sparingly, fairly, and only for cause. The strategy for correctional reform must 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 social welfare cases overloads 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 syndrome 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 they are not equipped to handle. Types of behavior commonly categorized as "victimless crimes," which are defined as crimes without an effective complainant 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 of criminal justice. Here and there 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 behave in ways that may be counter to prevailing 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 these institutions create crime rather than prevent it. Their very nature insures failure. 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 such as self-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 blame for this insufferable system cannot be placed on the shoulders of corrections alone. Correctional personnel have decried, 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 view 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 penitentiary idea must succumb to a new concept: community corrections. Therefore, the Commission recommends a 10-year moratorium on construction of institutions except under circumstances 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 mega-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 point 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 may 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 truest 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 blueprint for corrections must read: more alternatives, more programs, more professionals to conduct 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 lessons of history. For it was a similar reform movement in 1787 in which our fledgling country, seeking to establish institutions predicated on the concept of

the dignity of man, embarked on a prison construction program without precedent. The physical and ideological legacy of this movement stands recognized today as one of the major obstacles to correctional reform and a prime example of man's inhumanity to man. So we must guard against embarking on a financially ruinous construction program that merely would replace prisons, reformatories, jails, and detention homes with facilities bearing more palatable names and wearing more attractive facades but fundamentally unchanged.

The trend toward community-based corrections is one of the most promising developments in corrections today. It is based on the recognition that delinquency 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 concept of community corrections and for embarking on a national strategy to move from our current institution-oriented 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 defendant is incarcerated or returned to the community under a range of nonresidential and residential community-based programs. Sentencing may also set upper or lower limits for duration of correctional responsibility.

Sentencing practices in this country reflect an appalling state of affairs. In too many jurisdictions, the decision to sentence 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 predilection for imprisonment 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 Western nations in their severity and harshness.

In light of these facts, the Commission recommends specific statutory changes and enabling legislation to improve sentencing effectiveness. The report recommends expanding sentencing options for a wide range of community-based correctional programs, shorter sentences for less serious offenders, and more selective use of imprisonment. Institutionalization should be reserved for those offenders whose repetitive, destructive behavior patterns seriously threaten the safety of the community.

The confidence and cooperation of the law enforcement and judicial branches of the criminal justice system are critical to the transition to community-based corrections. Furthermore, public involvement and public trust are indispensable to achievement of such a major change. While total system planning will reduce corrections' traditional isolation and lead to establishment of functional relationships with other parts of the system, gaining public confidence will be far more difficult.

The time has come for fundamental changes in corrections. Improbable as it may sound because of the high cost of prison construction, it would be easier for this Nation to replace its obsolete correctional system with another generation of institutions than to embrace the concept of community corrections. The reasons are as distressing as they are simple. Hiding our social problems behind a progressive-looking facade requires only sufficient funding. Community corrections requires radically changed attitudes toward the offender and a new social commitment.

Unified Correctional Systems and System Planning

It is difficult to conceive of any area more in need of coordinated, uniform planning than the reduction of juvenile delinquency and adult crime. The American criminal justice system is so complex and the interrelationships among its components are so varied that even its supporters view it as a kind of crazy quilt. There are wide variations in the way in which Federal, State, and local governments administer, finance, and operate correctional services. These services may be centralized at the State level, decentralized in municipalities and counties, or shared by the State, counties, and cities in an almost infinite number of ways. In their attempts to create more hopeful alternatives to incarceration, legislatures created reformatories, probation, parole, and a host of services for delinquent children. These alternatives evolved without central control or direction. The correctional system became a nonsystem.

In short, corrections today is an incomprehensible, inefficient, and multilevel administrative maze, suffering from interpersonal conflicts, interagency jealousies, and duplicating activities. In fact, corrections is such a loose federation that it is impossible to hold any one person or agency accountable for its past failures or responsible for its future planning and direction.

The result is a hopelessly fragmented correctional system and a disastrous disparity in standards, goals, and services that accounts to a high degree for corrections' failure to correct, and for the haphazard use of its meager resources.

To overcome such fundamental problems, effective relationships among the various components of the criminal justice system must be established, and corrections must end its social and political isolation. Beyond these essential requirements, however, lies the need for uniformity of definition, standards, and practices. This requires an integrated system that is administratively manageable, fiscally sound, and responsive to public needs and scrutiny. Such requirements suggest that planning activities be coordinated to the highest possible degree.

Since State governments already support the vast majority of nonfederal correctional programming, the long-range goal of unification and consolidation of correctional responsibilities into an integrated, State-controlled correctional system is logical. This approach would facilitate the delivery of correctional services in a coordinated and mutually supportive fashion. Steamlining activities would reduce waste and overlap, thereby promoting optimum application of available resources. Development of high personnel and performance standards would be enhanced through uniform staff development, interdepartmental career opportunities, and civil service. Systemwide research and evaluation would increase feedback on program effectiveness, the knowledge base of corrections, and accountability to the public. The implementation of an integrated State correctional system is essential to attain equity, maximum diversion of sociomedical problems from corrections, and utilization of a full variety of dispositional alternatives within the system.

It must be stressed that the concept of a statewide, structurally integrated correctional system is not in philosophical or practical conflict with the concept of community-based corrections. Uniform statewide planning does not imply remote control of operations or banishment of minor and first-time offenders to isolated State institutions. What it does imply is a logical, systematic planning approach which can be responsive to changing problems and priorities and provide a framework for developing more relevant programs. It is system planning as opposed to subsystem 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 personnel 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 systematic planning, the Commission recommends that corrections develop a comprehensive nationwide strategy to improve correctional manpower and that priority be given to the following standards and goals regarding this key issue:

1. Implementation of coordinated State recruitment 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 prepare all levels of staff for optimum performance of their tasks. Existing resources from the private sector and the academic community must be utilized more fully. Maximum emphasis should be placed on development of specialized professional personnel and of middle- and upper-echelon managers. The National Institute of Corrections, in conjunction with leading universities, colleges, and private resources, should have a key role in the development of a national strategy to implement this recommendation.

2. Development of a nationwide policy to develop underutilized human resources. Efforts to recruit minority group members for every level of correctional staff and to provide training programs to insure opportunities for career advancement should be intensified. For too long, minority groups have been overrepresented as offenders and underrepresented as staff. Affirmative action is required to alter the situation created by years of discrimination and indifference.

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 practices, particularly for male institutions, they have been effectively eliminated from management positions in corrections. Corrections remains one of the last holdouts in the national movement to eliminate discrimination on the basis of sex. Such a stance clearly is inappropriate for a field that purports to be seeking drastic change and new openness.

Of equal importance is recruitment and employment of qualified ex-offenders. Successful reintegration of offenders, corrections' primary task, requires full employment opportunities. Corrections should take the lead in hiring—and encouraging others to hire—from this underutilized human resource pool.

Finally, the changing role of corrections has led to development of a remarkable variety of new careers on the professional, paraprofessional, and volunteer levels. Because the full potential of this manpower resource has only begun to emerge, a systematic strategy should be developed to recruit and utilize effectively this vital supplement to correctional manpower.

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 apathy is the predominant 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 in but also in terms of keeping the public out. The result has been disastrous for the goals of corrections. While institutional administrators developed near-absolute discretion and almost unchecked power, the public was utterly ignorant about the state of corrections and developed little, if any, sense of responsibility for the correctional process.

In view 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. Furthermore, involvement must come not only 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. But the full potential of volunteerism 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, provide guidance in matters of community concerns, and serve in a host of other capacities.

Finally, fellow professionals from human service agencies and the fields of education, medicine, mental health, and the like, need to be involved in advisory, lay, or volunteer capacities. Such an effort will bring their particular expertise to bear on the problems 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 corrections, the perennial stepchild of the criminal justice system, at last may be emerging from the Dark Ages.

For the first time in this Nation's history, we are witnessing a concerted, nonpartisan effort to improve the system. Continuing concern over reform by the President and the courts, and sustained support by dedicated members of the House and Senate are providing the impetus needed for comprehensive reform. The 13-point program for corrections developed by the President in 1969, the powerful leadership of the Chief Justice supported by the American Bar Association, the Federal Interagency Council on Corrections, the support and funding of the Law Enforcement Assistance Administration, the President's Task Force on Prisoner Rehabilitation, and finally, the National Advisory Commission on Criminal Justice Standards and Goals bear witness to what was aptly described by the Attorney General at the first national conference on corrections as "the most determined and comprehensive approach to corrections ever made in this country."

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 realization of 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 the other social problems to which massive Federal aid has been given. Legislation and appropriations authorizing corrections to share in the funding programs of the Law Enforcement Assistance Administration, the Departments of Labor and of Health, Education, and Welfare, and other Federal agencies are evidence of the growing interest of the Federal Government in improving corrections.

But considering the magnitude of the problem, what the Federal Government has done so far is not nearly enough. The current Federal leadership must be built upon and translated into more tangible and more fully adequate aid.

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 painfully aware that pleas for more money addressed to legislators and county commissioners fall upon deaf ears. Corrections remains where it has always been, at the end of the budgetary line in the distribution of State and local tax funds. Although sporadic support for corrections has developed in isolated instances, there is little hope that this situation can be changed substantially. In fact, as matters presently stand, the States, counties, and cities are looking to the Federal Government to finance correctional improvements and postponing such improvements until Federal aid is forthcoming.

The amendment of the Omnibus Crime Control and Safe Streets Act of 1970 to provide specifically for the funding of correctional improvements is a promising vehicle for the massive Federal aid that is necessary. Under the original act, corrections had to share the regular funding program, Part C, with police and courts. The amendment, known as Part E, singles out corrections for special funding. The Part E appropriation in the 1973 fiscal year will make available about $113 million for the improvement of corrections, supplemented by about $100 million in Part C funds.

However, since this amount must be spread over the entire spectrum of corrections, the beneficial effects are largely dissipated. So far, appropriation requests for Part E funds have been limited to 20 per cent of the appropriations for Part C. It should be noted, however, that the amendment authorized a funding level of *not less than* 20 per cent of Part C. Obviously, a higher level of funding is permitted by the act.

Normal State and local expenditures to maintain corrections at its present grossly deficient level of operations total about $1.5 billion a year. The annual Federal funding assistance should approach about the same figure. Otherwise, corrections will not be able to accomplish its shift to community-based programs, obtain the manpower it needs, do the research and experimentation that has been so long neglected, and correct the deplorable conditions that exist generally.

Further, the States and localities find even the 25 percent matching requirement for Federal funds burdensome, owing to the low budgetary priority accorded corrections, and as a result even the Federal funds available often do not find ready takers. The matching requirement should be reduced to 10 percent or eliminated entirely.

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 E 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. This Commission concurs.

Legislation

The importance of legislation to correctional reform is repeated throughout the standards of this report. While legislation alone cannot bring about the needed changes and cannot even guarantee that authorized 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 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 the piecemeal fashion of the past. The entire correctional and penal codes of a State should be redrafted and legislatively considered as a package. Their formulation should be guided by a single 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.

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 advised that they will be 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 committee 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 needed to obtain acceptance. 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 Treatment and Corrections 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 manpower discussed earlier in this report are so prevalent that they cannot be remedied on a short-term basis. Recommended solutions are reflected in the narrative and standards of Chapter 14.

It will be easier to educate and train qualifed 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 programs. But capable persons can be persuaded to enter 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 assignments will be easy, but a beginning must be made now.

As corrections begins to involve the public increasingly in 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 forebears 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 corrections opens it doors to the young and accepts 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 principle is a sound one. However, the Federal system shares the deficiencies of 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 assuring 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 the unification of 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, probation, and institutions are operated independently of each other.

The report strongly supports the diversion of juveniles and of sociomedical 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 no evidence that Federal correction programs, although operated in well-managed institutions, produce any better results than State programs. The Federal system, like those of the States, does not collect statistics on recidivism that can be considered valid. Comparisons therefore are impossible to make. However, Federal Bureau of Investigation statistics on offenders released from Federal jurisdiction 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 released after 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 reconvictions, 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 additional probation personnel and related 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 such facilities. The Federal system has 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 disreputable 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 to be used as the basis for contracts and "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 reasonably be devised. Development and publication of Federal standards would undoubtedly be taken as an opportunity by Federal detainees to file suit on the grounds 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 rating system 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 system should become a model 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 reformed along the lines 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 many years. In December 1972, 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.

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 resources from which 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.

It is also the view of the Commission that the institute when established should be given the responsibility for updating and revising the standards of this report periodically, in keeping with technical developments and advances in correctional knowledge.

Accreditation of Correction Agencies

An accreditation system for corrections has been given considerable attention in recent years. Accreditation would be used as a means to recognize and maintain standards of service, programs, and institutions, and eventually bring about higher levels of quality.

A program for accreditation was developed by the American Correctional Association and published in 1969 under the title "An Accreditation Plan for Corrections." The plan calls for establishment of a Commission on Accreditation for Corrections, with full autonomy in matters relating to accreditation policy and process. The commission would be governed by a board selected from the general public, community-based services, detention and institutional services, education and research, the judiciary, law enforcement, criminal defense, business, and labor.

The key duties and responsibilities of the commission would be adoption of standards for accreditation, review of such standards, and recommendation of changes in and the accreditation of programs, agencies, and institutions.

Associated with any system of accreditation that may be established should be a method for holding the correctional administrator accountable for results. Requirements in the past have been minimal. Custodial institutions have been required to keep offenders until ordered to release them. Probation and parole agencies have been called on to list offenders in their caseloads and report violations. In short, if riots, escapes, and scandals did not occur, the task of corrections was accomplished.

But expectations cannot be so limited if corrections is to have any effectiveness in the reduction of crime. The goals of correctional agencies must be defined, and the achievement of goals must be measured. The reintegration of all offenders cannot be expected, but relative successes can be planned for and achieved. The expectation of failure is not acceptable.

If accountability is to be a principle of correctional management, the manager must have the tools by which to measure. Just as the accountant is an essential figure in any business enterprise, so the statistician must be brought into the service of the correctional manager. It is a useless waste of public funds, as well as gross inequity to the offender, when penal terms are imposed and served without having the achievement of the goals which they are intended to accomplish measured.

This transformation of management for process into management for results calls for a change in the administrative culture of corrections. Both top managers and their subordinates will in many cases require retraining. Probably the best device for the massive retraining of policymakers and system managers is the proposed National Institute of Corrections.

The Commission recognizes that an accreditation service would provide another significant dimension in introducing, elevating, and maintaining high standards of performance in corrections and urges the earliest possible implementation of an accreditation plan.

Commitment of Corrections

Commitment of the corrections field to change is indispensable if there is to be any significant implementation of these standards—two objectives considered by this Commission as virtually synonymous. The task ahead is unquestionably formidable.

That change is overdue is evident on every hand—high crime and recidivism rates, riot and unrest in our prisons, almost daily revelations of brutality and degradation in our jails, increasing litigation against corrections, and indignant public reactions.

Maurice H. Sigler in his address as 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 can't 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 are related to the failure of corrections 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 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 accelerate during the decade 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 date to incorporate the new technology and information into another, and hopefully more advanced, set of standards.

As pointed out earlier, 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 pursue 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 wrongfully dumped upon it. It must shift its emphasis from institutions to community services. It must plan these changes intelligently and systematically. Finally, it must compete and, if necessary, fight as other movements do 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 the Public

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 outrage do serve to enhance social cohesion and to measure our regard for accepted social values. It would be irrational to ignore the pervasiveness and strength of natural feelings of revulsion toward particular criminal acts. However, legalizing severe punishment implies a societal retrogression in human dignity. Winston Churchill observed that: "What is done to the criminal is a very accurate index to the quality of any civilization."

It must be conceded that regardless of the rehabilitation mythology and the easy expressions of humanitarian intent that have characterized American corrections throughout its history, the actual treatment of offenders has been harsh indeed. And it hasn't worked. Crime and recidivism continue undiminished.

It also must be conceded that there are dangerous or confirmed criminals who by any light must be considered poor, almost hopeless, prospects for social reintegration. For the safety of the public, they must be locked up until the passage of time at least

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 cautious 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 courts sector and the juvenile corrections sector, and consequently may differ from figures presented in the summary Report (Statistics Division Report SD-D-1). 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 reliable 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 houses 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 houses 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 agency.

Adult Correctional Facilities—Included are those institutions which detain adults only or a combination of prisoner popalations. Drunk tanks, lock-ups 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 courts. 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

PARENT AGENCY RESPONSIBILITY FOR ADMINISTERING CORRECTIONAL SERVICES, BY STATE [1]

January 1971

State	Juvenile Detention	Juvenile Probation	Juvenile Institutions	Juvenile Aftercare	Misdemeanant Probation	Adult Probation	Local Adult Institutions and Jails	Adult Institutions	Parole
Alabama	Local	Local	3 Separate & Independent Boards	Dept. of Pensions & Security & Local	Board of Pardons & Paroles	Board of Pardons & Paroles	Local	Board of Corrections	Board of Pardons & Paroles
Alaska	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare
Arizona	Local	Local	Dept. of Corrections	Dept. of Corrections	None	Local	Local	Dept. of Corrections	Dept. of Corrections
Arkansas	Local	Dept. of Welfare & Local	Juvenile Training School Dept.	Juvenile Training School Dept.	None	Local	Local	Dept. of Corrections	Board of Pardons & Parole
California	Local	Local	Dept. of Youth Authority	Dept. of Youth Authority	Local	Local	Local	Dept. of Corrections	Dept. of Corrections
Colorado	Local	Local & District	Dept. of Institutions	Dept. of Institutions	Local	Local	Local	Dept. of Institutions	Dept. of Institutions
Connecticut	Juvenile Court Districts	Juvenile Court Districts	Dept. of Youth Services	Dept. of Youth Services	Dept. of Adult Probation	Dept. of Adult Probation	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections
Delaware	Dept. of Health & Soc. Servs.	Local	Dept. of Health & Soc. Servs.	Dept. of Health & Soc. Servs.	Dept. of Health & Soc. Servs.	Dept. of Health & Soc. Servs. & Local	Dept. of Health & Soc. Servs.	Dept. of Health & Soc. Servs.	Dept. of Health & Soc. Servs.
Florida	Local	Local	Dept. of Health & Rehabilitative Services	Dept. of Health & Rehabilitative Services	Local & Probation & Parole Commission	Local & Probation & Parole Commission	Local	Dept. of Health & Rehabilitative Services	Probation & Parole Commission
Georgia	Division of Children & Youth & Loc.	Division of Children & Youth & Loc.	Division of Children & Youth	Division of Children & Youth	Dept. of Probation & Local	Dept. of Probation & Local	Local	Dept. of Corrections	Board of Pardons & Parole
Hawaii	Local	Local	Dept. of Social Service	Dept. of Social Service	Local	Local	Local	Dept. of Social Service	Board of Parole & Pardons
Idaho	State Board of Health & Local	State Board of Health & Local	State Board of Health	State Board of Health	None	Board of Correction	Local	Board of Correction	Commission for Pardons & Parole
Illinois	Local	Local	Dept. of Corrections	Dept. of Corrections	Local	Local	Local	Dept. of Corrections	Dept. of Corrections
Indiana	Local	Dept. of Welfare & Local	Dept. of Corrections	Dept. of Corrections	Local	Local	Local	Dept. of Corrections	Dept. of Corrections
Iowa	Local	Local	Dept. of Social Services	Dept. of Social Services	None	Dept. of Social Services	Local	Dept. of Social Services	Dept. of Social Services
Kansas	Local	Local	Dept. of Social Welfare	Dept. of Social Welfare	Local	Loc. & Board of Probation & Parole	Local	Director of Penal Institutions	Board of Probation & Parole
Kentucky	Local	Dept. of Child Welfare & Loc.	Dept. of Child Welfare	Dept. of Child Welfare	Dept. of Corrections	Dept. of Corrections	Local	Dept. of Corrections	Dept. of Corrections
Louisiana	Local	Dept. of Public Welfare & Local	Dept. of Corrections	Dept. of Public Welfare & Local	None	Dept. of Corrections	Local	Dept. of Corrections	Dept. of Corrections
Maine	Local	Dept. of Mental Health & Corrections & Loc.	Dept. of Mental Health & Corrections	Dept. of Mental Health & Corrections	Dept. of Mental Health & Corrections	Dept. of Mental Health & Corrections	Local	Dept. of Mental Health & Corrections	Dept. of Mental Health & Corrections
Maryland	Dept. of Juvenile Services	Dept. of Juvenile Services	Dept. of Juvenile Services	Dept. of Juvenile Services	Dept. of Parole & Probation & Local	Dept. of Parole & Probation & Local	Local	Dept. of Correctional Services	Dept. of Parole & Probation
Massachusetts	Youth Service Board	Local	Youth Service Board	Dept. of Youth Services	Local	Local	Local	Dept. of Correction	Parole Board
Michigan	Local	Local	Dept. of Social Services	Dept. of Social Services	Dept. of Corrections & Local	Dept. of Corrections & Local	Local	Dept. of Corrections	Dept. of Corrections

Minnesota	Local	Dept. of Corrections & Local	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections & Local	Dept. of Corrections & Local	Local	Dept. of Corrections	Dept. of Corrections
Mississippi	Local	Local	Board of Trustees	State DPW and Local	None	Board of Probation & Parole	Local	Dept. of Correction	Board of Probation & Parole
Missouri	Local	Local	Board of Training Schools	Board of Training Schools	Local	Board of Probation & Parole	Local	Dept. of Correction	Board of Probation & Parole
Montana	Local	Local	Dept. of Institutions	Dept. of Institutions	None	Board of Pardons	Local	Dept. of Institutions	Board of Pardons
Nebraska	Local	District Courts & Local	Dept. of Public Institutions	Dept. of Public Institutions	District Courts & Local	District Courts	Local	Dept. of Public Institutions	Board of Parole
Nevada	Local	Local	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Parole & Probation	Dept. of Parole & Probation	Local	Board Prison Commissioners	Dept. of Parole & Probation
New Hampshire	Board of Parole	Dept. of Probation & Local	Board of Parole	State Industrial School	Dept. of Probation & Local	Dept. of Probation & Local	Local	Board of Parole	Board of Parole
New Jersey	Local	Local	Dept. of Institutions & Agencies	Dept. of Institutions & Agencies	Local	Local	Local	Dept. of Institutions & Agencies	Dept. of Institutions & Agencies
New Mexico	Local	Local	Dept. of Corrections	Local	Dept. of Corrections	Dept. of Corrections	Local	Dept. of Corrections	Parole Board
New York	Local	Local	Dept. of Social Services	Dept. of Social Services	Division of Probation & Local	Division of Probation & Local	Local	Dept. of Correctional Services	Dept. of Correctional Services
North Carolina	Local	District & Local	Board of Juvenile Correction	Local	Probation Commission	Probation Commission	Dept. of Corrections	Dept. of Corrections	Board of Parole
North Dakota	Local	DPW & Local	Dept. of Institutions	Public Welfare Board	None	Board of Pardons	Local	Dept. of Institutions	Board of Pardons
Ohio	Local	Local	Youth Commission	Youth Commission	Local	Local	Local	Dept. Mental Hygiene & Correction	Dept. Mental Hygiene & Correction
Oklahoma	Local	Loc. & Dept. of Welfare & Institutions	Dept. of Welfare & Institutions	Dept. of Welfare & Institutions	None	Local & Dept. of Corrections	Local	Dept. of Corrections	Pardon & Parole Board

State	Juvenile Detention	Juvenile Probation	Juvenile Institutions	Juvenile Aftercare	Misdemeanant Probation	Adult Probation	Local Adult Institutions and Jails	Adult Institutions	Parole
Oregon	Local	Corrections Division & Local	Corrections Division	Corrections Division	Corrections Division	Corrections Division	Local	Corrections Division	Parole Board
Pennsylvania	Local	Local	Board of Training Schools	Board of Training Schools & Local	Board of Probations & Parole & Local	Board of Probations & Parole & Local	Dept. of Justice & Local	Dept. of Justice	Board of Probations & Parole
Rhode Island	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare
South Carolina	Local	Local	Dept. of Juvenile Corrections	Dept. of Juvenile Corrections	Probation, Parole & Pardon Board	Probation, Parole & Pardon Board	Local	Dept. of Corrections	Probation, Parole & Pardon Board
South Dakota	Local	Local	Board of Charities & Corrections	Board of Pardons & Parole	None	Board of Pardons & Parole	Local	Board of Charities & Corrections	Board of Pardons & Parole
Tennessee	Local	Dept. of Corrections & Local	Dept. of Corrections	Dept. of Corrections	Local	Dept. of Corrections	Local	Dept. of Corrections	Dept. of Corrections
Texas	Local	Local	Youth Council	Youth Council	Local	Local	Local	Dept. of Corrections	Board of Pardons & Paroles
Utah	Local	Juvenile Court Districts	Dept. of Social Services	Juvenile Court Districts	Division of Corrections	Division of Corrections	Local	Division of Corrections	Division of Corrections
Vermont	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections
Virginia	Local	Dept. of Welfare & Institutions & Local	Dept. of Welfare & Institutions	Dept. of Welfare & Institutions & Local	Dept. of Welfare & Institutions	Dept. of Welfare & Institutions	Local	Dept. of Welfare & Institutions	Dept. of Welfare & Institutions
Washington	Local	Local	Dept. of Social & Health Services	Dept. of Social & Health Services	Local	Dept. of Social & Health Services	Local	Dept. of Institutions	Board of Prison Terms & Paroles
West Virginia	Local	Dept. of Welfare & Local	Commissioner of Public Institutions	Commissioner of Public Institutions	Local & Div. of Probation & Parole	Local & Div. of Probation & Parole	Local	Commissioner of Public Institutions	Div. of Probation & Parole

	Dept. of Health & Soc. Services & Local	Dept. of Health & Soc. Services & Local		Dept. of Health & Social Services	Dept. of Health & Social Services
	Dept. of Probation & Parole	Dept. of Probation & Parole		Board of Charities & Reform	Dept. of Probation & Parole
Wisconsin			Local		
Wyoming	Local	Local			
Local	13	11	43	0	0
State Local	11	13	1	0	0
State	16	26	6	50	50

	Dept. of Health & Soc. Services & Local	Dept. of Probation & Parole & Local	Dept. of Health & Social Services	Board of Charities & Reform	Dept. of Probation & Parole
Wisconsin	Local				
Wyoming	Local	Local			
Local	40	24	0	0	2
State Local	2	20	0	0	5
State	8	6	50	50	43

Source: Table reproduced from Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System* (Washington: Government Printing Office, 1971), pp. 282–286.

[1] Some States have local services in addition to State services.

NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS

Chairman

Russell W. Peterson
Governor of Delaware

Vice Chairman

Peter J. Pitchess
Sheriff of Los Angeles County

Richard R. Andersen
Chief of Police, Omaha, Nebr.

Forrest H. Anderson
Governor of Montana

Sylvia Bacon
Associate Judge
Superior Court, District of Columbia

Arthur J. Bilek
Chairman, Illinois Law Enforcement Commission
Chicago, Ill.

Frank Dyson
Chief of Police, Dallas, Tex.

Caroline E. Hughes
Member, National Council on
Vocational Education, Cushing, Okla.

Howard A. Jones
Chairman, New York State
Narcotics Addiction Control Commission
Albany, N.Y.

Robert J. Kutak
Attorney, Omaha, Nebr.

Richard G. Lugar
Mayor, Indianapolis, Ind.

Ellis C. MacDougall
Director, State Board of Corrections
Atlanta, Ga.

Henry F. McQuade
Chief Justice
Idaho Supreme Court
Boise, Idaho

Gary K. Nelson
Attorney General, Arizona
Phoenix, Ariz.

Charles L. Owen
Executive Director, Commission on
Law Enforcement and Crime Prevention
Frankfort, Ky.

Ray Pope
Director, Georgia State Department
of Public Safety, Atlanta, Ga.

Reverend Elmer J. C. Prenzlow, Jr.
Metropolitan Milwaukee Campus Ministry
Milwaukee, Wis.

Milton G. Rector
Executive Director, National Council on
Crime and Delinquency
Hackensack, N.J.

Arlen Specter
District Attorney
Philadelphia, Pa.

Reverend Leon H. Sullivan
Chairman of the Board, The Opportunity
Industrialization Center
Philadelphia, Pa.

Donald F. Taylor
President, Merrill Manufacturing Corporation
Merrill, Wis.

Richard W. Velde (ex officio)
Associate Administrator
Law Enforcement Assistance Administration
Washington, D.C.

Police Task Force

Chairman

Edward M. Davis
Chief of Police
Los Angeles Police Department

Vice Chairman

Dale Carson
Sheriff, Jacksonville, Fla.

Arthur L. Alarcon
Judge, Superior Court
Los Angeles, Calif.

George A. Bowman, Jr.
County Judge, Children's Court Center
Milwaukee, Wis.

William Cahn
District Attorney of Nassau County
Mineola, N.Y.

Benjamin O. Davis, Jr.
Assistant Secretary for Safety and
Consumer Affairs
Department of Transportation
Washington, D.C.

Don R. Derning
Chief of Police, Winnetka, Ill.

Alfred S. Ercolano
Director, College of American Pathologists
Washington, D.C.

David Hanes
Attorney, Wilmer, Cutler, & Pickering
Washington, D.C.

Clarence M. Kelley
Chief, Kansas Police Department
Kansas City, Mo.

David B. Kelly
Superintendent, New Jersey State Police
West Trenton, N.J.

Charles Kingston
Professor of Criminalistics
John Jay College of Criminal Justice
New York, N.Y.

Donald Manson
Policy Analyst, Center for Policy Analysis
National League of Cities, Washington, D.C.

John R. Skryock
Chief, Kettering Police Department
Kettering, Ohio

Joseph White
Executive Director
Ohio Law Enforcement Planning Agency
Columbus, Ohio

Courts Task Force

Chairman

Daniel J. Meador
Professor of Law
University of Virginia
Charlottesville, Va.

Vice Chairman

Stanley C. Van Ness
Public Defender
State of New Jersey
Trenton, N.J.

Arthur Azevedo, Jr.
California State Assembly
Office of Assemblyman Bill Bagley
Sacramento, Calif.

William O. Bittman
Attorney, Hogan and Hartson, Washington, D.C.

William L. Cahalan
Wayne County Prosecuting Attorney
Detroit, Mich.

John C. Danforth
Attorney General of Missouri
Jefferson City, Mo.

William H. Erickson
Justice, Supreme Court of Colorado
Denver, Colo.

B. J. George
Professor of Law
Wayne State University Law School
Detroit, Mich.

Edward B. McConnell
Administrative Director of the Courts
Trenton, N.J.

Tim Murphy
Judge, Superior Court,
District of Columbia

Frank A. Orlando
Presiding Judge, Juvenile Court
of Broward County,
Fort Lauderdale, Fla.

G. Nicholas Pijoan
Director, Division of Criminal Justice
Denver, Colo.

Donald E. Santarelli
Associate Deputy Attorney General
Department of Justice, Washington, D.C.

William M. Slaughter
Litton Industries, Inc.
Beverly Hills, Calif.

George A. Van Hoomissen
Dean, National College of District Attorneys
University of Houston, Tex.

Corrections Task Force

Chairman

Judge Joe Frazier Brown
Executive Director, Criminal Justice Council
Austin, Tex.

Fred Allenbrand
Sheriff, Johnson County
Olathe, Kans.

Norman A. Carlson
Director, U.S. Bureau of Prisons
Washington, D.C.

Hubert M. Clements
Assistant Director, South Carolina
Department of Corrections
Columbia, S.C.

Roberta Dorn
Program Specialist,
Law Enforcement Assistance Administration
Washington, D.C.

Edith Flynn
Associate Professor, University of Illinois
Urbana, Ill.

Eddie Harrison
Director, Pre-trial Intervention Project
Baltimore, Md.

Bruce Johnson
Chairman, Board of Prison Terms and Paroles
Olympia, Wash.

Lance Jones
District Attorney
Sheboygan County, Wis.

Oliver J. Keller, Jr.
Director, Division of Youth Services
Tallahassee, Fla.

George G. Killinger
Director, Institute of Contemporary Corrections
and Behavioral Sciences
Huntsville, Tex.

William G. Nagel
Director, The American Foundation, Inc.
Philadelphia, Pa.

Rita O'Grady
Director, Family Court Center
Toledo, Ohio

Sanger B. Powers
Administrator, Division of Corrections
Madison, Wis.

Peter Preiser
State Director of Probation
Albany, N.Y.

Rosemary C. Sarri
Professor, National Assessment Study of Correctional Programs for Juvenile and Youthful Offenders
Ann Arbor, Mich.

Saleem A. Shah
Chief, Center for Studies of Crime and Delinquency,
National Institute of Mental Health
Rockville, Md.

John A. Wallace
Director, Office of Probation for the
Courts of New York City
New York, N.Y.

Martha Wheeler
President-Designate, American Correctional Association
Ohio Reformatory for Women
Marysville, Ohio

Community Crime Prevention Task Force

Chairman

Jack Michie
Director, Division of Vocational Education
Lansing, Mich.

Martha Bachman
Hockessin, Del.

Ronald Brown
General Counsel, National Urban League
New York, N.Y.

Paul D'Amore
Vice President for Business & Finance, Marquette University
Milwaukee, Wis.

Adrian G. Duplantier
State Senator, Orleans Parish
New Orleans, La.

Carl V. Goodin
Chief of Police, Cincinnati, Ohio

Mamie Harvey
Youth Services Administration
New York, N.Y.

Richard A. Hernandez
Los Angeles, Calif.

Gary Hill
U.S. Jaycees, Lincoln, Nebr.

Eugene Kelley
Security Manager, Bendix Corporation
Ann Arbor, Mich.

Oliver Lofton
President, Priorities Investment Corporation
Newark, N.J.

Henry Mascarello
Executive Director, Massachusetts Correctional Association
Boston, Mass.

Harry L. McFarlane
Manager of Security, J.C. Penney Company, Inc.
New York, N.Y.

Dorothy Miller
President, Scientific Analysis Corporation
San Francisco, Calif.

Arthur Mutter
Director, Community Child Psychiatric Services
Newton Center, Mass.

Earl Pippen
Executive Director, Alabama Consumer Finance Association
Montgomery, Ala.

Arnold Rosenfeld
Executive Director, Governor's Committee on
Law Enforcement and Administration of Justice
Boston, Mass.

Ivan Scheier
National Information Center on Volunteers in Courts
Boulder, Colo.

Paul Slater
National Association of Manufacturers
New York, N.Y.

Stanley B. Thomas
Deputy Assistant Secretary for Youth and Student Affairs
Department of Health, Education, and Welfare
Washington, D.C.

Ruby Yaryan
Staff Director, Interdepartmental Council to Coordinate All Federal Juvenile Delinquency Programs
Law Enforcement Assistance Administration
Washington, D.C.

Civil Disorders Advisory Task Force

Chairman

Jerry V. Wilson
Chief, Metropolitan Police Department
Washington, D.C.

George Beck
Deputy Chief
Los Angeles Police Department

Herbert R. Cain, Jr.
Judge, Court of Common Pleas
Philadelphia, Pa.

Gerald M. Caplan
Professor, College of Law, Arizona State University
Tempe, Ariz.

Thomas Gadsden
Civil Rights Division, Department of Justice
Washington, D.C.

Edward A. Hailes
Executive Director, Opportunities Industrialization Center
Washington, D.C.

Maynard H. Jackson
Vice Mayor
Atlanta, Ga.

Wayne A. Kranig
Chief, Law Enforcement Division
California Office of Emergency Services
Sacramento, Calif.

Robert E. Levitt
Majority Floor Leader, House of Representatives
Canton, Ohio

Norval Morris
Director, Center for Studies in Criminal Justice
School of Law
University of Chicago
Chicago, Ill.

Eugene J. Quindlen
Assistant Director for Government Preparedness
Executive Office of the President
Washington, D.C.

William A. Rusher
Publisher, National Review
New York, N.Y.

Community Involvement Advisory Task Force

Chairman

George B. Peters
President, Aurora Metal Company
Aurora, Ill.

Victor Henderson Ashe II
Knoxville, Tenn.

Sidney H. Cates III
Deputy Chief for Administration, Department of Police
New Orleans, La.

Patricia Costello
Northshore Youth Counselling Service
Milwaukee, Wis.

Sarah Jane Cunningham
Attorney, Cunningham and Clark
McCook, Nebr.

Ephram Gomberg
Executive Vice President, Citizens Crime Commission
Philadelphia, Pa.

Benjamin F. Holman
Director, Community Relations Service, Department of Justice
Washington, D.C.

Wayne Hopkins
Chamber of Commerce of the United States
Washington, D.C.

Kenneth B. Hoyt
Director, Specialty Oriented Student Research Program
University of Maryland
College Park, Md.

Steve E. Littlejohn
Harvard College
Cambridge, Mass.

Margaret Moore Post
Indianapolis News
Indianapolis, Ind.

Gary Robinson
Assistant Secretary, Executive Office of Human Services
Boston, Mass.

Edward J. Stack
Sheriff, Broward County
Fort Lauderdale, Fla.

William H. Wilcox
Secretary, Department of Community Affairs
Harrisburg, Pa.

Drug Abuse Advisory Task Force

Chairman

Sterling Johnson
Executive Director, New York City Civil Complaint Review Board
New York, N.Y.

Kenneth Biehn
Assistant District Attorney, Bucks County
Quakertown, Pa.

V. C. Chasten
Daly City, Calif.

Judianne Densen-Gerber
Executive Director, Odyssey House
New York, N.Y.

Jeffrey Donfeld
Assistant Director, Special Action Office for Drug Abuse
Washington, D.C.

Robert L. Dupont
Director, Narcotics Treatment Administration
District of Columbia

Allan Gillies
Administrative Assistant, Eli Lilly and Company
Indianapolis, Ind.

Frank Lloyd
Director, Medical Services, Methodist Hospital
Indianapolis, Ind.

Bruce Martin
Project Director, Regional Institute for Corrections Administrative Study
Boulder, Colo.

Bernard Moldow
Judge, New York City Criminal Court
New York, N.Y.

William M. Tendy
Assistant Director, New York Organized Crime Task Force
White Plains, N.Y.

W. Elwyn Turner
Director of Public Health, County of Santa Clara
San Jose, Calif.

J. Thomas Ungerleider
Assistant Professor of Psychiatry, UCLA
Los Angeles, Calif.

Yaras M. Wochok
Assistant District Attorney
Philadelphia, Pa.

Education, Training, and Manpower Development Advisory Task Force

Chairman

Lee P. Brown
Director of the Law Enforcement Programs
Portland State University
Portland, Oreg.

Morris W. H. Collins, Jr.
Director, Institute of Government, University of Georgia
Athens, Ga.

Jay Edelson
Social Science Research Analyst, U.S. Department of Labor
Washington, D.C.

Donald E. Fish
Bureau Chief, Department of Community Affairs
Police Standards Board
Tallahassee, Fla.

Ernest Friesen
Executive Director, Institute for Court Management
University of Denver Law Center
Denver, Colo.

John B. Hotis
Inspector, FBI Academy
Quantico, Va.

John Irving
Dean, Law School, Seton Hall University
Newark, N.J.

Conrad F. Joyner
College of Liberal Arts, Dept. of Government
University of Arizona
Tucson, Ariz.

Charles V. Matthews
Director, Center for the Study of Crime, Delinquency and Corrections, Southern Illinois University
Carbondale, Ill.

Frederick Miller
Executive Director, Opportunity Industrialization Center Institute
Philadelphia, Pa.

Gordon Misner
Director, Administration of Justice Program
University of Missouri
St. Louis, Mo.

Richard A. Myren
Dean, School of Criminal Justice
State University of New York
Albany, N.Y.

James P. Quinn
Indianapolis, Ind.

Alfred F. Smode
Executive Scientist, Dunlap and Associates, Inc.
Darien, Conn.

Information Systems and Statistics Advisory Task Force

Chairman

Colonel John R. Plants
Director, Michigan State Police
East Lansing, Mich.

C. J. Beddome
Assistant Chief, Administrative Division
Arizona Department of Public Safety
Phoenix, Ariz.

Gerald B. Fox
City Manager
Wichita Falls, Tex.

George Hall
National Institute of Law Enforcement and Criminal Justice, LEAA
Washington, D.C.

Scott W. Hovey, Jr.
Director, Bureau of Services
St. Louis Police Department
St. Louis, Mo.

Joan E. Jacoby
National Center for Prosecution Management
Washington, D.C.

James A. McCafferty
Assistant Chief, Division of Information Systems
Administrative Office of the U.S. Courts
Washington, D.C.

Vincent O'Leary
Professor of Criminal Justice
State University of New York
Albany, N.Y.

Larry P. Polansky
Chief Deputy Court Administrator, Court of Common Pleas
Philadelphia, Pa.

Donald R. Roderick
Inspector, Uniform Crime Reports
National Crime Information Center, FBI
Washington, D.C.

Juvenile Delinquency Advisory Task Force

Chairman

Wilfred W. Nuernberger
Judge, Separate Juvenile Court
Lincoln, Nebr.

Gary Abrecht
Washington, D.C.

Mary Ellen Abrecht
Washington, D.C.

Robert C. Arneson
Director, Law Enforcement Planning Commission
Boise, Idaho

Allen F. Breed
Director, Department of Youth Authority
State of California
Sacramento, Calif.

William S. Fort
Judge, Court of Appeals
Salem, Oreg.

Sanford Fox
Director, Center for Corrections and the Law
Boston College Law School
Boston, Mass.

Robert J. Gemignani
Commissioner, Youth Development and Delinquency Prevention Administration, Department of Health, Education & Welfare
Washington, D.C.

Thomas N. Gilmore
Senior Research Analyst, Wharton School of Finance and Commerce, University of Pennsylvania
Philadelphia, Pa.

William H. Hansen
Chief of Police
Sioux City, Iowa

Milton Luger
Director, Division for Youth
New York State Youth Commission
Albany, N.Y.

James E. Miller
Director, Juvenile Delinquency
Indiana Criminal Justice Planning Agency
Indianapolis, Ind.

Wayne R. Mucci
Director, Institute and Facilities Specialities for Children
New York, N.Y.

Paul Nejelski
Project Director, Juvenile Justice Standards Project
Institute of Judicial Administration
New York, N.Y.

Margaret K. Rosenheim
Professor, School of Social Service Administration
University of Chicago
Chicago, Ill.

Stanton L. Young
Oklahoma City, Okla.

Organized Crime Advisory Task Force

Chairman

William L. Reed
Commissioner, Florida Department of Law Enforcement
Tallahassee, Fla.

Annelise Anderson
Palo Alto, Calif.

G. Robert Blakey
Chief Counsel, Subcommittee on Criminal Law and Procedure
Washington, D.C.

Harry Lee Hudspeth
Attorney at Law
El Paso, Tex.

Wallace H. Johnson
Special Assistant to the President, The White House
Washington, D.C.

John F. Kehoe, Jr.
Commissioner of Public Safety
Boston, Mass.

Aaron M. Kohn
Managing Director, Metropolitan Crime Commission
New Orleans, La.

William Lucas
Sheriff, Wayne County
Detroit, Mich.

John J. McCoy
Chief Deputy, Riverside Sheriff's Department
Riverside, Calif.

William J. Scott
Attorney General of Illinois
Springfield, Ill.

Research and Development Advisory Task Force

Chairman

Peter J. McQuillan
Judge, New York City Criminal Court
Flushing, N.Y.

Peter B. Bensinger
Director, Department of Corrections
Springfield, Ill.

Milton U. Clauser
Provost, Naval Postgraduate School
Monterey, Calif.

Phillip Lacey
Houston, Tex.

Peter P. Lejins
Director, Institute of Criminal Justice and Criminology
University of Maryland
College Park, Md.

Evelyn Murphy
Consultant on Social and Economic Policies
Programs and Research Methods
Watertown, Mass.

Joseph D. Nicol
University of Illinois
Chicago, Ill.

Dallin H. Oaks
President, Brigham Young University
Provo, Utah

Frank J. Remington
Professor, School of Law
University of Wisconsin
Madison, Wis.

Henry Ruth
Director, Mayor Lindsay's Criminal Justice Coordinating Council
New York, N.Y.

Bernard A. Schreiver
Schreiver & McKee Associates, Inc.
Washington, D.C.

Daniel L. Skoler
Staff Director, Commission on Correctional Facilities and Services, American Bar Association
Washington, D.C.

Paul M. Whisenand
Professor, Department of Criminology
California State College
Long Beach, Calif.

Index

Footnote References to Standards and Recommendations, and Bibliography have not been indexed.

D

E

F

G

H

I

J

K

L

Q

R

S

T

U

V

W

PHOTOS

Page i

Visitors leaving a correctional facility.

Photo courtesy of South Carolina Department of Corrections.

Page iv

Inmates at work on a prison farm.

Photo by Danny Lyon, Magnum Photos, Inc.

Page vi

One inmate's plea for improved correctional facilities.

Photo courtesy of South Carolina Department of Corrections.

Page viii

Offender rehabilitation program.

Photo courtesy of U.S. Department of Labor.

Page xii

Man testing an auto on job found for him by a volunteer organization.

Photo courtesy of Job Therapy, Inc.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1973 O—494–672

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402—Price paper cover—$6.30 domestic postpaid, or $5.75 GPO Bookstore

END