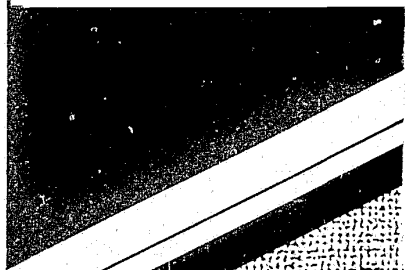


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## HOW STATE AND LOCAL GOVERNMENTS CAN ECONOMIZE BY IMPLEMENTING CRIMINAL JUSTICE STANDARDS



W. Paul Bishop  
Washington, D.C.

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## PREFACE

In a period in which state and local governments are being squeezed for each possible dollar, the prospect of increasing the efficiency of the criminal justice system while simultaneously reducing the overall cost is a tantalizing one indeed. Those who have been engaged in long-range criminal justice planning know that this can indeed be a reality, and it is toward this objective that this publication is being offered for consideration.

Experience has shown, however, that sometimes the implementation of standards and goals can increase certain systemic costs, but overall, it seems clear that system-wide implementation of standards and goals can lead to substantial savings.

This brochure, written by W. Paul Bishop, Esquire, of Studies in Justice, Inc., a Washington-based research organization, and Penelope D. Clute, Esquire, of the Michigan Department of Corrections, should be used in conjunction with another brochure in this series entitled *How to Implement Standards for Criminal Justice*, which suggests general techniques for implementation.

The other brochures in this series of eight works respectively deal with implementation of police standards through police-bar cooperation, pretrial release standards, speedy trial standards, and corrections standards. Additional brochures suggest story ideas for journalists based upon the American Bar Association and National Advisory Commission Standards and Goals and ways in which civic and religious leaders can work for criminal justice improvement. Copies of each of these are available at no charge from the ABA Section of Criminal Justice, 1800 M Street, N.W. Washington, D.C. 20036.

## INTRODUCTION

Today, local and state government budgets are straining under the demands for more resources from all facets of the criminal justice system. With local governments spending almost three times as much for criminal justice activities as do federal and state governments combined, reforms and improvements at the local level will have the most dramatic impact on criminal justice costs. Only through the efficient utilization of available financial, physical and human resources will the criminal justice system promote effective law enforcement.

During the past decade, a serious attempt has been made to formulate national standards and goals for improvement of the criminal justice system. In 1968, the American Bar Association adopted the first of 17 volumes of *Standards Relating to the Administration of Criminal Justice*, with the final volume approved in 1973. These volumes identify and analyze the various components and stages within the criminal justice system. Although the volumes reflect the multi-faceted nature of the criminal justice system, the ABA Standards continually stress the importance of integrating and coordinating the goals and activities of the entire system.

The ABA Section of Criminal Justice has had primary responsibility since 1968 for bringing about the implementation of 16 of these volumes. The 17th volume—fair trial and free press due to the special nature of these Standards—is being implemented by the Legal Advisory Committee on Fair Trial and Free Press of the ABA Standing Committee on Association Communications. The Criminal Justice Section has coordinated its implementation efforts through a special committee headed by U.S. Supreme Court Justice Tom C. Clark (Retired), and the Section has been working closely with the ABA's Special Committee for the Administration of Criminal Justice, charged with monitoring and updating these standards and developing new standards as required.

Recently, the ABA has adopted two of the three planned volumes prepared by the ABA Commission on Standards of Judicial Administration. These ABA Standards examine court organization and trial courts with a third volume on appellate courts now being drafted. Together with the *ABA Standards Relating to the Administration of Criminal Justice*, the court organization and trial court standards provide a series of constructive guidelines for improving criminal justice. The latter standards, however, do not restrict themselves to criminal justice and address many areas where improvement

can be made in civil procedures. The ABA Judicial Administration Division has created a National Committee on Implementation of Standards for Court Organization, chaired by Justice Winslow Christian of the California Court of Appeals, San Francisco, California.

As approved by the ABA's policy-making House of Delegates in February, 1976, the trial court standards differ in these respects from the ABA Standards for Criminal Justice:

- a jury trial must be held in any criminal case in which the accused can be punished by confinement in jail or prison;
- juries of 12 persons; and
- unanimous verdicts are required.

The House of Delegates directed that the ABA Standards for Criminal Justice be modified to agree fully with the trial court standards, and the matter was referred to the ABA Special Committee on the Administration of Criminal Justice for action.

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals published its recommendations. Approaching the system from a different perspective, the NAC issued six volumes, including reports on *Police, Courts, and Corrections*. These volumes interrelate with the ABA Standards by analyzing certain functions not covered in the ABA Standards. Conversely, the ABA standards examine subjects omitted in the NAC Standards and Goals.

The ABA Criminal Justice Section received a grant from the Law Enforcement Assistance Administration in 1975 for the "nationwide implementation of standards and goals." This brochure, one of a series of "How to Do It" brochures, is prepared as a part of a criminal justice planning and budget program under this grant. The brochure is an attempt to determine the magnitude of financial cost implications—both in savings and expenditures—of implementing criminal justice standards. Examples are provided to illustrate successfully implemented programs which have resulted in improvement of the criminal justice system or costs savings. However, each jurisdiction must examine local existing procedures to determine the potential impact of any specific proposed reform. Each of the American Bar Association's 17 volumes of Standards Relating to Criminal Justice is analyzed, as are the ABA volumes on court organization and trial courts, due to their interrelationship with the criminal justice standards, and the reports on courts, corrections, and police of the National Advisory Commission on Criminal Justice Standards and Goals—879 standards in all.

The following discussions and tables illustrate two aspects of implementation: (1) the action required and (2) the cost saved or incurred. The first determination is one of whether there are legal obstacles to immediate implementation; generally, this is a question of whether authority must be granted by enactment of legislation or promulgation of court rule. The second analysis is whether there are financial cost implications. The tables lay out this dual approach utilizing the following categories:

(1) **General Principle—No Cost.** A standard in this group calls for neither organizational change nor a grant of new authority. It merely provides general principles or ethical guidelines for everyday conduct. Standards which describe existing procedure or constitutional requirements, and therefore entail no new obligations, are also included in this classification.

(2) **Change in Practice—Possible Short-Term Costs.** The recommendation of a standard in this group can be implemented by a change in the practice, organization or office structure of the agency dealt with in the standard (e.g. police department, prosecutor's office, court). This change will likely involve a redistribution of resources or re-evaluation of priorities and thus will not require a permanent influx of new funds or staff. However, short-term funding or staff increase may be necessary during the transition period until the new practice is functioning smoothly.

(3) **Legislation or Court Rule—Possible Short-Term Costs.** Standards in the third group require a formal grant of authority by enactment of a statute or promulgation of a court rule to make the recommended changes. No long term funding is involved, but, as with group (2), an initial outlay of monies may be necessary to effect the change-over.

(4) **New Component—Long Term Costs.** The Standards in this category entail the creation of new training or research capabilities, physical plants, ongoing supervisory commissions or other new components. They cannot be implemented without specific, ongoing outlays of money. However, since it is primarily personnel-related costs that are involved, once the funding is obtained implementation may proceed without the necessity of formal action.

Many standards contain multiple recommendations fitting into more than one category. If any part of a particular standard demanded more formal action or greater funding than the rest, the entire standard was designated at the more formal or costly level.

Two kinds of overall costs are also involved in the implementation effort which are impossible to prorate among the standards. The classification guide provided in this brochure will not be a useful tool unless the planners and implementers know how their state measures up to the standards. The ABA Section of Criminal Justice from the outset of its nationwide implementation program in 1968 has urged each state to do a comparative analysis of each of the standards with state laws, rules and legal practices. These initial comparative analyses have been made or are underway in each of the 50 states. Each state is also being encouraged to update its comparative analysis with other standards and guidelines. These comparative analyses will go far in determining these costs, but further data-gathering and research may be necessary.

Thus, before a jurisdiction can successfully use this brochure, a necessary first step is a detailed assessment of the particular criminal justice system's present status and capability of present resources. Once completed, a decision-maker will know whether a classification presented in this pamphlet is appropriate to his or her jurisdiction. The closer the existing operation is to the standard, the less formal and costly the action required to fully implement the recommendations. For example, a state correctional system which provides few of the rehabilitative services discussed in NAC corrections would need considerable appropriations to come up to par. Thus, for it, the standards would be categorized as a "New Component." However, for a state that has such programs in operation, the standard constitutes a statement of "General Principle."

The standards examine the criminal justice system from the perspective that, although comprised of many subsystems, input into any one facet of the system will have an impact throughout. If, for example, the police reduce the number of arrests by diverting more cases to available social service agencies, these agencies must be provided sufficient resources to handle the increased caseload. To offset this expense, pre-arrest diversion saves time and money for the police, judicial authorities and trial counsel. However, to realize this economy, the legislature and municipal officials must promulgate statutory guidelines and the police must be trained to properly exercise their discretion. The standards, written to diminish fragmentation of the existing subsystems, have demonstrated during the eight years since the first standards were adopted, that their implementation provides fairer justice to the accused, with concomitant benefit to the public through

the more efficient and effective administration of the criminal justice system.

The report highlights the ABA Standards and NAC Standards and Goals as a resource for critical analysis of the strengths and weaknesses within state and local criminal justice systems. Each of the standards outlined provides insight into the potential for economic gains through their implementation. With the standards as a guide, state and local governments can achieve more effective law enforcement with less overall expense while protecting the rights of those accused of wrongdoing.

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## THE AMERICAN BAR ASSOCIATION CRIMINAL JUSTICE STANDARDS

The *American Bar Association Standards Relating to the Administration of Criminal Justice* provide a comprehensive, integrated approach to reform and improvement of the total criminal justice system. Mr. Justice Clark has written,

In truth, the ABA Standards in most instances represent a distillation and restatement of what is already the best practice and procedure in many jurisdictions. They are a blend of clarification, simplification, unification, renovation and modernization of the whole system. They are suggested guidelines to be applied to the administration of criminal justice in fifty states and the federal jurisdiction.<sup>1</sup>

With the standards as a basis for discussion, criminal justice planners, legislators, local decision-makers, budget officials, the bar and the judiciary can better examine the organizations, services and practices existing within their jurisdiction.

### **The Urban Police Function\***

For most of society, the only exposure to the criminal justice system is through daily contact with the police. While public support is crucial to the success of providing adequate law enforcement within the framework of a democratic society, the community must be educated to the fact that the police cannot provide the answer to all of society's ills. Legislators, city councils and county commissioners must determine priorities for police activity. Once these priorities are developed, the police must be given the support of the other components of the criminal justice system and social services agencies. The availability of, and close cooperation with, these organizations allows the police to develop and implement procedures designed to avoid overreliance on the criminal justice system. While the police function should be examined in light of overall government services, the ABA Standards also stress the importance of developing an effective police organization, with qualified and well trained patrolmen, competent administrators and adequate resources.

Against the background of public support and police cooperation with other agencies, the ABA Standards recognize that police must be aware of the value of flexibility and experimentation with alternatives which reduce overreliance on the criminal law.<sup>1</sup> When the police are properly trained in techniques such as conflict resolution



and have a working knowledge of agencies available for referral,<sup>2</sup> not only will their decisions produce better results but there will also be a corresponding savings of police manpower and operating expenses. In addition to the need for greater use of diversion, the police should not be expected to enforce laws for which adequate enforcement resources do not exist.<sup>3</sup> For example, the police spend untold sums of money and man hours arresting, processing and housing chronic alcoholics. This duty drains substantial resources from other police responsibilities.<sup>4</sup> If the police were able to divert these offenders into treatment facilities, both the police and citizens would benefit.

Of the 46 ABA Standards in this volume, only six necessitate legislation or court rule and only four involve ongoing expenditures of money due to new components such as governmental tort liability,<sup>5</sup> recruitment of college graduates,<sup>6</sup> research capability,<sup>7</sup> and an in-house legal advisor.<sup>8</sup> The remaining standards are largely descriptions of the police role in our society, the broad discretion involved and the need to recognize the complexity of the police task.

While the implementation of the ABA Standards would entail some capital expenditure, the results would be a more effective and cost efficient police force. In summary, they stress the need for public understanding of police capabilities and responsibilities, the importance of the police working with other government and private agencies and providing the police with adequate resources for effective recruitment, training, administration and organization.<sup>9</sup>

Urban Police Function	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1	x			
1.2	x			
1.3	x			
2.1	x			
2.2	x			
2.3		x		
2.4			x	
2.5		x		
3.1		x		
3.2	x			
3.3			x	
3.4			x	
4.1	x			
4.2	x			
4.3		x		
4.4			x	
4.5	x			
5.1	x			
5.2		x		
5.3	x			
5.4			x	
5.5				x
6.1			x	

## How to Economize

Urban Police Function	General Principle	Change in Practice	Statute or Court Rule	New Component
6.2		x		
6.3	x			
7.1	x			
7.2	x			
7.3		x		
7.4	x			
7.5				x
7.6	x			
7.7	x			
7.8		x		
7.9	x			
7.10		x		
7.11				x
7.12				x
7.13	x			
7.14	x			
8.1	x			
9.1	x			
9.2	x			
9.3	x			
9.4	x			
10.1	x			
10.2	x			
TOTALS	27	9	6	4

## Electronic Surveillance

With the enactment of the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351), the federal government established laws regulating the scope of permissible electronic surveillance. The ABA Standards, published at the same time as the enactment of federal legislation in 1968, provide an overview of the important factors to consider in this area of law enforcement.

Local governments should insure that law enforcement agencies strictly adhere to applicable federal and state statutes governing electronic surveillance. This area of responsibility is one in which in-house police legal counsel, recommended in the *ABA Standards on The Urban Police Function*, can provide expert legal advice. Should electronic surveillance be improperly or illegally conducted, the results can prove costly to the government entity with oversight responsibility. The expense of gathering the information will be wasted since the information will not be admissible in any official proceeding.<sup>1</sup> More importantly, in terms of cost, federal legislation provides criminal and civil sanctions to be applied against persons or government agencies engaged in prohibited conduct.

Electronic Surveillance	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1			x	
2.1			x	
2.2			x	
2.3			x	

## Through Standards

<i>Electronic Surveillance</i>	<i>General Principle</i>	<i>Change in Practice</i>	<i>Statute or Court Rule</i>	<i>New Component</i>
3.1			x	
3.2			x	
4.1			x	
4.2		x		
5.1			x	
5.2			x	
5.3			x	
5.4			x	
5.5			x	
5.6			x	
5.7			x	
5.8			x	
5.9			x	
5.10			x	
5.11			x	
5.12			x	
5.13			x	
5.14			x	
5.15			x	
5.16			x	
5.17		x		
5.18		x		
TOTALS	0	3	23	0

### The Prosecution Function

In all phases of law enforcement and the criminal justice system, the prosecutor must carefully balance the power of his office among the competing demands for more successful prosecutions with resulting incarceration, the Constitutional rights accorded the individual defendant and the financial resources available to the community to support its criminal justice system. The prosecutor has wide discretion and his decisions can influence the degree of public respect and support given, not only to his office, but also to the police, the courts, and the defense bar.

Although the prosecutor may have no role in introducing a defendant into the criminal justice system, he is the dominant influence in the disposition of a case following arrest.<sup>1</sup> The prompt disposition of all charges should be a major concern for a prosecutor. Just as the ABA Standards encourage the police to utilize alternatives to the criminal justice system, they recommend that the prosecutor also explore the availability of non-criminal disposition of charges. They emphasize that particularly in the case of a first offender, the nature of the case may merit non-criminal disposition of the case.<sup>2</sup> In cases involving non-violent crimes, the prosecutor might seek a program of restitution in which the defendant agrees to make good the loss he caused. In determining the best course to pursue, the prosecutor should be familiar with and employ the services of social service agencies in the evaluation of cases for diversion.<sup>3</sup> With good communication

among the police, the prosecutor's office and social service agencies, a substantial number of cases can be diverted from the criminal justice system.

A formal, organized, well-run diversion program benefits society and the defendant and successful programs reduce the strain on all stages of the criminal justice system. In Atlanta, in fiscal year 1974, an estimated \$825,000 in criminal justice costs were averted through the use of diversion programs.<sup>4</sup> The offender who completes the diversion program also benefits. In most cases, the charges are dropped and involvement with the criminal justice process is minimized. Diversion programs frequently require the client to enroll in a drug abuse rehabilitation, vocational or employment program. These programs can offer opportunities for the participant to develop the skills necessary to avoid future criminal conduct.

A thorough cost analysis of pretrial diversion is available from the Correctional Economics Center of the American Bar Association.<sup>5</sup>

The prosecutor can also develop innovative programs to diminish the caseload demands on the criminal courts. In Columbus, Ohio, the Columbus Night Prosecution Program provides for out of court settlement of minor criminal cases through mediation. Trained law students serve as mediators in cases which have been screened by local prosecutors. In a one year period, over 3,600 cases were diverted from the criminal justice system at a savings of approximately \$70 per case. Only 84 criminal complaints were filed during the period. The program saves the taxpayers money, reduces the workload of the prosecutor and the court, eliminates the stigma of an arrest record and provides effective justice to the parties involved.<sup>6</sup>

Like *The Urban Police Function*, these ABA Standards are primarily statements of general principle, describing the prosecutorial role and presenting ethical guidelines. Only three standards entail ongoing funding of new components. These are establishment of a state council to coordinate the prosecution policies of local offices and the creation of a central pool of supporting resources and manpower<sup>7</sup> funding of special assistants and professional investigative staff<sup>8</sup> and training programs.<sup>9</sup>

<i>Prosecution Function</i>	<i>General Principle</i>	<i>Change in Practice</i>	<i>Statute or Court Rule</i>	<i>New Component</i>
1.1				x
1.2	x			
1.3	x			

Through Standards

Prosecution Function	General Principle	Change in Practice	Statute or Court Rule	New Component
1.4	x			
2.1			x	
2.2				x
2.3	x			
2.4				x
2.5		x		
2.6				x
2.7		x		
2.8	x			
2.9	x			
2.10			x	
3.1	x			
3.2	x			
3.3	x			
3.4			x	
3.5	x			
3.6	x			
3.7	x			
3.8	x			
3.9	x			
3.10	x			
3.11	x			
4.1		x		
4.2	x			
4.3	x			
4.4		x		
5.1			x	
5.2	x			
5.3	x			
5.4	x			
5.5	x			
5.6	x			
5.7	x			
5.8	x			
5.9	x			
5.10	x			
6.1	x			
6.2		x		
TOTAL	28	4	5	3

### The Defense Function

The defense counsel, as professional advocate for the defendant, must maintain standards of professional conduct while providing the defendant competent and effective counsel. In this capacity the defense counsel should seek prompt disposition of the charges against his client, avoid unnecessary delays,<sup>1</sup> and protect the rights of the accused.<sup>2</sup> Through such actions, including compliance with discovery procedures,<sup>3</sup> the defense counsel assures the defendant that he is being fairly and competently represented and, at the same time, expedites disposition of the charges.

The defense counsel, like the prosecutor, should be aware of the possibility of diversion from the criminal process.<sup>4</sup> The potential for rehabilitation of the client is enhanced through the use of diversion and the state is able to save the considerable financial strain necessitated by detention, prosecution and possible incarceration.

The prudent recommendation by the defense counsel to his client that plea discussions be initiated can be mutu-

ally beneficial to the defendant and the community. When the defense counsel determines after a complete investigation that a conviction is probable, he should so advise the client and suggest plea discussions as an alternative to trial.<sup>5</sup> A disposition agreed upon by the client, defense counsel and prosecutor is far less time consuming and costly than a trial.

The defense counsel should be familiar with sentencing alternatives available to the court<sup>6</sup> and should present to the court information which will assist in securing a proper disposition favorable to the accused.<sup>7</sup> The defense counsel should be prepared when appropriate to suggest a program of rehabilitation which will place the client in a productive capacity and avoid incarceration.<sup>8</sup>

Again, this volume is almost wholly statements of general principal providing guidance in the daily professional conduct of the defense attorney. None involves long-term funding.

Defense Function	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1	x			
1.2	x			
1.3	x			
1.4				x
1.5	x			
1.6	x			
2.1				x
2.2		x		
2.3				x
2.4	x			
3.1				x
3.2	x			
3.3	x			
3.4	x			
3.5	x			
3.6	x			
3.7	x			
3.8	x			
3.9	x			
4.1	x			
4.2	x			
4.3	x			
4.4	x			
4.5	x			
5.1	x			
5.2	x			
5.3	x			
6.1	x			
6.2	x			
7.1	x			
7.2	x			
7.3	x			
7.4	x			
7.5	x			
7.6	x			
7.7	x			
7.8	x			
7.9	x			
7.10	x			
8.1	x			
8.2	x			
8.3	x			

Through Standards

Defense Function	General Principle	Change in Practice	Statute or Court Rule	New Component
8.4	x			
8.5	x			
8.6	x			
TOTALS	40	1	4	0

### Providing Defense Services

The need for competent defense services to be provided is well established.<sup>1</sup> The ABA Standards recognize that local needs will determine whether these services should be provided through assigned counsel or full-time public defender offices.<sup>2</sup> Regardless of the system employed, the defense service will be far more effective if counsel is provided for an accused as soon as it is feasible after he is taken into custody, when he appears before a committing magistrate or when he is formally charged, whichever occurs earliest.<sup>3</sup> The accused should be informed of his right to the assistance of an attorney in a manner which is easily understood. At the same time, the accused should be provided access by telephone to communicate with someone capable of providing counsel.<sup>4</sup> If the local police and prosecutors recognize and respect the accused's rights at this early stage of his involvement in the criminal justice process, expensive and time consuming post-conviction litigation can be avoided at a later date.

An effective system for providing competent defense services derives its value not from the dollars involved, but from the value to the public at large of a judicial system which operates fairly for all and the value of justice to every accused individual.<sup>5</sup>

This volume specifically addresses the two common methods of providing defense services: assigned counsel systems and defender systems. Guidelines are provided for each of the systems as well as for *when* counsel should be provided (types and stage of proceedings and eligibility of defendant). Although nine of the standards necessitate long-term funding, all pertain directly to government compensation of counsel for indigent accused, six<sup>6</sup> present factors tending to increase the cost of appointed counsel; and the other three recommend support services.<sup>7</sup>

Providing Defense Services	General Principle	Change in Practice	Statute or Court Rule	New Component
.1	x			
1.2	x			
1.3			x	
1.4		x		
1.5				x
2.1				x

Providing Defense Services	General Principle	Change in Practice	Statute or Court Rule	New Component
2.2	x			
2.3		x		
2.4				x
3.1	x			
3.2		x		
3.3				x
4.1	x			
4.2				x
5.1				x
5.2				x
5.3	x			
6.1				x
6.2			x	
6.3			x	
6.4				x
7.1			x	
7.2			x	
7.3			x	
TOTALS	6	3	6	9

### The Function of the Trial Judge

The trial judge, as a neutral party, must use his authority to assure the integrity of the criminal justice process. The ABA Standards stress the need for the trial judge to be provided adequate facilities, resources and staff to assure the prompt and fair administration of justice.<sup>1</sup>

The trial court should cooperate with the legislative and executive branches to insure adequate judicial manpower, supporting staff, physical facilities and operating budget.<sup>2</sup> However, if cooperation is sought and not obtained, the trial court should exercise the inherent power of the judiciary to compel other agencies of government to provide for staff facilities and funds.<sup>3</sup> This ABA Standard does not exist in a vacuum. In *Commonwealth ex rel. Carroll v. Tate*, Chief Justice Bell, writing for the Supreme Court of Pennsylvania, states, "... the Judiciary *must* possess the inherent power to determine and compel payment of those sums of money which are reasonable and necessary to carry out its mandated responsibilities, and its powers and duties to administer Justice, if it is to be in reality a co-equal, independent Branch of our Government."<sup>4</sup> This broad power is modified later in the opinion to the extent that the wants and needs of the court must be "reasonably necessary."<sup>5</sup>

Given the proper resources, the trial judge is in a unique position to oversee the effective use of judicial time and he should avoid delays, continuances and extended recesses, except for good cause.<sup>6</sup>

In the area of pretrial responsibilities, the trial judge should be aware of the status of those persons held in jail awaiting formal charge, trial or sentence.<sup>7</sup> A close monitoring of the jail population will minimize hardship on the accused and will reduce the costs incurred by unnecessary incarceration.

### Through Standards

The trial judge should establish efficient procedures for dealing with pretrial matters including encouraging broad informal discovery and the creation of omnibus proceedings.<sup>8</sup>

The trial judge should see that the criminal trial calendar is managed in a manner that insures that all cases are listed on the calendar and are disposed of as promptly as possible.<sup>9</sup> In doing so, the ABA Standards recommend that preference be given to criminal cases over civil cases, and to the trial of defendants in custody or defendants whose pretrial liberty presents unusual risks.<sup>10</sup>

Like the volumes pertaining to the other "actors" in the criminal justice system, almost all of these ABA Standards are general principles. They describe the role of the trial judge and provide guidelines for judicial conduct. Although categorized as General Principles, many of the standards state duties of a judge, and may entail Change in Practice in a court not currently meeting these obligations.

The ABA Standards relating to plea discussions<sup>11</sup> and acceptance of guilty pleas<sup>12</sup> could, of course, be met by change in practice; however, they have been classified as requiring court rule to insure consistency between cases and among judges.

Two of the standards would likely entail long-term funding with regard to court facilities and supporting staff.<sup>13</sup> A third calls for the establishment of a commission for disciplining judges.<sup>14</sup>

Providing Defense Services	General Principle	Change in Practice	Statute or Court Rule	New Component
5.3	x			
5.4	x			
5.5	x			
5.6	x			
5.7	x			
5.8	x			
5.9	x			
5.10	x			
5.11	x			
5.12	x			
5.13	x			
6.1	x			
6.2	x			
6.3	x			
6.4	x			
6.5	x			
6.6	x			
6.7	x			
6.8	x			
6.9	x			
6.10	x			
6.11	x			
7.1	x			
7.2	x			
7.3	x			
7.4	x			
7.5	x			
8.1			x	
8.2	x			
9.1				x
9.2			x	
TOTALS	46	2	6	3

### Fair Trial and Free Press

The ABA Standards recognize the potential conflict between the First and Sixth Amendments. The need to guarantee free speech and freedom of the press, however, must be balanced against the right of the accused to a fair trial by an impartial jury. The ABA Standards place the primary responsibility for ensuring a fair trial on the legal branch and the agencies which serve and minister to it.

Without the cooperation of the press and restraint by all the parties involved, the criminal justice process will be tainted to the extent that a fair trial is impossible. Excessive publicity prior to trial may cause lengthy delays in the commencement of the trial or a change of venue requiring additional expense. Prejudicial information published during the trial may result in a mistrial or reversal if the jurors have access to the material. Finally, once the verdict is rendered, such information might adversely influence the sentence or make a new trial more difficult if one is required. Throughout the criminal justice process, the emphasis must be on the fair adjudication of the charge. A trial resulting in a mistrial or reversal due to prejudicial publicity is a waste of the taxpayers' money and an injustice to the accused.

Function of the Trial Judge	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1	x			
1.2	x			
1.3	x			
1.4	x			
1.5	x			
1.6	x			
1.7	x			
2.1	x			
2.2				x
2.3				x
2.4	x			
2.5	x			
3.1	x			
3.2		x		
3.3	x			
3.4	x			
3.5	x			
3.6			x	
3.7			x	
3.8		x		
3.9	x			
4.1			x	
4.2			x	
4.3	x			
5.1	x			
5.2	x			

This volume presents an accommodation between First Amendment right to freedom of speech and the press and a defendant's Sixth Amendment right to a fair trial. Limitations are placed on release of information regarding a pending criminal case and enforcement mechanisms provided. Recommendations are also made for the selection of a jury and the conduct of pretrial and trial proceedings to avoid possible prejudice. Almost all of the standards require legislation or court rules for their implementation.

Fair Trial Free Press	General Principle	Change In Practice	Statute or Court Rule	New Component
1.1		x		
1.2			x	
1.3			x	
2.1		x		
2.2			x	
2.3			x	
2.4				
3.1	x		x	
3.2			x	
3.3			x	
3.4			x	
3.5			x	
3.6			x	
4.1	x			
TOTALS	2	2	10	0

### Pretrial Release

The decision to support a policy of pretrial release has significant impact on public support of the entire criminal justice system. Trial judges are subject to pressure from the prosecution and public to protect society from potential further criminal acts by the accused. The non-dangerous defendant can surely be identified and released, for the harsh reality is that most jails are overcrowded, destructive environments that are costly to operate. Justice Roberts of the Supreme Court of Pennsylvania has written:

The imprisonment of an accused prior to a determination of guilt is a rather awesome thing: it costs the taxpayers tremendous sums of money; it deprives the affected individual of his most precious freedom, liberty; it deprives him of his ability to support himself and his family; it quite possibly costs him his job; it restricts his ability to participate in his own defense; it subjects him to the dehumanization of prison; it separates him from his family; and, without trial, it casts over him an aura of criminality and guilt. These deprivations are especially unjustifiable in view of the fact that many of those who are accused of crime and jailed before trial are eventually acquitted.<sup>1</sup>

In light of the reality that current bail systems are not working for the benefit of either the public or the defendant,<sup>2</sup> the ABA Standards favor the release of defendants pending determination of guilt or innocence.<sup>3</sup> The potential for abuse of this policy can be mitigated through the concerted efforts of the police, prosecution, defense bar and trial judge to develop a system of pretrial release which saves public funds and provides the defendant with an opportunity to continue his work while awaiting disposition of the charges.

The ABA Standards recommend that a system of alternative procedures to arrest<sup>4</sup> be employed to reduce the costs associated with arrest, booking, jailing and first appearance of the accused before a judicial authority. For minor offenses, the police should have the authority to issue a summons rather than an arrest warrant.<sup>5</sup>

The economic viability of a citation and summons procedure is supported in a study by the Correctional Economics Center of the American Bar Association.<sup>6</sup> The report indicates that assuming even a relatively low rate of eligibility for release and a low release rate out of those eligible, the release rates for stationhouse citation activity and field citations are estimated to be approximately 10 to 41 percent less costly, respectively, than traditional arrest when criminal justice expenditures alone are considered.<sup>7</sup> Although stationhouse citation activity allows greater control over release of decisions, higher costs are incurred by transporting, booking and holding the accused. The report concludes that a system of citations will produce the greatest savings when a broad base of eligibility for release is established, a substantial percentage of the eligible population is released, and effective screening and notification are employed to keep rates of failure to appear at a minimum.<sup>8</sup>

If an accused has been arrested, he should be taken before a judicial officer without delay.<sup>9</sup> A determination would then be made if counsel should be appointed for his appearance<sup>10</sup> at the first hearing. At the first appearance, the prosecution should encourage the release of defendants upon an order to appear on their own recognizance. To promote efficiency in the administration of justice and avoid unnecessary pretrial release inquiries, special efforts should be made to enter into stipulations which provide release.<sup>11</sup>

The ABA Standards presume that the defendant is entitled to be released in order to appear on his own recognizance.<sup>12</sup> Should the judicial officer determine that such a release is unwarranted, the least onerous condition on release should be imposed.<sup>13</sup> Suggested condi-

tions on release include: releasing the defendant into the custody of a qualified individual; placing the defendant under the supervision of a probation officer; or allowing the defendant to continue his work or his education but requiring him to return to custody at specified times.<sup>14</sup>

The decision to impose monetary bail should be made only after the determination is made that no other conditions on release will reasonably assure the defendant's appearance in court.<sup>15</sup>

The policy favoring pretrial release is not designed to coddle the criminal or encourage future illegal activity. The standards urge that special conditions of release be imposed to minimize potential wrongful acts.<sup>16</sup> Should the defendant willfully violate these conditions, the standards outline a procedure for arrest and re-examination of the release decision.<sup>17</sup>

The ABA Standards recommend that defendants in custody be tried within a time limitation that is shorter than that applicable to the defendants at liberty pending trial.<sup>18</sup>

Because the majority of these ABA Standards involve alternative methods to require appearance and criteria for their use, legislative authority is required for their implementation. The only proposal dependent upon long-term funding is that recommending a pre-first appearance inquiry to facilitate the release decision;<sup>19</sup> although no new agency need be created, additional staff would certainly be necessary to undertake the task.

In summary, an effective system of pretrial release will protect the defendant's right, protect the public and reduce the costly operation and overcrowding of local detention facilities.

Pretrial Release	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1	x			
1.2			x	
1.3			x	
1.4			x	
2.1		x		
2.2			x	
2.3			x	
2.4			x	
2.5			x	
3.1			x	
3.2			x	
3.3			x	
3.4			x	
4.1			x	
4.2		x		
4.3		x		
4.4			x	
4.5				x
5.1			x	
5.2		x		
5.3	x			
5.4			x	
5.5			x	

Pretrial Release	General Principle	Change in Practice	Statute or Court Rule	New Component
5.6		x		
4.7			x	
5.8			x	
5.9			x	
5.10			x	
5.11	x			
5.12			x	
TOTALS	3	5	21	1

### Discovery and Procedure Before Trial

The ABA Standards urge the judiciary and the trial counsel to develop procedures for more complete and open discovery procedures.<sup>1</sup> With cooperation from the trial court, the prosecution, and the defense, the greater utilization of pretrial discovery will benefit the defendant and the public. Through more efficient operation of the adjudication process, procedures prior to trial can be divided into three successive stages: (i) an informal exploratory stage initiated by counsel and conducted without court supervision; (ii) an omnibus stage supervised by the court and requiring court appearances; and (iii) a trial planning stage entailing pretrial conferences as necessary.<sup>2</sup>

The omnibus process results in improvement throughout the criminal justice system. The procedures promote an expeditious and fair determination of the charges.<sup>3</sup> Allowing the defendant access to the government file provides the defendant with sufficient information to make an informed plea.<sup>4</sup> The defendant fully appraised of the government's case can better judge the value of entering plea negotiations. Conversely, if the defendant is able to answer the government's charges and effectively answer questions on the evidence against him, the government will be strongly influenced to terminate the case. The prosecution also benefits from being able to assess the defendant's proposed defense and to evaluate character witnesses expected to be used by the defendant.

The omnibus procedures prior to trial should avoid unnecessary and repetitious trials by exposing any latent procedural or constitutional issues.<sup>5</sup> They should reduce interruptions and complications of trials by identifying issues collateral to guilt or innocence, and determining them prior to trial.<sup>6</sup> The overall court administration should benefit from the minimizing of paper work through the substantial reduction of written motions, the prevention of repetitious assertions of the issues, and the consolidation of numerous pretrial hearings.<sup>7</sup>

In the Federal District Court for the Western District of Texas, the omnibus procedure has been in use since 1967

with impressive results. From the outset, the firm leadership of the judiciary encouraged participation by counsel in the omnibus hearing. In 1970, the procedure was modified to provide an informal conference between indictment and arraignment. With the experience gained during the first three years and the modified procedures, the improvements were dramatic. The rate of guilty pleas increased by 30 percent, and in all cases the mean elapsed time from indictment to final disposition was reduced. There was a decrease in the number of cases in which a formal omnibus hearing, was requested. In those cases requiring a formal hearing, the time was reduced from one hour to twenty minutes. In 55 percent of the cases utilizing the omnibus hearing, no written briefs were required. Also, delays due to lack of preparation by counsel were reduced.<sup>8</sup>

The omnibus hearing is also enthusiastically supported by the judiciary of the U.S. District Court for the Western District of Missouri.<sup>9</sup> After four years experience, the omnibus procedure made speedy trial possible and saved trial time. The rate of criminal convictions increased and the time required for disposition of cases by guilty pleas was reduced to one month against a national average of three to four months.<sup>10</sup>

Similar beneficial results are reported in the Jacksonville Division of the U.S. District Court, Middle District of Florida. In addition to an increase in the percentage of guilty pleas from 45 to 80 percent, the number of cases appealed has decreased.<sup>11</sup>

The implementation of omnibus procedures offers concrete results in the effort to reduce trial delays and court workloads, to dispose of cases more fairly and quickly, and to allow better informed and prepared representation for the defendant and the state.

Many of the ABA Standards categorized as requiring court rule may, in fact, be implemented by change in practice, if a local court has the authority to initiate such practices. However, it is felt that the better method is through promulgation of court rules so that the discovery procedures will be certain and standardized. Only one recommendation entails long-term funding, and that is the expense of any forms, time schedules, and hearings necessary to facilitate the discovery process.<sup>12</sup>

Discovery & Proced. Before Trial	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1	x			
1.2	x			
1.3	x			
1.4				x
1.5	x			

#### How to Economize

Discovery & Proced. Before Trial	General Principle	Change in Practice	Statute or Court Rule	New Component
2.1		x		
2.2		x		
2.3		x		
2.4			x	
2.5			x	
2.6	x			
3.1			x	
3.2			x	
3.3			x	
4.1	x			
4.2	x			
4.3	x			
4.4			x	
4.5			x	
4.6			x	
4.7			x	
5.1			x	
5.2			x	
5.3			x	
5.4			x	
TOTALS	8	3	13	1

#### Speedy Trial

The right of the accused to a speedy trial and the interest of the public in prompt disposition of criminal cases are simultaneously satisfied when the criminal justice system has sufficient resources to avoid unnecessary delays. The trial of criminal cases should be given preference over civil cases,<sup>1</sup> and the trial of defendants in custody should be given preference over defendants at liberty.<sup>2</sup> The court, in granting continuances, should do so only for good cause and only for so long as necessary and should take into account not only the request or consent of the prosecution, or defense, but also the public interest in prompt disposition of the case.<sup>3</sup>

The failure to bring a defendant to trial before the running of the specified time limitation should result in absolute discharge of the offense charged and for any other charge required to be joined with that offense.<sup>4</sup>

This volume encourages courts to set speedy trial time limits (no specific deadline is proposed), provides methods for computing them, and establishes consequences for their violation. The specifics must be implemented by statute or court rule and will very likely entail short-term costs during the transition period if a backlog of cases must be disposed of quickly. The assessment of present status and capabilities discussed in the introduction is critical to successful implementation of any speedy trial provision.

Speedy Trial	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1			x	
1.2			x	
1.3			x	

#### Through Standards



Speedy Trial	General Principle	Change in Practice	Statute or Court Rule	New Component
2.1			x	
2.2	x			
2.3	x			
3.1			x	
3.2	x			
4.1			x	
4.2	x			
TOTALS	4	0	6	0

### Joinder and Severance

The ABA Standards examine joinder and severance of both defendants and offenses. Again the ABA Standards recognize the importance of balancing two diverse interests: the need for expeditious handling of criminal cases and the protection of defendants from the risk of prejudicial and unfair treatment.

The ABA Standards are liberal in permitting joinder of offenses<sup>1</sup> and joinder of defendants<sup>2</sup> in the initial stages of prosecution. When both the prosecution and defense agree, the liberal application of the rules of joinder can facilitate the prompt disposition of the charges. Joinder can protect the defendant from a multiplicity of trials for common offenses and reduce demands on the prosecution, defense and judiciary.

The ABA Standards dealing with severance require the defendant to make a timely motion before trial or at the close of all the evidence if based upon a ground not previously known. Severance is waived by failure to renew the motion.<sup>3</sup> Other standards outline the criteria for severance of offenses<sup>4</sup> and severance of defendants.<sup>5</sup> Finally the ABA Standards recommend that the court may act on its own motion if a severance could be obtained on motion of a defendant or the prosecution.<sup>6</sup> The proper severance of defendants or severance of offenses will eliminate costly retrials granted due to the prejudicial joinder of the initial trial.

All eight of these ABA Standards should be implemented by legislation or court rule to insure equal treatment of defendants.

Joinder & Severance	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1			x	
1.2			x	
1.3			x	
2.1			x	
2.2			x	
2.3			x	
2.4			x	
3.1			x	
TOTALS	0	0	8	0

How to Economize

### Pleas of Guilty

The plea of guilty is the least time consuming, costly and demanding disposition of a criminal charge. The entire criminal justice system benefits from the plea agreement. However, its continued use should not be based solely on the administrative benefits; for the defendant also benefits. The plea of guilty ensures the defendant prompt disposition of the charges, avoids a public trial, allows for the negotiation both to the charges of the plea and the proposed correctional or rehabilitative measures and provides the defendant with the opportunity to benefit from cooperating with the police and the prosecution.<sup>1</sup> Therefore, the ABA Standards recognize the propriety for the court to grant charge and sentence concessions to defendants who enter a plea of guilty when the interest of the public in the effective administration of criminal justice would be served.<sup>2</sup>

When a plea of guilty is entered, the court should order a verbatim recording of the proceedings. The record should include the court's advice to the defendant, the inquiry into the voluntariness of the plea and inquiry into the accuracy of the plea.<sup>3</sup> Such a record will later prevent an attack upon the validity of the plea and will reduce post-conviction litigation.

Since a plea of guilty is by far the most frequent mode of conviction in state courts, its negotiation and acceptance are critical proceedings in which ignorance or error may have grave consequences for the defendant. Therefore, despite the fact that most of the ABA Standards can be implemented by change in practice, they have been denominated statute or court rule as recognition of the great need to properly regulate this process. None would necessitate long-term funding.

Pleas of Guilty	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1			x	
1.2			x	
1.3			x	
1.4			x	
1.5			x	
1.6			x	
1.7			x	
1.8		x		
2.1			x	
2.2			x	
3.1		x		
3.2	x			
3.3			x	
3.4			x	
TOTALS	1	2	11	0

Through Standards

## Trial by Jury

The ABA Standards examine the various aspects of jury trial in criminal cases ranging from when a jury should be used to the conditions requiring impeachment of the jury's verdict. In certain cases, the ABA Standards recommend limitations on the right to a jury trial. Substantial juror time can be saved when certain petty offenses are denied a jury trial, and other offenses require juries of less than twelve and less than unanimous verdicts.<sup>1</sup>

The process by which jurors are selected and utilized focuses on the appropriate criteria for determining juror qualifications and exemptions.<sup>2</sup> To expedite the selection process, the trial judge should have the primary responsibility to conduct the voir dire.<sup>3</sup> For laymen to be fairly and effectively used, they must be adequately trained and compensated.<sup>4</sup> Studies have shown that more effective juror usage in the court system will yield important benefits. A reduction in jury costs will provide a direct savings to the court. Jurors will benefit through the reduction in lost income due to service. The criminal justice system will benefit from an improvement in juror attitudes and a greater willingness by the citizenry to participate in the jury process.<sup>5</sup>

Special procedures should be employed during a jury trial to eliminate prejudicial influences. For instance, an incarcerated defendant or witness should not have to appear in court in prison attire.<sup>6</sup>

Finally, the ABA Standards urge that during deliberations the jury be provided all the assistance possible. The trial judge should exercise his discretion to determine what material should be taken to the jury room.<sup>7</sup>

The ABA Standards cover the right to jury trial and its waiver, selection of a jury, juror orientation and compensation, and other special procedures relating to the jury during trial and deliberations. Most of them should be implemented through either legislation or court rule since they are more than strictly procedural and substantially affect a defendant's constitutional rights.

Three of the standards may entail long-term funding: those relating to development of a juror handbook for orientation,<sup>8</sup> compensation of jurors,<sup>9</sup> and the need for pattern jury instructions.<sup>10</sup>

Trial by Jury	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1		x		
1.2			x	
1.3			x	
2.1	x			
2.2	x			

Trial by Jury	General Principle	Change in Practice	Statute or Court Rule	New Component
2.3			x	
2.4			x	
2.5			x	
2.6			x	
2.7			x	
3.1				x
3.2				x
4.1	x			
4.2			x	
4.3	x			
4.4			x	
4.5			x	
4.6				x
5.1			x	
5.2			x	
5.3			x	
5.4			x	
5.5			x	
5.6	x			
5.7	x			
TOTALS	6	1	15	3

## Sentencing Alternatives and Procedures

The ABA Standards outline the complexity and the importance of the sentencing problem and suggest a framework for the improvement of current sentencing practices. In assessing the proper sentence, it should be remembered that total confinement is always expensive to the public treasury and frequently is detrimental to the correction of the offender. Current statutory maximum sentences are so long that gross sentence disparities result in a loss of public confidence in the equality of justice and bitter resentment by those defendants subjected to the unusually harsh sentence.

The ABA Standards urge that the sentence in each case imposes the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense, and the rehabilitation needs of the defendant.<sup>1</sup> Sentences requiring only partial confinement offer an alternative to probation or commitment to a total custody institution. These sentences would allow the development of an individualized treatment program for each offender<sup>2</sup> and would mitigate the potential harm encountered in total confinement facilities.

In at least six states and 10 U.S. cities, criminals have been given the opportunity to make restitution to their victims. In Minnesota, 87 inmates have paid over \$14,000 to victims of their property crimes. Georgia officials report that \$23,000 was paid in one year to victims of property crimes and another \$200,000 was paid by court orders from judges who coupled restitution with other punishment.<sup>3</sup>

The greater utilization of halfway houses as an alternative to building more total confinement facilities also merits more widespread consideration. A second role for halfway houses is that they can serve as a resource for services during other stages of the criminal justice process such as pretrial diversion or temporary housing for probationers or parolees. The goals of halfway houses services appear to be twofold: (1) they provide the offender with the opportunity to maintain his liberty, strengthen his community ties, gain vocational training or education and find or continue meaningful employment; and (2), they reduce correctional costs to the county or state through lower capital investments for construction and maintenance of facilities, reduce operating costs through offender contributions from salaries and also reduce associated social costs necessitated by state and community support of the offender's dependents. In a comprehensive report prepared in October 1975 by the Correctional Economics Center of the American Bar Association, the costs of maintaining halfway houses compared favorably with the estimate of jail costs for total incarceration.<sup>4</sup> Again adoption of the ABA Standards provides an opportunity for the saving of public funds.

The ABA Standards also outline the value of fines as a sentence alternative. However, they recommend that except when the defendant has gained money or property through the commission of the offense, fines should not be imposed for a felony.<sup>5</sup> Once a fine is imposed, the court should have the discretion to determine the method of payment.<sup>6</sup> Until the last few years, "speed traps" and other abuses had dampened the general public willingness to accept fines as a correctional measure. However, substantial progress has been made in elimination of abuses, and the ABA Standards recognize that, particularly for the venal misdemeanor, a fine may be the most appropriate corrective and deterrent sentence. In effect, for this large body of offenders, the cost of the administration of justice is reduced.

These ABA Standards deal largely with a comprehensive statutory structure for sentencing. The legislation defines the parameters within which judicial discretion may be exercised. The standards also set forth general principles regarding the roles of the court and of counsel in the sentencing proceeding.

Six of the standards are classified as needing long-term funding for new components: development of special facilities for certain types of offenders,<sup>7</sup> resources and supporting staff for preparation of presentence reports,<sup>8</sup>

medical services,<sup>9</sup> sentencing institutes,<sup>10</sup> orientation of new judges,<sup>11</sup> and information on sentenced offenders.<sup>12</sup>

Sentencing Alternatives & Procedures	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1			x	
2.1			x	
2.2	x			
2.3			x	
2.4			x	
2.5*	x			
2.6				x
2.7			x	
3.1			x	
3.2			x	
3.3			x	
3.4			x	
3.5			x	
3.6			x	
3.7			x	
3.8			x	
4.1				x
4.2	x			
4.3			x	
4.4			x	
4.5			x	
4.6				x
5.1	x			
5.2	x			
5.3	x			
5.4	x			
5.5			x	
5.6			x	
5.7			x	
5.8	x			
6.1			x	
6.2			x	
6.3			x	
6.4			x	
6.5			x	
7.1			x	
7.2				x
7.3				x
7.4		x		
7.5				x
TOTALS	8	1	25	6

### Probation

The decision whether to impose probation, much like that of pretrial release, is one that lends itself to criticism from victims of crime, prosecutors and the general public. Yet, the alternative of total confinement in too frequently overcrowded, understaffed and inadequate facilities, is expensive and, in the long run, often detrimental to society. The ABA Standards recommend probation as a desirable alternative to incarceration in appropriate cases. When probation is properly supervised, the public is protected from further violations of the law and the individual retains his liberty. The opportunity for rehabilitation is increased through the continuation of

Through Standards

normal community contacts. Furthermore, probation avoids the detrimental effects of confinement which complicate the reintegration of the offender into the community; it greatly reduces the financial cost to the public treasury necessary to maintain an effective corrections system; and it minimizes the impact of conviction upon the innocent dependents of the offender.<sup>1</sup> Probation should be the sentence unless the court finds that confinement is necessary to protect the public from further criminal activity by the offender; or that the offender is in need of correctional treatment which can most effectively be provided if he is confined; or that it would unduly depreciate the seriousness of the offense if a sentence of probation were imposed.<sup>2</sup>

The ABA Standards recognize that probation services must have sufficient funds to hire professional personnel, provide adequate office space, clerical assistance and thereby maintain manageable caseloads.<sup>3</sup> The well-supervised probationer should have the guidance necessary to restructure his life to avoid further involvement with the criminal justice system. The development of adequate probation services can substantially reduce the costs associated with maintaining and expanding total confinement facilities—the most expensive of correctional methods. Any increased public capital investment for an effective probation service pays a handsome dividend to the taxpayers as a permanent sentencing alternative to total confinement.

In Lincoln, Nebraska, a volunteer probation counselor program has been operating since 1968. The program involves responsible citizens from all walks of life who assist inmates on probation for crimes ranging from theft offenses to minor traffic violations. An evaluation of the program's effectiveness in 1972 produced highly favorable results of comparisons between high-risk probationers who were assigned to volunteers and probationers who proceeded through regular probation programming.<sup>4</sup>

The granting of probation, the presentence report, conditions of probation termination, revocation, and probation administration are all covered in this volume. Twelve of the 25 standards require legislation or court rule for their implementation, as they relate to the authority of the court or the rights of the probationer.

Six would involve long-term funding and availability of resources and supporting staff for preparation of presentence reports<sup>5</sup>—this was also provided for under the ABA Standards Relating to Sentencing Alternatives and Procedures,<sup>6</sup> probation personnel generally,<sup>7</sup> continuous

research capability and adequate working conditions,<sup>8</sup> staff to provide collateral services such as reports for pre-trial release and diversion,<sup>9</sup> fellowships and trainee programs,<sup>10</sup> and competitive salary structure.<sup>11</sup>

Probation	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1			x	
1.2	x			
1.3	x			
2.1				x
2.2	x			
2.3	x			
2.4	x			
2.5	x			
3.1			x	
3.2			x	
3.3			x	
4.1			x	
4.2			x	
4.3			x	
5.1			x	
5.2			x	
5.3			x	
5.4			x	
6.1				x
6.2				x
6.3				x
6.4			x	
6.5		x		
6.6				x
6.7				x
TOTALS	6	1	12	6

### Appellate Review of Sentences

The appellate review of sentences, while still in limited use in this country, has been the practice in England since 1907. The English experience would indicate that appellate review of sentences can easily be integrated into the criminal justice process. In England, appellate review of sentences resulted in no substantial increase in appeals. However, of the total appeals, it now appears that some sixty percent are on sentence only. The ABA Standards recognize that although review of every sentence should be available, for the initial experimental period review be limited to sentences of specified lengths and types of sentence.<sup>1</sup>

The ABA Standards enumerate four general objectives of sentence review, and each can have a beneficial economic impact. As discussed in the ABA Standards Relating to Sentencing Alternatives and Procedures, total confinement is the least desirable, most costly and frequently least effective sentence. Appellate sentence review provides a means by which grossly excessive sentences can be corrected.<sup>2</sup> Secondly, sentence review facilitates the rehabilitation of the offender by affording him an op-

portunity to assert grievances he may have regarding his sentence.<sup>3</sup> The defendant serving a sentence two or three times longer than another inmate incarcerated for a similar crime will likely feel so aggrieved that he will not be amenable to rehabilitative efforts. Appellate review of sentences will also engender public respect for law by correcting abuses of sentencing authority and by increasing the fairness of the sentencing process.<sup>4</sup> Finally, the development and application of criteria for sentencing which are both rational and just will be promoted. The public correction of mistakes will help prevent repetition of aberrant sentencing and focus both sentencing and reviewing courts on the importance of careful consideration of individual sentences.<sup>5</sup> Appellate review of sentences can also avoid an unnecessary retrial where only the sentence is defective.

The extent of sentence disparity was illustrated by the Second Circuit Sentencing Study prepared by the Federal Judicial Center in August, 1974.<sup>6</sup> In the experiment, 43 active judges and seven senior judges recommended sentences based on 30 actual presentence reports. In one case, the proposed sentences ranged from the most severe, 20 years imprisonment plus a \$65,000 fine, to the least severe sentence of three years imprisonment.

The pattern of disparity was unpredictable. The study indicates that substantial disparity exists within districts, and that differences among districts are of secondary importance. Also, no evidence suggests that experience on the federal bench diminishes the disparity among judges. Finally, the individual judges were not easily categorized as either lenient or harsh. The great majority are sometimes severe and sometimes lenient when compared with their colleagues.<sup>7</sup>

The Second Circuit study demonstrates the need for improvement in the sentencing process. Appellate review of sentences is one alternative which should be explored as a potential answer to the sentencing disparity problem. Any general reduction in confinement is, of course, a saving to the state.

These standards assert that a defendant should have the right to appeal the sentence as well as the conviction. Guidelines are set forth for the extent of the right, its availability, and the scope of review. Since in most states sentences are not reviewable, implementation of this volume would require legislation. This new area of review would initially result in increased appeals; therefore, though a new court need not be created, additional staff would be necessary to handle the larger caseload. However, adoption of the *ABA Standards Relating to*

*Post-Conviction Remedies*, which recommend a unified review, could result in an eventual cost-savings rather than expenditure.

Appellate Review of Sentences	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1				x
1.2	x			
2.1			x	
2.2	x			
2.3			x	
3.1	x			
3.2			x	
3.3			x	
TOTALS	3	0	4	1

### Criminal Appeals

While appellate litigation generally is not divided between civil and criminal appeals, the ABA Standards treat criminal appeals as a separate component integral to the criminal justice system. Delays in processing appeals have serious ramifications to both society and the defendant, particularly when incarceration is involved.

The ABA Standards affirm the right of convicted defendants to appellate review but do not mandate review in every case.<sup>1</sup> Appellate review should serve the following purposes: (1) to protect the defendant against unjust results; (2) to develop and refine criminal law and procedure; and (3) to insure consistent practices in the criminal process.<sup>2</sup> The ABA Standards also examine the transition of the case from trial court to appellate court. Finally, the handling of appeals should be continually monitored and evaluated in an effort to minimize the process for each appeal.<sup>3</sup> Counsel on appeal should be provided to insure that the convicted defendant's legal rights are protected.<sup>4</sup> Competent, trusted counsel can be instrumental in dissuading a client from pressing hopeless grounds of appeal. If the client insists on appeal, counsel can prepare the case on brief without oral argument. Well prepared briefs can be expeditiously reviewed by the court, thus saving both time and money.

The basic aspects of the appeals system must be implemented by statute to insure notice of the right and uniform application. Other ABA Standards describe as general principles the duties of the court and counsel. The only ABA Standard possibly entailing a new component is that according counsel at every stage of appeal, often at government expense.<sup>5</sup> This was earlier encompassed under the *ABA Standards Relating to Providing Defense Services*.

Criminal Appeals	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1			x	
1.2			x	
1.3			x	
1.4			x	
2.1			x	
2.2	x			
2.3	x			
2.4	x			
2.5			x	
3.1	x			
3.2				x
3.3	x			
3.4		x		
TOTALS	5	1	6	1

### Post-Conviction Remedies

The ABA Standards focus on the need for states to develop one comprehensive remedy for post-conviction review of the validity of judgments of conviction, or the legality of custody, or supervision based upon a judgment of conviction. The unitary remedy should encompass all claims whether factual or legal in nature.<sup>1</sup> With many states relying on various forms of writs as the only avenue for post-conviction review, the unitary review will prevent unnecessary filings and court review of inappropriate petitions.

The ABA Standards stress the need for specially adapted discovery procedures to be utilized in exploring issues of fact. If summary disposition is determined appropriate based on discovery, or if the case is submitted on an agreed statement of facts, the application for post-conviction relief can be decided on the merits without the expense, risk and inconvenience of transporting applicants in custody from the prison to the courthouse.<sup>2</sup>

Considering the recent inundation of federal and state courts with *pro se* petitions, the ABA Standards recommend the establishment of a regular agency to be charged with the responsibility of providing legal advice and representation to its prisoners.<sup>3</sup> This service has been provided in a number of states recently and in each there has been a substantial reduction in court time spent on applications for post-conviction relief. In Kansas, for example, a nonprofit corporation has been established to provide complete legal services to prisoners in both civil and criminal matters. This organization, supervised by a board of directors with representatives from the bar, the law schools and the judiciary, operates independently of, but in cooperation with, the department of corrections. The organization is now fully funded by the state with a

budget for fiscal year 1977 of \$118,640. Staff attorneys work full time at the two state maximum security prisons and the project director provides services at the reception and diagnostic center and the youthful offender vocational center. The project attorneys are assisted by law students and professors from the two approved law schools.

One major benefit derived from the availability of legal counsel is the dramatic reduction in the number of motions filed in the last five years under the state's post-conviction relief statute. According to the Kansas Judicial Council Bulletin, Forty-ninth Annual Report, the number of actions filed under Kansas Statutes Annotated 60-1507 has dropped from 124 in 1970 to 62 in 1975. This reduction has occurred in spite of a significant rise, including an 18 percent increase within the last year, in the state inmate population. The project staff regularly counsel clients on the merits of their proposed actions, and advise clients against filing frivolous petitions. The effectiveness of the legal services project can be measured in the high degree of inmate confidence displayed, and the respect accorded it by the corrections officials, the judiciary and the legislature.

If a full-time prison legal services organization cannot be established, intermediate steps could include in-prison counseling by volunteer lawyers and law students, providing an adequate law library, and distribution of pamphlets outlining the scope of post-conviction relief.<sup>4</sup> At a minimum, the state should provide stationery and supplies, the right to purchase and retain legal reference materials, reasonable access to legal reference materials and free and uninhibited access to the courts and private counsel.<sup>5</sup>

The ABA Standards recommend the preparation and use of a standardized application form which is comprehensible to the applicant.<sup>6</sup> Considerable court time is lost by clerks and judges attempting to understand the incoherent and unintelligible application.

Recently, the U.S. Court of Appeals for the Fifth Circuit prescribed methods for coping with the increasing number of 42 USC 1983 suits filed by state prisoners challenging their conditions of confinement. Although under 28 USC 1915(d) the court may dismiss frivolous *forma pauperis* complaints, the court notes that a complaint cannot be dismissed merely because of inartful pleading. The court encourages the use of a questionnaire developed at the Federal Judicial Center designed to enable the judge to develop the factual basis for the plaintiff's complaint.<sup>7</sup>

Through Standards

In Georgia, a similar form, along with explanatory pamphlets outlining the scope and nature of post-conviction proceedings is being developed by the Prison Legal Services Project at the University of Georgia Legal Aid and Defender Society. The original request for assistance from the U.S. District Court for the Middle District of Georgia was directed to the President of the State Bar of Georgia. In turn, the Bar President requested assistance from the University Legal Aid Society which is now preparing the material. Close cooperation among the judiciary, the bar association and the prison legal services organization will result in the expeditious implementation at very little cost of literature and forms which will greatly assist both the inmates and the judiciary.

Just as appellate review of sentences will provide inmates with a better frame of mind toward rehabilitation, so will competent legal assistance from attorneys with credibility among the inmates. Of course, inmates may still proceed *pro se*, but advice from respected attorneys should strongly influence the inmates to channel their energies in a more productive direction.

Since implementation of this volume would expand, or at least restructure, the practice in most states, legislation should be sought. Even though some of the ABA Standards are worded as general principles, they are intended to be encompassed in the comprehensive legislation necessitated by the new concept (e.g., 2.1-2.4 are guiding principles for the legislation necessitated by 1.1).

Four of the ABA Standards may entail long-term expenditures for new components: provision of resources in prisons,<sup>8</sup> preparation of standardized forms,<sup>9</sup> appointment of counsel<sup>10</sup> (also provided under ABA Standards Relating to Providing Defense Services 5.2), and discovery.<sup>11</sup>

Post Conviction Remedies	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1			x	
1.2	x			
1.3			x	
1.4	x			
2.1	x			
2.2	x			
2.3	x			
2.4	x			
3.1				x
3.2				x
3.3			x	
3.4	x			
3.5		x		
4.1		x	x	
4.2		x		
4.3			x	
4.4				x
4.5				x

Post Conviction Remedies	General Principle	Change in Practice	Statute or Court Rule	New Component
4.6			x	
4.7			x	
5.1			x	
5.2	x			
5.3	x			
6.1	x			
6.2	x			
6.3			x	
TOTALS	11	2	9	4

## THE AMERICAN BAR ASSOCIATION STANDARDS RELATING TO JUDICIAL ADMINISTRATION

The ABA Standards Relating to Court Organization is the initial volume in a series of standards being formulated by the ABA Commission on Standards of Judicial Administration. Other volumes include ABA Standards Relating to Trial Courts and a proposed ABA Standards Relating to Appellate Courts. The ABA Commission has developed the standards primarily with a view to their adoption by state court systems. As with the ABA Standards Relating to the Administration of Criminal Justice, successful implementation depends upon the initiative of those involved in the criminal justice system. The ABA Standards are designed to assist those responsible for the administration of courts to provide administered justice that is fair, efficient and economical.

### Court Organization

The ABA Standards establish the aims of court organization as serving the courts' basic task of determining cases justly, promptly and economically.<sup>1</sup> To achieve these goals, they make recommendations on the topics of a unified court system, selection and tenure of judges, rule-making and administrative authority, court administrative services, court budgeting and court records systems.

The ABA Standards support the implementation of a court system that is unified in its structure and administration, staffed by competent judges, judicial officers and other personnel, and that has uniform rules and policies, clear lines of administrative authority and a unified budget.<sup>2</sup>

In a supporting study, *Court Finance and Unitary Budgeting*,<sup>3</sup> the advantages of unitary budgeting are reviewed. Through a single budget administered at the state level, all operating expenditures of the court system are processed. The system relies on state funding rather

than fragmented local appropriations. Unitary budgeting provides for more orderly financial procedures for the courts and improved court management. Possible benefits derived from unitary budgeting include better planning in judicial administration, a more equitable distribution of judicial services within a state, uniformity in job classification of judicial employees and a mechanism for administration of the system.<sup>4</sup>

The 29 ABA Standards in this volume provide for a unified court system with rule-making authority, administrative services, and state financing. Half of the standards would likely entail long-term expenditures for new components. These range from the considerable cost of court reorganization<sup>5</sup> to the more minor expenses of maintaining boards and commissions<sup>6</sup> with money for training and staff falling in between.<sup>7</sup>

Court Organization	General Principle	Change in Practice	Statute or Court Rule	New Component
1.00	x			
1.10				x
1.11	x			
1.12				x
1.13			x	
1.20				x
1.21				x
1.22				x
1.23				x
1.24			x	
1.25				x
1.26				x
1.30			x	
1.31				x
1.32				x
1.33			x	
1.40				x
1.41				x
1.42		x		
1.43				x
1.44				x
1.50				x
1.51		x		
1.52		x		
1.53			x	
1.60	x			
1.61		x		
1.62		x		
1.63	x			
TOTALS	4	5	5	15

### Trial Courts

The goal of achieving fair and efficient administration of justice can only be met if the trial court fulfills its role as the cornerstone of justice. To do so, the trial court must fairly administer its rules of procedure to secure a just determination of each individual case and develop ad-

ministrative policies and procedures to secure proper allocation of the court's time and resources.<sup>1</sup>

The ABA Standards on Trial Courts are interrelated with the ABA Standards on the Administration of Criminal Justice. The ABA Standards on Trial Courts examine the following subjects: fair and effective procedure; right of jury trial; assistance of counsel; efficient trial court administration; trial court staff services; caseload management; administration of jury selection and use; and specialized procedures. Although several of these topics extend beyond the ABA Standards on the Administration of Criminal Justice, to gain a full understanding, the ABA Standards on Trial Courts must be read in conjunction with the former.

This volume presents 44 standards on procedure and administration in the trial court. They are almost evenly divided among the four implementation classifications. The thirteen that would involve long-term funding involve possibly considerable expense in expanded rights to jury trial<sup>2</sup> and counsel.<sup>3</sup> Other costs relate to courthouse security,<sup>4</sup> staff,<sup>5</sup> clinical evaluations in involuntary commitment cases,<sup>6</sup> juror processing,<sup>7</sup> and small claims court.<sup>8</sup>

Trial Courts	General Principle	Change in Practice	Statute or Court Rule	New Component
2.00	x			
2.01	x			
2.02			x	
2.10				x
2.11			x	
2.12				x
2.20				x
2.21	x			
2.22				x
2.23	x			
2.30	x			
2.31	x			
2.32			x	
2.33		x		
2.34	x			
2.35		x		
2.36	x			
2.37		x		
2.40				x
2.41				x
2.42			x	
2.43				x
2.44				x
2.45		x		
2.50	x			
2.51		x		
2.52			x	
2.53		x		
2.54		x		
2.55		x		
2.56		x		
2.60	x			
2.61				x
2.62			x	
2.63			x	



Trial Courts	General Principle	Change in Practice	Statute or Court Rule	New Component
2.64				x
2.70		x		
2.71				x
2.72				x
2.73			x	
2.74			x	
2.75				x
2.76		x		
2.77			x	
TOTALS	10	11	10	3

## THE NATIONAL ADVISORY COMMISSION STANDARDS AND GOALS

The NAC Standards and Goals comprise six volumes. Five of these, the *Criminal Justice System*, *Police*, *Courts*, *Corrections* and *Community Crime Prevention*, contain approximately 400 specific standards and recommendations. The sixth volume, *A National Strategy to Reduce Crime*, is a summary report and contains no specific standards and goals.

This section examines the NAC Reports on *Police*, *Courts* and *Corrections*. The ABA Standards are more comprehensive than the NAC Standards and Goals, and contain 172 standards covering areas on which the NAC Standards and Goals are silent. The *ABA Standards Relating to Electronic Surveillance*, *to Fair Trial and Free Press*, and *to Joinder and Severance* have no counterparts in the NAC Standards and Goals. The *ABA Standards Relating to the Prosecution Function and the Defense Function*, directed to the organization and staffing of these two services, have only a few counterparts in the NAC Standards and Goals. On some subjects, the NAC Standards and Goals contain a number of recommendations that have no counterpart in the ABA Standards—*Police*, 48; *Courts*, 21; and *Corrections*, 75. A detailed comparison of the ABA Standards and the NAC Standards and Goals is available from the ABA Section of Criminal Justice.<sup>1</sup> Additionally, a five-way comparison of the two sets of standards, the ALI-Model Code of Prearrest Procedure, and the Federal Rules of Criminal Procedure, with the Uniform Rules of Criminal Procedure is also available from the Section.<sup>2</sup>

### Police

As with *Corrections*, almost half of the 107 NAC *Police* Standards and Goals are classified as entailing long-term funding. However, unlike *Corrections*, no massive outlays of money are called for, as this volume deals pri-

marily with expanded or specialized training and assignment of specific responsibilities.

In categorizing the NAC Standards and Goals, it was assumed that basic training currently exists in police departments. If the recommended training appeared susceptible to inclusion into existing programs without additional costs, it was classified as "Change in Practice." If it seemed to require specialized or intensive training, it was placed under the "New Component" category. Those training standards which appeared to necessitate new long-term funding, were: training for unusual occurrences,<sup>1</sup> juvenile,<sup>2</sup> traffic,<sup>3</sup> special crime tactical forces,<sup>4</sup> vice,<sup>5</sup> narcotic and drug investigations,<sup>6</sup> intelligence operations,<sup>7</sup> reserve officer training,<sup>8</sup> evidence technician,<sup>9</sup> crime laboratory technician,<sup>10</sup> interpersonal communications,<sup>11</sup> advanced training,<sup>12</sup> formal personnel development activities,<sup>13</sup> and internal discipline investigative procedures.<sup>14</sup> Additional equipment may need to be purchased to meet the standards regarding physical fitness facilities<sup>15</sup> and communications.<sup>16</sup>

Assignment of specialized responsibilities include: school duty,<sup>17</sup> planning,<sup>18</sup> recruitment,<sup>19</sup> training instructor,<sup>20</sup> and an employee-relations specialist.

Considerable cost may be involved in meeting NAC Standards and Goals 5.2, 9.4, 11.3, 14.1, and 16.1 which call for the state to provide various kinds of support services and reimbursements to local police agencies.

Planning and research capability are necessary to meet NAC Standards and Goals 4.1, 6.1, 8.3, and 13.3.

Police	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1		x		
1.2		x		
1.3				
1.4		x		
1.5	x			
1.6				
1.7		x		
2.1		x		
2.2	x			
2.3		x		
3.1		x		
3.2		x		
4.1				
4.2		x		
4.3		x		
4.4		x		
4.5		x		
5.1		x		
5.2				
5.3	x			
5.4				
5.5		x		
5.6		x		
5.7		x		
5.8				

Through Standards

Police	General Principle	Change in Practice	Statute or Court Rule	New Component
6.1				x
6.2	x			
7.1		x		
7.2			x	
7.3		x		
7.4		x		
7.5			x	
7.6				x
8.1	x			x
8.2				x
8.3				x
9.1	x			
9.2		x		
9.3	x			
9.4				x
9.5				x
9.6				x
9.7		x		
9.8				x
9.9				x
9.10				x
9.11				x
10.1		x		
10.2				x
11.1		x		
11.2				x
11.3				x
12.1				x
12.2				x
12.3		x		
12.4			x	
13.1				x
13.2				x
13.3				x
13.4				x
13.5				x
13.6				x
14.1				x
14.2			x	
15.1		x		
15.2				x
15.3		x		
16.1				x
16.2		x		
16.3				x
16.4				x
16.5				x
16.6		x		
16.7				x
17.1				x
17.2				x
17.3		x		
17.4		x		
17.5		x		
18.1				x
18.2		x		
18.3			x	
18.4			x	
19.1		x		
19.2		x		
19.3		x		
19.4				x
19.5				x
19.6		x		
20.1				x
20.2				x
20.3		x		
20.4				x
20.5				x
21.2			x	
21.2		x		
21.3				x
22.1		x		
22.2	x			

Police	General Principle	Change in Practice	Statute or Court Rule	New Component
22.3				
23.1				x
23.2				x
23.3				x
24.1			x	
24.2			x	
24.3				x
24.4				x
TOTALS	8	39	11	49

### Courts

Two-thirds of the 93 NAC Standards and Goals of this report present specific proposals for legislation or new components to improve the processing of criminal cases. Most of those involving the possibility of long-term funding have parallel recommendations under the ABA Standards. These relate to the quality of the judiciary,<sup>1</sup> court structure and administration,<sup>2</sup> a court public information officer,<sup>3</sup> the prosecutorial role,<sup>4</sup> public provision of counsel for the indigent accused,<sup>5</sup> standardized jury instructions and juror handbook,<sup>6</sup> and a unified post-conviction review procedure.<sup>7</sup>

Other areas of long-term funding not discussed elsewhere are the creation of an apprehension unit for pre-trial release programs,<sup>8</sup> regional court administrators<sup>9</sup> and criminal justice coordinating councils,<sup>10</sup> specific physical facilities,<sup>11</sup> witness compensation,<sup>12</sup> computer services,<sup>13</sup> training for court personnel who deal with juveniles,<sup>1</sup> and both "prosecution" and "defense" counsel at delinquency hearings.<sup>15</sup>

Perhaps the most controversial standard in this volume—3.1 abolition of plea negotiation—has been categorized as "Legislation—short-term funding." Each locale will want to carefully assess, and not prejudice, the cost implications of its implementation.

Courts	General Principle	Change in Practice	Statute or Court Rule	New Component
1.1	x			
1.2			x	
2.1	x			
2.2			x	
3.1			x	
3.2			x	
3.3		x		
3.4			x	
3.5	x			
3.6		x		
3.7			x	
3.8		x		
4.1			x	
4.2			x	
4.3			x	

Courts	General Principle	Change in Practice	Statute or Court Rule	New Component
4.4			x	
4.5			x	
4.6			x	
4.7				x
4.8			x	
4.9			x	
4.10			x	
4.11		x		
4.12			x	
4.13			x	
4.14			x	
4.15				x
5.1			x	
6.1				x
6.2				x
6.3			x	
6.4			x	
6.5	x			
6.6			x	
6.7			x	
6.8			x	
6.9		x		
7.1				x
7.2			x	
7.3				x
7.4				x
7.5				x
8.1				x
8.2			x	
9.1				x
9.2		x		
9.3				x
9.4		x		
9.5				x
9.6	x			
10.1				x
10.2				x
10.3				x
10.4	x			
10.5		x		
10.6		x		
10.7				x
11.1				x
11.2				x
12.1			x	
12.2				x
12.3				x
12.4				x
12.5				x
12.6		x		
12.7		x		
12.8				x
12.9		x		
13.1				x
13.2				x
13.3			x	
13.4				x
13.5		x		
13.6		x		
13.7	x			
13.8			x	
13.9		x		
13.10	x			
13.11				x
13.12		x		
13.13	x			
13.14				x
13.15		x		
13.16				x
14.1				x
14.2			x	
14.3			x	
14.4				x
14.5			x	

Courts	General Principle	Change in Practice	Statute or Court Rule	New Component
15.1		x		
15.2	x			
15.3	x			
15.4			x	
TOTALS	11	18	33	31

### Corrections

Nearly one-half of the 129 NAC Standards and Goals in this volume fall into the long-term funding category. The extent of current implementation is likely to vary widely from jurisdiction to jurisdiction, however. Thus, the assessment of present status and capabilities may be even more crucial in this area than in the police and judicial subsystems. Further, these proposals often necessitate entirely new programs or facilities, which by their nature are much more costly than the materials or individual staff typically recommended in other volumes.

Examples of the new components discussed are: prison legal services,<sup>1</sup> prison rehabilitation programs,<sup>2</sup> diversion,<sup>3</sup> programs for pretrial detainees,<sup>4</sup> juvenile intake services,<sup>5</sup> state operation and control<sup>6</sup> and inspection<sup>7</sup> of local institutions, adult intake services,<sup>8</sup> market wages in prison industries,<sup>9</sup> and a wide-ranging planning and research capability.<sup>10</sup>

Corrections	General Principle	Change in Practice	Statute or Court Rule	New Component
2.1		x		
2.2				x
2.3		x		
2.4				x
2.5		x		
2.6		x		
2.7		x		
2.8		x		
2.9				x
2.10			x	
2.11	x			
2.12		x		
2.13	x			
2.14	x			
2.15	x			
2.16	x			
2.17				x
2.18				x
3.1				x
4.1				x
4.2	x			
4.3			x	
4.4			x	
4.5			x	
4.6			x	
4.7			x	
4.8	x			
4.9				x
4.10			x	

Corrections	General Principle	Change in Practice	Statute or Court Rule	New Component
5.1			x	
5.2			x	
5.3			x	
5.4			x	
5.5			x	
5.6			x	
5.7		x		
5.8			x	
5.9			x	
5.10		x		
5.11			x	
5.12				x
5.13			x	
5.14			x	
5.15			x	
5.16			x	
5.17		x		
5.18	x			
5.19		x		
6.1	x			
6.2		x		
6.3				x
7.1				x
7.2		x		
7.3				x
7.4		x		
8.1		x		
8.2				x
8.3	x			
8.4				x
9.1				x
9.2				x
9.3				x
9.4				x
9.5				x
9.6				x
9.7				x
9.8				x
9.9				x
9.10				x
10.1				x
10.2	x			
10.3				x
10.4				x
10.4				x
11.1				x
11.2				x
11.3		x		
11.4				x
11.5				x
11.6				x
11.7		x		
11.8				x
11.9				x
11.10				x
12.1			x	
12.2				x
12.3			x	
12.4			x	
12.5	x			
12.6				x
12.7		x		
12.8				x
13.1				x
13.2				x
13.3				x
13.4			x	
14.1		x		
14.2				x
14.3		x		
14.4		x		
14.5				x
14.6				x
14.7				x

Corrections	General Principle	Change in Practice	Statute or Court Rule	New Component
14.8				x
14.9				x
14.10				x
14.11				x
15.1				x
15.2				x
15.3	x			
15.4	x			
15.5	x			
16.1			x	
16.2			x	
16.3			x	
16.4				x
16.5			x	
16.6			x	
16.7			x	
16.8			x	
16.9			x	
16.10			x	
16.11			x	
16.12			x	
16.13				x
16.14			x	
16.15				x
16.16			x	
16.17			x	
TOTALS	18	18	38	55

### SUMMARY

The ABA Standards and NAC Standards and Goals should not be regarded as model procedures to be implemented in place of existing practices. Rather, they are catalysts for the thoughtful study of the problems confronting state and local governments today. The ABA Standards and NAC Standards and Goals, while isolating each component and phase, stress the importance of comprehensive planning based on full recognition of the complexity of the criminal justice system. Through cooperation among the police, the judiciary, the bar and state and local government, the fair and just administration of criminal justice will serve as an example of the strength of our democratic society.

## FOOTNOTES

### The American Bar Association Standards for Criminal Justice

<sup>1</sup>Clark, Tom C., *The American Bar Association Standards for Criminal Justice Prescription for an Ailing System*, 47 NOTRE DAME LAWYER 429, 433 (1972).

### The Urban Police Function

\*These standards are being implemented through the Joint American Bar Association-International Association of Chiefs of Police (ABA-IACP) Advisory Committee on Implementation of Urban Police Function Standards to the ABA Criminal Justice Section Committee on Implementation of Standards for Criminal Justice.

<sup>1</sup>LeFave, Wayne R., *Arrest: The Decision to Take a Suspect Into Custody*, Little, Brown; and Co.; Boston (1965)

<sup>2</sup>§3.1; see also, Larry T. Hoover, *Police Educational Characteristics and Curricula*, (Wash., D.C.: U.S. Dept. of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, July, 1975.)

<sup>3</sup>§3.4

<sup>4</sup>Nimmer, Raymond T., *Two Million Unnecessary Arrests*, American Bar Association, Chicago, 1971.

<sup>5</sup>§5.5

<sup>6</sup>§7.5

<sup>7</sup>§7.11

<sup>8</sup>§7.12

<sup>9</sup>*Innovation in Law Enforcement*, (Wash., D.C.: U.S. Dept. of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, June, 1973.)

### Electronic Surveillance

<sup>1</sup>§2.3

### The Prosecution Function

\*The National District Attorneys Association has a number of standards for prosecutors in both metropolitan and rural areas, which are based upon the ABA Standards. For more information write the NDAA, 211 East Chicago Ave., Ste. 1515, Chicago, IL 60611.

<sup>1</sup>§3.9; see also, Merrill, Milks, Sendrow, *Case Screening and Selected Case Processing in Prosecutors' Offices*, (Wash., D.C.: U.S. Dept. of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, Mar., 1973).

<sup>2</sup>§3.8(a)

<sup>3</sup>§3.8(b)

<sup>4</sup>Ann M. Watkins, *Cost Analysis of Correctional Standards: Pretrial Diversion*, (Wash., D.C.: Correctional Economics Center of the American Bar Association, Oct., 1975), Vol. I, p. 20.

<sup>5</sup>Id at Vols. I-II; For discussion of operational diversion programs, see, *Pretrial Criminal Justice Intervention Techniques*

and Action Programs, (Wash., D.C.: National Pretrial Intervention Service Center, American Bar Association, Commission on Correctional Facilities and Services, May, 1974); *Descriptive Profiles on Selected Criminal Justice Intervention Programs*, (Wash., D.C.: National Pretrial Intervention Service Center, American Bar Association, Commission on Correctional Facilities and Services, April, 1974); Joan Mullen, *The Dilemma of Diversion*, (Wash., D.C.: U.S. Dept. of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, 1974).

<sup>6</sup>*Citizen Dispute Settlement*, Wash., D.C.: U.S. Dept. of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, 1974).

<sup>7</sup>§2.2

<sup>8</sup>§2.4

<sup>9</sup>§2.6

### The Defense Function

<sup>1</sup>§1.2

<sup>2</sup>§3.6(a)

<sup>3</sup>§4.5

<sup>4</sup>§6.1

<sup>5</sup>§6.1(b)(c)

<sup>6</sup>§8.1(a)

<sup>7</sup>§8.1(b)

<sup>8</sup>For an evaluation of one rehabilitation project, see *Rehabilitative Planning Services for the Criminal Defense*, (Wash., D.C.: Institute of Criminal Law and Procedure, Georgetown University Law Center, Oct., 1969).

### Providing Defense Services

\*The National Legal Aid and Defender Association is now in the process of developing standards for providing defense services through public defender or legal aid offices, which are based on the ABA Standards. For more information, write NLADA, 1155 E. 60th St., Chicago, IL 60637.

<sup>1</sup>§1.1

<sup>2</sup>§1.2, 1.3

<sup>3</sup>§5.1

<sup>4</sup>§7.1

<sup>5</sup>*The D.C. Public Defender Service*, (Wash. D.C.: U.S. Dept. of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, 1974) Vol. I, p. 45.

<sup>6</sup>§2.4, 4.2, 5.1, 5.2, 6.1, 6.4

<sup>7</sup>§1.5, 2.1, 3.3

### The Function of the Trial Judge

<sup>1</sup>§2.2

<sup>2</sup>§2.3(a)

<sup>3</sup>§2.3(b)

<sup>4</sup>*Commonwealth ex rel. Carroll v. Tate*, 442 Pa. 45, 274 A 2d 193, 197 (1971); *cert. denied, Tate v. Pennsylvania ex rel. Jamieson*, 402 U.S. 974 (1972)

### Through Standards

<sup>5</sup>ibid. at 199.

<sup>6</sup>§1.4

<sup>7</sup>§3.2

<sup>8</sup>§3.6

<sup>9</sup>§3.8(a)

<sup>10</sup>§3.8(c)

<sup>11</sup>§4.1

<sup>12</sup>§4.2

<sup>13</sup>§2.2, 2.3

<sup>14</sup>§9.1

#### Pretrial Release

<sup>1</sup>*Commonwealth ex rel. Hartage v. Hendrick*, 439 Pa., 584, 594, 268 A. 2d 451, 455 (1970)

<sup>2</sup>Wice, Paul B., *Bail and Its Reform: HA National Survey*, (Wash., D.C.: U.S. Dept. of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, Oct., 1973).

<sup>3</sup>§1.1

<sup>4</sup>§2.1

<sup>5</sup>§2.2

<sup>6</sup>Susan Weisburg, *Cost Analysis of Correctional Standards: Alternatives to Arrest*, (Wash., D.C.: Correctional Economics Center, American Bar Association, Oct., 1975).

<sup>7</sup>§ p. 7

<sup>8</sup>§ p. 9

<sup>9</sup>§4.1

<sup>10</sup>§4.2

<sup>11</sup>§4.3(f)

<sup>12</sup>§5.1(e)

<sup>13</sup>§5.2(a)

<sup>14</sup>§5.2(b)

<sup>15</sup>§5.3(a)

<sup>16</sup>§5.5

<sup>17</sup>§5.6, 5.7, 5.8

<sup>18</sup>§5.10

<sup>19</sup>§4.5

#### Discovery and Procedure Before Trial

§1.;

<sup>2</sup>§5.1

<sup>3</sup>§1.1(a)(i)

<sup>4</sup>§1.1(a)(ii)

<sup>5</sup>§1.1(a)(iv)

<sup>6</sup>§1.1(a)(v)

<sup>7</sup>§1.1(a)(vp)

<sup>8</sup>Comment, *The Omnibus Proceeding: Clarification of Discovery in the Federal Courts and Other Benefits*. 6ST. MARY'S L. JO. 386, 402 (1974).

<sup>9</sup>Clark, Tom C., *The Omnibus Hearing in State and Federal Courts*, 59 CORNELL L.R. 761 (1974).

<sup>10</sup>ibid. 767

<sup>11</sup>ibid. 766

<sup>12</sup>§1.4

#### Speedy Trial

<sup>1</sup>§1.1(a)

<sup>2</sup>§1.1(b)

<sup>3</sup>§1.3

<sup>4</sup>§4.1

#### Joinder and Severance

§1.1

<sup>2</sup>§1.2

<sup>3</sup>§2.1

<sup>4</sup>§2.2

<sup>5</sup>§2.3

<sup>6</sup>§3.1

#### Pleas of Guilty

<sup>1</sup>Newman, Donald J., *Conviction: The Determination of Guilt or Innocence Without Trial*, Little, Brown, and Co., Boston, (1965).

<sup>2</sup>§1.8

<sup>3</sup>§1.7

#### Trial by Jury

<sup>1</sup>§1.1

<sup>2</sup>§2.1

<sup>3</sup>§2.4

<sup>4</sup>§3.1, 3.2

<sup>5</sup>*A Guide to Juror Usage*, (Wash., D.C.: U.S. Dept. of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, Dec., 1974).

<sup>6</sup>§4.1

<sup>7</sup>§5.1

<sup>8</sup>§3.1

<sup>9</sup>§3.2

<sup>10</sup>§4.6

#### Sentencing Alternatives and Procedures

<sup>1</sup>§2.2; for discussion of current sentencing practices, see, Hand, Singer, *Sentencing Computation Laws and Practice: A Preliminary Survey*, (Wash., D.C.: Resource Center on Correctional Law and Legal Services, American Bar Association, Jan., 1974).

<sup>2</sup>§2.4; see also, *Reintegration of the Offender into the Community*, (Wash., D.C.: U.S. Dept. of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, June, 1973).

<sup>3</sup>The Christian Science Monitor, "More Judges Sentencing Criminals to Repay Their Victims Directly," Dec. 8, 1975.

<sup>4</sup>Donald J. Thalheimer, *Cost Analysis of Correctional Standards: Halfway Houses*, (Wash., D.C.: Correctional Economics Center, American Bar Association, Oct., 1975).

<sup>5</sup>§2.7(a)

<sup>6</sup>§2.7(b)

<sup>7</sup>§2.6

#### Through Standards

- <sup>8</sup>§4.1
- <sup>9</sup>§4.6
- <sup>10</sup>§7.2
- <sup>11</sup>§7.3
- <sup>12</sup>§7.5

### Probation

- <sup>1</sup>§1.2
- <sup>2</sup>§1.3
- <sup>3</sup>§6.1, 6.2
- <sup>4</sup>Ku, Richard, *The Volunteer Probation Program, Lincoln, Nebraska*, (Wash., D.C.: U.S. Dept. of Justice, LEAA, National Institute of Law Enforcement and Criminal Justice, 1974).
- <sup>5</sup>§2.1
- <sup>6</sup>§4.1
- <sup>7</sup>§6.1
- <sup>8</sup>§6.2
- <sup>9</sup>§6.3
- <sup>10</sup>§6.6
- <sup>11</sup>§6.7

### Appellate Review of Sentences

- <sup>1</sup>§1.1
- <sup>2</sup>§1.2(i)
- <sup>3</sup>§1.2(ii)
- <sup>4</sup>§1.2(iii)
- <sup>5</sup>§1.2(iv)
- <sup>6</sup>A. Partridge, W.B. Eldridge, *The Second Circuit Sentencing Study*, (Wash., D.C.: Federal Judicial Center, Aug., 1974).
- <sup>7</sup>*ibid.* p. 23

### Criminal Appeals

- <sup>1</sup>§1.1
- <sup>2</sup>§1.2
- <sup>3</sup>§3.4
- <sup>4</sup>§3.2
- <sup>5</sup>§3.2

### Post-Conviction Remedies

- <sup>1</sup>§1.1
- <sup>2</sup>§4.5
- <sup>3</sup>§3.1(d)
- <sup>4</sup>§3.1(c)
- <sup>5</sup>§3.1(b)
- <sup>6</sup>§3.2
- <sup>7</sup>*Watson v. Ault*, 18 CrL 2395, CA5, Jan. 12, 1976.
- <sup>8</sup>§3.1
- <sup>9</sup>§3.2
- <sup>10</sup>§4.4
- <sup>11</sup>§4.5

### Court Organizations

- <sup>1</sup>§1.00
- <sup>2</sup>§1.10
- <sup>3</sup>*Court Finance and Unitary Budgeting*, (Wash., D.C.: American Bar Association Commission on Standards of Judicial Administration, 1973).
- <sup>4</sup>*ibid.* p. 8-11
- <sup>5</sup>§1.10, 1.12, 1.40, 1.41, 1.50
- <sup>6</sup>§1.20, 1.21, 1.22, 1.23
- <sup>7</sup>§1.25, 1.26, 1.31, 1.32, 1.43, 1.44

### Trial Courts

- <sup>1</sup>Introduction, pp. 1-2
- <sup>2</sup>§2.10
- <sup>3</sup>§2.20, 2.22
- <sup>1</sup>§2.44 .....
- <sup>5</sup>§2.40, 2.41, 2.43, 2.71
- <sup>6</sup>§2.72
- <sup>7</sup>§2.12, 2.61, 2.64
- <sup>8</sup>§2.75

### The National Advisory Commission Standards and Goals

- <sup>1</sup>*Comparative Analysis of Standards and Goals of the National Advisory Commission on Criminal Justice Standards and Goals with Standards For Criminal Justice of the American Bar Association*, (Wash., D.C.: ABA Section of Criminal Justice, June, 1974).
- <sup>2</sup>*Uniform Rules of Criminal Procedure: Comparison and Analysis*, (Wash., D.C.: ABA Section of Criminal Justice, 1975).

### Police

- <sup>1</sup>§7.6
- <sup>2</sup>§9.5
- <sup>3</sup>§9.6
- <sup>4</sup>§9.8
- <sup>5</sup>§9.9
- <sup>6</sup>§9.10
- <sup>7</sup>§9.11
- <sup>8</sup>§10.2
- <sup>9</sup>§12.1
- <sup>10</sup>§12.2
- <sup>1</sup>.....
- <sup>12</sup>§17.1
- <sup>13</sup>§17.2
- <sup>14</sup>§19.4
- <sup>15</sup>§20.2
- <sup>16</sup>§23.1-3
- <sup>17</sup>§1.6
- <sup>18</sup>§5.4
- <sup>19</sup>§13.1
- <sup>20</sup>§16.5
- <sup>21</sup>§18.1

### Through Standards

### Courts

<sup>1</sup>§7.1, 7.3, 7.4, 7.5; *ABA Standards Relating to Court Organization* §1.21, 1.22, 1.25

<sup>2</sup>§8.1, 9.1; *ABA Standards Relating to Court Organization* §1.10, 1.41

<sup>3</sup>§10.3; *ABA Standards Relating to Trial Courts* §2.43

<sup>4</sup>§12.2, 12.3, 12.4, 12.5, 12.8; *ABA Standards Relating to Prosecution Function* §2.2, 2.3, 2.4, 2.6

<sup>5</sup>§13.1, 13.2, 13.4, 13.11, 13.14, 13.16; *ABA Standards Relating to Providing Defense Services* §1.5, 3.3, 5.1-2, 6.1; *ABA Standards Relating to Post-Conviction Remedies* §3.1

<sup>6</sup>§4.15, 10.2; *ABA Standards Relating to Trial by Jury* §4.6, 3.1  
<sup>7</sup>§6.1-2; *ABA Standards Relating to Post-Conviction Remedies*

<sup>8</sup>§4.7

<sup>9</sup>§9.3

<sup>10</sup>§9.5

<sup>11</sup>§10.1

<sup>12</sup>§10.7

<sup>13</sup>§11.1-2

<sup>14</sup>§14.1

<sup>15</sup>§14.4

### Corrections

<sup>1</sup>§2.2

<sup>2</sup>§2.9

<sup>3</sup>§3.1, 6.3; *Courts* §2.1-2

<sup>4</sup>§4.9

<sup>5</sup>§8.2

<sup>6</sup>§9.2

<sup>7</sup>§9.3

<sup>8</sup>§9.4

<sup>9</sup>§11.10, 16.13

<sup>10</sup>§4.1, 7.1, 8.4, 9.1, 9.10, 11.1, 11.6, 13.2, 14.8, 14.10, 15.2

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