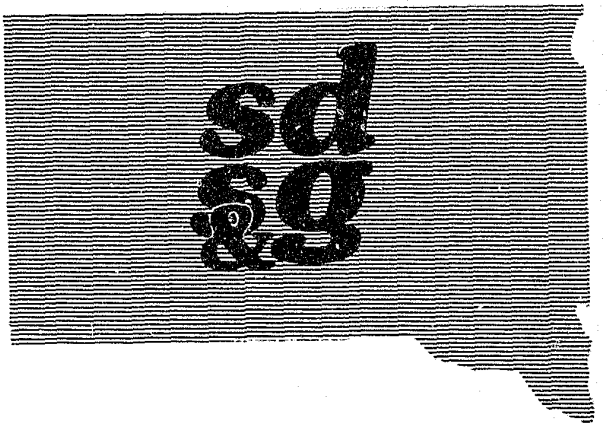
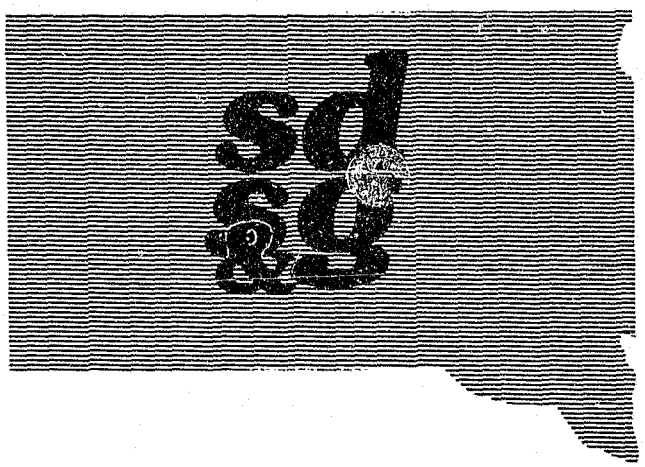


Criminal Justice Standards & Goals for South Dakota

December 1976



Criminal Justice Standards & Goals for South Dakota

December 1976

This document was printed to publish the results of the South Dakota Criminal Justice Standards and Goals Project at a per copy cost of $4.01.

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This Project was financed in part by a grant from the Department of Justice, Law Enforcement Assistance Administration under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. (Grant numbers: 74-DF-08-0036 and 76-DF-08-0003)

Credits

A special thanks goes to the following: Photo Lab, Educational Media Center, University of South Dakota; Rapid City Police Department, Community Crime Prevention photograph; South Dakota State Penitentiary, Corrections photograph; W. H. Over Museum, Reservations photograph; Steven Hamersma, proof reader; Sue Kracht and Suzanne Soper, assistance in typing final draft; Paula Hubert and Patrice Kuecker, secretarial services related to project activities; Blaine Foss, administrative assistance; and Lois Rose, organization of the Standards and Goals Conference held April 22 and 23, 1975.

STATE OF SOUTH DAKOTA

RICHARD F. KNEIP
GOVERNOR

EXECUTIVE OFFICE

PIERRE
57501

Dear Fellow South Dakotans:

The Criminal Justice Standards and Goals Project began two years ago. This report is the product of the work of over 120 South Dakota citizens who served on the six Standards and Goals Task Forces. It represents over 5000 man-hours of discussion and debate, not including the hours of research outside the task force sessions conducted by the staff and reviewed by Task Force members. It has been a monumental effort directed at analyzing our criminal justice system and establishing Standards and Goals for its improvement.

The Standards and Goals which have resulted from this effort provide a blueprint for the Criminal Justice system. It is now up to each and every one of us - citizen, elected official, professional - to see that from this blueprint a fairer, more efficient and more effective criminal justice system is built.

Therefore, I urge all South Dakotans to give this Criminal Justice Standards and Goals document careful review and consideration.

Sincerely,

RICHARD F. KNEIP
GOVERNOR

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PREFACE

On October 20, 1971, the Law Enforcement Assistance Administration (LEAA) appointed the National Advisory Commission on Criminal Justice Standards and Goals (NAC). The Commission was charged with formulating for the first time comprehensive national criminal justice Standards and Goals aimed at reducing and preventing crime at the State and local levels. After almost two years of study and research, the Commission published reports containing over 400 Standards and Goals which addressed the major problem areas of the components of the criminal justice system. The Commission's standards were offered as recommendations and guidelines rather than specific mandates to the States. The development of a strategy for each State for the implementation of Standards and Goals was strongly endorsed by the Commission, but at the same time it recognized that each State must identify its own criminal justice problems and develop its own strategies for establishing Standards and Goals.

The State Criminal Justice Commission contracted with the University of South Dakota, Criminal Justice Studies Program to conduct the Standards and Goals development process for South Dakota.

Six task forces were established to develop Standards and Goals for the State. Each task force was composed of criminal justice professionals, elected officials, and lay citizens, selected from all areas of the State. The task forces concentrated on the following areas: police, courts, corrections, community crime prevention, reservation criminal justice, and systems.

Each task force met seven times in different areas of the State between June, 1975 and June, 1976. Each of the meetings lasted two days. Any interested citizen had the opportunity to discuss relevant issues with the task forces during the first two hours of each meeting.

Prior to each task force meeting, the Standards and Goals Project staff researched the issues to be discussed. Their research consisted of reviews of recent literature, standards established by other organizations, and relevant South Dakota statutes. Also, the staff analyzed the existing conditions in South Dakota through contacts with professionals in the field, published reports and questionnaires.

Each task force member received this compiled information two weeks prior to the task force meeting in order to have adequate time to prepare for the meeting. At the meeting, the task force members debated the issues and proposed tentative standards.

After each meeting the staff distributed the proposed standards to all interested individuals and organizations and all county auditors for the express purpose of eliciting comments, criticisms and input.

The Criminal Justice Standards and Goals Project was conducted for the South Dakota Criminal Justice Commission as an effort to strengthen their planning process. Standards and Goals provide the Commission with a clearly defined and articulated description of the direction in which the criminal justice system should progress. This document will guide the development of State Criminal Justice Commission programs which will subsequently improve our criminal justice system and reduce crime in South Dakota. The State Criminal Justice Commission adopted the Standards and Goals presented in this document on July 16, 1976.

The State Criminal Justice Commission will be using this document. However, its utility does not stop there. The Standards and Goals should be used by all State and local governmental units and agencies, as well as, private sector programs involved in crime reduction. They present a clear roadmap to all for the development and improvement of the system. They offer the base for all criminal justice agency and system planning.

It must be remembered that some of the Standards and Goals are future-oriented. The system is ready to implement some standards; for others it may take time before they are implemented either through legislative or administrative action. The Standards and Goals must be approached with "common sense." Today, an agency may not be able to achieve a standard, but this should not preclude the agency from striving to meet this standard at a level higher than that which presently exists and to strive continually to meet it totally at a future date.

It must be stressed that the Standards and Goals are flexible. They represent the best ideas to date as to where the system should be headed. Each and every one is open to debate. They should be constantly debated. The task forces developed these Standards and Goals based on their best knowledge and the situation or condition at the time. New knowledge will be uncovered, the system will change, and the Standards and Goals will have to be appropriately adjusted. This is your responsibility. The task forces have served their responsibility well. They have developed a viable set of Standards and Goals which provide direction to our criminal justice system. It is your responsibility to review the standards, debate them and use them to improve the criminal justice system in South Dakota.

police

CHAPTER ONE

THE POLICE ROLE

Police Standard 1.1

The Police Function

Every police chief executive immediately should develop written policy, based on policies of the governing body that provides formal authority for the police function and, consistent with the policies established under Standard 2.2 subsection two (2), should set forth the objectives and priorities that will guide the agency's delivery of police services. Agency policy should articulate the role of the agency in the protection of constitutional guarantees, the enforcement of the law, and the provision of services necessary to reduce crime, to maintain public order, and to respond to the needs of the community.

1. Every police chief executive should acknowledge that the highest duties of government, and therefore the police, are to safeguard freedom, to preserve life and property, to protect the constitutional rights of citizens and maintain respect for the rule of law by proper enforcement thereof, and thereby, to preserve democratic processes.

2. Every police chief executive should identify those crimes on which police resources will be concentrated.

3. Every police chief executive should recognize that some government services that are not essentially a police function are, under some circumstances, appropriately performed by the police. Such services include those provided in the interest of effective government or in response to established community needs. A chief executive:

a. Should determine if the service to be provided has a relationship to the objectives established by the police agency. If not, the chief executive should resist that service becoming a duty of the agency;

b. Should determine the budgetary cost of the service; and

c. Should inform the public and its representatives of the projected effect that provision of the service by the police will have on the ability of the agency to continue the present level of enforcement services.

d. If the service must be provided by the police agency, it should be placed in perspective with all other agency services and it should be considered when establishing priorities for the delivery of all police services.

e. The service should be made a part of the agency's police role until such time as it is no longer necessary for the police agency to perform the service.

4. In connection with the preparation of their budgets, all police agencies should study and revise annually the objectives and priorities which have been established for the enforcement of laws and the delivery of services.

5. Every police agency should determine the scope and availability of other government services and public and private social services, and develop its ability to make effective referrals to those services.

Commentary

The Police Task Force reasons that the police cannot be all things to all people. For them to provide the most efficient and effective services to the public, they must establish objectives and priorities to guide the activities of the department. The development of objectives and priorities should take place after consultation with all affected parties. It is also important that the agency drafts its objectives and priorities with a clear understanding that an estimated 70% of their activities are related to service functions and only 30% to criminal activities.

Police chief executives should concentrate agency resources on those crimes which are serious, stimulate the greatest fear, and cause the greatest economic loss.

The Police Task Force also would urge police agencies to resist or reject the imposition of tasks dealing with city maintenance. The Task Force feels that such tasks as street and sewer maintenance, etc., demean the police function.

Implementation

A. Agencies Involved:
   All police agencies.
   Governmental chief executives.
   Courts.
   Prosecutors.
   Corrections.

B. Administrative Actions:
   All police agencies should immediately develop procedures to establish agency policy, objectives and priorities following the above standard.

Police Standard 1.2

Limits of Authority

Every police chief executive immediately should establish and disseminate to the public and to every agency employee written policy acknowledging that police effectiveness depends upon public approval and acceptance of police authority. This policy at least:

1. Should acknowledge that the limits of police authority are strictly prescribed by law and that there can be no situation which justifies extralegal police practices;

2. Should acknowledge that there are times when force must be used in the performance of police tasks, but that there can be no situation which justifies the use of unreasonable force;

3. Should acknowledge that in their exercise of authority the police must be accountable to the community by providing formal procedures for receiving both commendations and complaints from the public regarding individual officer performance.

4. Should provide for immediate adoption of formal procedures to respond to complaints, suggestions, and requests regarding police services and formulation of policies. These procedures at least should stipulate that:

a. There will be appropriate notice to the public acknowledging that the police agency desires community involvement;

b. The public will be involved in the development of formal procedures as well as in the policies that result from their establishment; and

c. Periodic public input should be sought to elicit eval-

uations of police service and to determine the law enforcement needs and expectations of the community.

Commentary

If police agencies wish to be respected by the public they serve, they cannot step beyond the limits of the law. The use of extralegal procedures undermines the integrity of the police.

Police chief executives owe it to their personnel to offer guidelines (policy) to be used in determining under what circumstances and conditions and to what extent force may be used. Again, policy should be established with the assistance of all effected parties. Employees are more apt to follow policy which they had a voice in formulating.

Once complaint and commendation receipt procedures are established they should be communicated to the public. The person submitting a complaint should receive a personal letter from the police chief executive which informs the person of the agency's response to the complaint and the outcome. All complaints should be investigated fully and the complainant apprised of the outcome of the investigation. For further discussion of complaint receipt, investigation and adjudication procedures, see Chapter 18.

Implementation

A. Agencies Involved:
   All police agencies.
   Governmental chief executives.
   Courts.
   Prosecutors.

B. Administrative Actions:
   All police agencies should develop policy regulating police force and complaint and commendation receipt and investigation procedures.

Police Standard 1.3

Police Discretion

Every police agency should acknowledge the existence of the broad range of administrative and operational discretion that is exercised by all police agencies and individual officers. That acknowledgement should take the form of comprehensive policy statements that publicly establish the limits of discretion, that provide guidelines for its exercise within those limits, and that eliminate discriminatory enforcement of the law.

1. Every police chief executive should have the authority to establish the agency's fundamental objectives and priorities and to implement them through discretionary allocation and control of agency resources.

2. Every police chief executive should establish policy that guides the exercise of discretion by police personnel in using arrest alternatives. This policy:

a. Should establish the limits of discretion by specifically identifying, insofar as possible, situations calling for the use of alternatives to continued physical custody;

b. Should establish criteria for the selection of appropriate enforcement alternatives;

c. Should require enforcement action to be taken in all situations where all elements of a crime are present and all policy criteria are satisfied;

d. Should be jurisdictionwide in both scope and application.

3. Every police chief executive should establish policy that limits the exercise of discretion by police personnel in conducting investigations and that provides for the exercise of discretion within those limits. This policy should be based on codified laws, judicial decisions, and police experience in investigating criminal conduct.

4. Every police chief executive should establish policy that governs the exercise of discretion by police personel in providing routine peacekeeping and other police services that, because of their frequent recurrence, lend themselves to the development of a uniform agency response.

5. Every police chief executive should formalize procedures for developing and implementing the foregoing written agency policy.

6. Every police chief executive immediately should adopt inspection and control procedures to insure that officers exercise their discretion in a manner consistent with agency policy.

Commentary

Police discretion does exist in all communities. Police chief executives must come to terms with it and establish policy to guide its use. The unrealistic stance of full enforcement decreases the credibility of the agency.

When the police chief executive establishes policy related to discretion as it relates to what crimes the agency will actively ferret out, existing statutes should be reviewed to determine those the agency can enforce effectively. The police chief executive should also inform the appropriate legislative body of those statutes or ordinances which the agency cannot practically enforce. The police chief executive should also advise the appropriate legislative body as to the impact of proposed legislation or ordinance on the ability of the agency to maintain the existing level of police services. Unenforceable legislation is too often enacted. This adds to the police burden and lack of credibility in the community.

Police recruits should be trained so that an offender's lack of cooperation and/or disrespect toward police are not the basis of whether or not an arrest is made, unless such conduct constitutes a separate crime.

There are situations which arise everyday where invocation of the criminal process is not employed, such as in domestic disputes, dealings with juveniles, etc. Policy must be provided to all agency personnel to insure that all people will be treated on an equal basis.

Implementation

A. Agencies Involved:
   All police agencies.
   Governmental chief executives.
   Courts.
   Prosecutors.
   Corrections.

B. Administrative Actions:
   All police agencies should adopt policy to guide police discretion.

Police Standard 1.4

Communicating With the Public

Every police agency should recognize the importance of bilateral communication with the public and should constantly seek to improve its ability to determine the needs and expectations of the public, to act upon those needs and expectations, and to inform the public of the resulting policies developed to improve delivery of police services.

1. Every police agency should immediately adopt policies and procedures that provide for effective communication with the public through agency employees. Those policies and procedures should insure:

a. That every employee with duties involving public contact has sufficient information with which to respond to questions regarding agency policies; and

b. That information the officer receives is transmitted through the chain of command and acted upon at the appropriate level.

2. Every police agency that has racial and ethnic minority groups of signficant size within its jurisdiction should recognize their police needs and should, where appropriate, develop means to insure effective communication with such groups.

3. The police chief executive should have the responsibility of maintaining communications with the community, using whatever agency resources are necessary and appripriate to accomplish the task.

a. Every police agency should establish lines of communication between the agency and recognized community leaders and should elicit information from the citizens on the street who may feel that they have little voice in government or in the provision of its services.

b. Any officer assigned this responsibility should be no more than one step removed from the chief executive in the chain of command.

c. Every police agency should identify impediments to communication with the community, research and devise methods to overcome those impediments, and develop programs which facilitate communication between the agency and the community.

d. Every police agency should conduct constant evaluations of all programs intended to improve communication and should recommend discontinuance of programs when their objectives have been achieved or when another program might more beneficially achieve the identified functional objective.

Commentary

The Task Force stresses that South Dakota's police agencies cannot operate in a vacuum if they expect support from their respective communities. Communication with all segments of the community must be actively sought. The police are a part of and not apart from the public; this must be clearly understood.

The process of communication can be enhanced through community meetings, street contacts, or other methods. Effective communication can often stop or decrease public dissatisfaction or criticism which stems from misinformation. It is the responsibility of the police chief executive to see that the public is fully informed of agency policy and procedure.

Implementation

A. Agencies Involved:
Every police agency.

B. Administrative Actions:
All police agencies should provide the mechanism for effective communication with the public.

Police Standard 1.5

Police Understanding of Their Role

Every police agency immediately should take steps to insure that every officer has an understanding of his/her role, and an awareness of the culture of the community where he/she works.

1. The procedure for developing policy regarding the police role should involve officers of the basic rank, first line supervisors, and middle managers. Every police employee should receive written policy defining the police role.

2. Explicit instruction in the police role and community culture should be provided in all recruit and inservice training.

3. The philosophy behind the defined police role should be a part of all instruction and direction given to officers.

4. Middle managers and first line supervisors should receive training in the police role and thereafter continually reinforce those principles by example and by direction of those they supervise.

5. Methods of routinely evaluating individual officer performance should take into account all activities performed within the context of the defined role. Promotion and other incentives should be based on total performance within the defined role, rather than on any isolated aspect of that role.

Commentary

Role can be defined as the behavior expected of the holder of a certain position. Every police officer should be provided with a thorough understanding of the police role as defined by the agency. Officers should know what is expected of them, so they can act in accordance with that role expectation.

The policy developed to define the police role in the community should be brought about with input from all levels within the department. Patrol officers are most likely to accept a role if they have had some say as to what that role should be.

Evaluation and promotion are too often based upon a single situation or aspect of the officer's role. An example would be where an officer is raised in rank from sergeant to captain because the officer single-handedly captured two armed felons fleeing from the scene of a robbery. The sum total of the officer's actions should be considered in an evaluation or consideration for promotion. See Chapter 16 for a more thorough discussion of promotion procedures.

Implementation

A. Agencies Involved:
All police agencies.
Governmental chief executives.

B. Administrative Actions:

All police agencies should communicate the developed police role to all personnel.

Police Standard 1.6

Public Understanding of the Police Role

Every police agency immediately should establish programs to inform the public of the agency's defined police role. These programs should include, but not be limited to, the following:

1. Every police agency should arrange for at least an annual classroom presentation by a uniformed officer at every public and private elementary and secondary school within its jurisdiction.

2. Every police agency, where permitted by local conditions, should participate in government and civic classes offered in local evening adult schools and community colleges.

3. Every police agency, in cooperation with employee organizations or local civic groups, should develop or participate in youth programs including scouting and other athletic or camping activities.

All such programs should be designed to provide officers and young people with the opportunity to become personally acquainted with each other;

b. Every officer participating in youth programs should be provided with written material describing the objective of the program and its relationship to the police role.

4. Every police agency should accept invitations for officers to speak to business and civic organizations. Efforts should be made to provide speakers in response to every reasonable request and to coordinate the speaker's ability and background with the intended audience. Every opportunity should be taken to describe the police role and the agency's objectives and priorities.

5. Every police agency should publish a statement of the police role, the agency's objectives and priorities in filling that role, and the agency's activities to implement its role. An annual report should be used for this purpose. In addition, periodic statistical reports on crime, arrests, and property loss due to crime should be disseminated to the public. These reports should include an evaluation of significant trends and other interpretations.

6. Every police agency should inquire into the availability of public service resources from advertising and communication organizations to assist in developing support for the agency and its programs.

7. Every police agency should hold an annual open house and should provide other tours of police facilities and demonstrations of police equipment and tactics when appropriate to create greater public awareness of the police role.

Commentary

The Task Force feels very strongly that the police should communicate their role and function to the community and especially to school aged individuals. Effective communication can be brought about through various methodologies, such as, those mentioned in the standard.

All presentations given to schools or other civic groups should be well prepared. Where possible a police-liaison officer should be used for this purpose. The presentations should be tailored to the group being addressed. If the presentation is to a school aged group, for example, law enforcement as it relates to juveniles should be addressed.

The Sioux Falls Police Department has a program called a Mini-Course whereby students can get a first hand view of law enforcement by becoming directly involved with various aspects of police work within the Sioux Falls Police Department. Students actually visit the police department over a specified period of time to work with and learn from agency personnel. This program is a cooperative effort between the Sioux Falls Police Department and the Sioux Falls School System. The Task Force strongly recommends implementation of this program and others like it in other areas of South Dakota.

Implementation

A. Agencies Involved:

All police agencies.

B. Administrative Actions:

All police agencies should develop programs and procedures which provide an understanding of the police role by the public.

C. Funding:

All funding agencies should consider this a priority area and give consideration to funding the programs aimed at the implementation of this standard.

Police Standard 1.7

News Media Relations

Every police chief executive immediately should acknowledge in written policy statements the important role of the news media and the need for the police agency to be open in its relations with the media. The agency should promote an aggressive policy of presenting public information of a general nature rather than merely responding to occasional inquiries.

1. The news media relations policy should be included in the agency training curricula, and copies of it provided to all agency personnel, media representatives, and the public. This policy should acknowledge:

a. The right of the press to obtain information for dissemination to the public.

b. The agency's responsibility to respond to inquiries from the media, subject to legal restraints and the necessity to preserve evidence, to prevent interference with police investigations and other operations, and to protect the constitutional rights of persons accused of crimes;

c. The mutual benefits to the police agency and media when relations between the two are characterized by candor, cooperation, and mutual respect.

2. The news media relations program should provide regular liaison between the agency and the media through an officer or unit, depending upon the size of the agency and the nature and frequency of local news media demands.

3. Every police chief executive should establish a means of local, regional, or State accreditation of legitimate news media representatives or of recognizing accreditation by other agencies to assist media representatives in receiving police cooperation.

4. Every police chief executive, in cooperation with the media, should prepare a written policy establishing the relationship between the agency and the news media during unusual occurrences.

Commentary

A police department should have nothing to hide. It should accept the news media at its best and welcome witness. Any press relations policy must view the press as an essential public servant.

Police agencies should work closely with their respective legal counsel to ensure that prejudicial information about an accused person is not released. Policy which sets guidelines as to what information is prejudicial should be established and disseminated to agency personnel to protect the rights of the accused. The policy should also define the types of information which cannot be released because it may, by its nature, impede an investigation.

All police agencies should designate one officer as the contact person for the press. The police should not only establish relations with the press for articles relating to criminal activity or traffic accidents, but also actively seek the press's support in publishing crime prevention articles.

Press credentials should be issued yearly by the South Dakota Press Association. Press credentials assure the police that the holder is a news representative actively engaged in gathering police and fire department news.

Implementation

A. Agencies Involved:
All police agencies.
Prosecutors.
News Media.

B. Legislation:
Legislation should be enacted which provides for the issuance of press credentials by the South Dakota Press Association. The Press Association should establish criteria to be met by bonafide representatives of the press.

C. Administrative Actions:
All police agencies along with their prosecuting attorney and courts should establish policy to govern the issuance of press releases. Police agencies should establish a working relationship with the press.

CHAPTER TWO

ROLE IMPLEMENTATION

Police Standard 2.1

Development of Goals and Objectives

Every police agency immediately should develop short-and-long-range goals and objectives to guide agency functions. To assist in this development, all unit commanders should review and put into writing the principal goals and objectives of their unit.

1. Every police agency and every unit within the agency should insure that its goals and objectives are:

a. Consistent with the role of the police as defined by the agency's chief executive;

b. Responsive to community needs;

c. Reasonably attainable;

d. Sufficiently flexible to permit change as needed; and

e. Quantifiable and measurable where possible.

2. Every police agency should provide for maximum input both within and outside the agency in the development of its goals and objectives. It should:

a. Create an atmosphere that encourages unrestricted submission of ideas by all employees regardless of rank; and

b. Establish methods to obtain ideas from a variety of organizations and individuals outside the agency.

3. Every police agency and every unit within each agency should publish and disseminate within the agency its goals and objectives to provide uniform direction of employee efforts.

4. Every police chief executive should make a periodic review of unit goals and objectives and submit a written evaluation of the progress made toward the attainment of these goals. Annually, in conjunction with the budget preparation, every police chief executive should provide for review and evaluation of all agency goals and objectives and for revisions where appropriate.

Commentary

The Task Force wishes to stress in this and the next standard the concept of participatory management. All employees should be involved in the formulation of goals and objectives of the agency. If all personnel are involved, they will better accept agency goals and objectives, thus insuring greater likelihood for attainment of the established goals.

The police chief executive must constantly be asking the question: Will the thing which is to be done be in line with, or assist in meeting, the organizational objectives which have been established?

The goals and objectives of police agencies should be communicated to the other segments of the criminal justice system and community. This will promote, if not greater harmony in the criminal justice system, a greater understanding between the segments of the system.

Implementation

A. Agencies Involved:
All police agencies.
Governmental chief executives.

B. Administrative Actions:
All police chief executives should establish procedures for the development of departmental goals and objectives.

Police Standard 2.2

Establishment of Policy

Every police chief executive immediately should establish written policies in those areas of operations in which guidance is needed to direct agency employees toward the attainment of agency goals and objectives.

1. Every police chief executive should promulgate policy that provides clear direction without necessarily limiting employee exercise of discretion.

2. Every police chief executive should provide for maximum participation in the policy formulation process. This participation should include at least:

a. Input from all levels within the agency — from the level of execution to that of management — through informal meetings between the police chief executive and members of the basic rank, idea incentive programs, and any other methods that will promote the upward flow of communication; and

b. Input from outside the agency as appropriate — from other government agencies, community organizations, and the specific community affected.

3. Every police chief executive should provide written policies in those areas in which direction is needed, including, but not limited to:

a. General goals and objectives of the agency;

b. Administrative matters;

c. Community relations;

d. Public and press relations;

e. Personnel procedures and relations;

f. Personal conduct of employees;

g. Specific law enforcement operations with emphasis on such sensitive areas as the use of force, the use of lethal and nonlethal weapons, and arrest and custody; and

h. Use of support services.

Commentary

The Task Force recognizes the necessity of establishing written policy to guide the actions of all agency employees in the performance of their duties and which at the same time recognizes police discretion. Policies should set bounds in which agency personnel must operate. Any transgression of those bounds would be grounds for disciplinary action.

The Task Force recognizes that if officers overstep the bounds of policy, but their actions are within constitutional bounds, any evidence seized should not be suppressed by the court. Nor should a violation of policy be grounds for civil penalty. If the court finds any police agency policy in violation of the constitution or statute, this fact should be communicated to the police chief executive for corrective measures.

To insure that the above safeguards are met, the Police Task Force recommends that the State Legislature enact legislation which conforms to American Bar Association: **The Urban Police Function,** Standard 4.4, which reads as follows:

4.4 Contribution by Legislatures and courts.

To stimulate the development of appropriate administrative guidance and control over police discretion, legislatures and courts should actively encourage police administrative rule-making.

(a) Legislatures can meet this need by delegating administrative rule-making responsibility to the police by statute.

(b) Courts can stimulate administrative development in several ways including the following:

(i) Properly developed and published police administrative policies should be sustained unless demonstrated to be unconstitutional, arbitrary, or otherwise outside the authority of the police;

(ii) To stimulate timely and adequate administrative policy-making, a determination by a court of a violation of an administrative policy should not be a basis for excluding evidence in a criminal case unless the violation of administrative policy is of constitutional dimensions or is otherwise so serious as to call for the exercise of the superintending authority of the court. A violation per se should not result in civil liability; and

(iii) Where it appears to the court that an individual officer has acted in violation of administrative policy or that an administrative policy is unconstitutional, arbitrary, or otherwise outside the authority of the police, the court should arrange for the police administrator to be informed of this fact, in order to facilitate fulfillment by the police administrator of his responsibility in such circumstances to reexamine the relevant policy or policies and to review methods of training, communication of policy, and supervision and control. (ABA, 1972: 14)

Implementation

A. Agencies Involved:
   All police agencies.
   Courts.

B. Legislation:
   South Dakota should enact legislation which:
   1. Encourages police administrative rule making, and
   2. Provides that a violation per se of policy should not result in civil liability unless such action is a violation of a person's constitutional rights.

C. Administrative Actions:
   All police agencies should develop policies which guide the actions of the agency and its employees. The courts should establish rules which allow for the acceptance of evidence gained in a manner outside of policy but within constitutional bounds.

Police Standard 2.3

Inspections

Every police agency should immediately establish a formal inspection system, to provide the police chief executive with the information needed to evaluate the efficiency and effectiveness of agency operation.

1. Every police agency should require ongoing line inspections. Every police chief executive should give all managers and supervisors the responsibility and authority to hold inspections and;

a. To conduct continual inspections of all personnel subordinate and directly responsible to them through any level of the chain of command and to inspect the equipment used and the operations performed by such subordinate personnel;

b. To take immediate action indicated by the results of such inspections: commendation for exemplary performance and correction of deficiencies.

2. Every police chief executive should implement routine scheduled and unscheduled inspections of all personnel, material, and operation. When the police chief executive personally cannot conduct these inspections often enough, staff inspections should be provided to meet these needs.

a. Every police agency with at least 75 personnel should, where necessary, establish an inspection unit or assign an employee whose full-time responsibility is staff inspection. If a full-time assignment is not justified, staff inspections should be assigned to an employee who performs related duties but is neither responsible to supervisors of the units being inspected nor responsible for the operations of such units;

b. Every police agency with fewer than 75 personnel, and in which the chief executive cannot conduct the inspections, should assign responsibility for the staff inspections to an employee who performs related duties but is neither responsible to supervisors of the units being inspected nor responsible for the operations of such units;

c. Staff inspections should include inspection of materials, facilities, personnel, procedures and operations. A written report of the findings of the inspection should be forwarded to the chief executive; and

d. Where possible, the rank of the employee responsible for staff inspections or that of the employee in charge of the inspections unit should be no lower than the rank of the employee in charge of the unit being inspected. There should be no more than one person between the inspecting employee and the chief executive in the chain of command. The person conducting a staff inspection should be a direct representative of the police chief executive.

Commentary

The selection of inspection personnel is critical to the success of the staff inspection program. Any person assigned to conduct inspections should possess a wide range of police experience, an understanding of agency goals and objectives, objectivity, and integrity.

The purpose of inspection (Wilson and McLaren, 1972) is fourfold. It is to determine if tasks are being performed; if anticipated results are being attained; if resources are being used to their full potential; and to reveal areas of need. Any inspection should center on the strengths of the inspected, not the weaknesses. Inspections should be conducted to improve skills and procedures. It is important that this be communicated to agency personnel so they do not view inspections solely as a method of uncovering dereliction of duty.

Implementation

A. Agencies Involved:
   All police agencies.

B. Administrative Actions:
   All police agencies should establish inspection procedures consistent with this standard.

CHAPTER THREE
CRIME PREVENTION

Police Standard 3.1
Crime Prevention

Every police agency should immediately establish programs that encourage members of the public to take an active role in preventing crime, that provide information leading to the arrest and conviction of criminal offenders, that facilitate the identification and recovery of stolen property, and that increase liaison with private industry in security efforts.

1. Every police agency should assist actively in the establishment of volunteer neighborhood security programs that involve the public in neighborhood crime prevention and reduction.

a. The police agency should provide the community with information and assistance regarding means to avoid being victimized by crime and should make every effort to inform neighborhoods of developing crime trends that may affect their area.

b. The police agency should instruct neighborhood volunteers to telephone the police concerning suspicious situations and to identify themselves as volunteers and provide necessary information.

c. Participating volunteers should not take enforcement action themselves.

d. Police units should respond directly to the incident rather than to the reporting volunteer.

e. If further information is required from the volunteer, the police agency should immediately notify the volunteer by telephone.

f. If an arrest results from the volunteer's information, the police agency should immediately notify the volunteer by telephone.

g. The police agency should acknowledge through personal contact, telephone call, or letter, every person who provides information.

2. Every police agency should establish or assist programs that involve trade, business, industry, and community participation in preventing and reducing commercial crimes.

3. Every police agency should seek the enactment of local ordinances that establish minimum security standards for all new construction and for existing commercial structures.

4. Every police agency should conduct, upon request, security inspections of businesses and residences and recommend measures to avoid being victimized by crime.

Commentary

The police cannot single-handedly prevent all crime which occurs within the community. They need the assistance of each and every citizen. Citizens should be encouraged to report suspicious or abnormal activity within their neighborhoods to which the police should directly respond. Citizens should also be informed as to ways they can make their persons and property safe from criminal activity. Such a program of public information could be fashioned after the Minnesota Crime Watch Program. The Minnesota Crime Watch Program has developed media commercials and pamphlets which inform citizens of ways to protect themselves and their property from crime. The program has proven to be effective in reducing crime in Minnesota.

The police should take an active role in hardening business, commercial and industrial complexes against crime. This could be done through ordinance and inspection and could be delegated to existing agencies whose responsibility it is to inspect buildings. Information pertaining to crime prevention should also be disseminated to the business and industrial communities.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
All police agencies should immediately research, prepare and disseminate to all areas of the community information relevant to crime prevention.

C. Funding:
The State Criminal Justice Commission should consider funding a program of statewide crime prevention. The program could be patterned after the Minnesota Crime Watch Program.

CHAPTER FOUR

CRIMINAL JUSTICE RELATIONS

Police Standard 4.1

Cooperation and Coordination

Every police agency immediately should act to insure understanding and cooperation between the agency and all other elements of the criminal justice system, and should immediately plan and implement appropriate coordination of its efforts with those of other elements of the criminal justice system.

1. Every police agency should cooperate with other elements of the criminal justice system in processing criminal cases from arrest to trial without delay.

2. Every police agency should consider and where appropriate seek the formation of a criminal justice coordinating council with members representative of law enforcement, other criminal justice agencies, and local government.

The council:

a. Should have as its overall objective the fair and effective disposition of all criminal cases and other more specific goals and activities related to crime prevention and reduction; and

b. Should develop policy and institute planning and coordination programs that serve to achieve its objective.

3. Every police agency should support training programs that promote understanding and cooperation through the development of unified interdisciplinary training for all elements of the criminal justice system.

Those programs:

a. Should provide for the instruction of police personnel in the functions of all criminal justice agencies to place the police role in proper perspective;

b. Should encourage, where appropriate, the participation of other criminal justice agencies in police training; and

c. Should encourage, where appropriate, police participation in training given to members of other criminal justice agencies.

Commentary

Regarding the question of speedy processing of criminal cases, the Task Force did not wish to apply an arbitrary time limit in terms of a specific number of days. By so doing, the Task Force recognizes that there are cases where it is physically impossible to bring a defendant to trial in a speedy fashion. This does not preclude the fact that a defendant should be brought to trial as soon as it is physically possible.

Those who are incarcerated while awaiting trial should be given priority for date of trial over those on bail awaiting trial.

Unified interdisciplinary, as used within this standard, means that police training should be tied as closely as possible with other criminal justice segment training to foster in all segments a clear understanding of the responsibilities, procedures, and problems of each. This may take the form of combined training programs or specific topic areas in police training programs.

Implementation

A. Agencies Involved:
All police agencies.
Prosecutors.
Courts.
Corrections.

B. Legislation:

Legislation should be enacted which makes it mandatory that the administrators of police, court, and correctional agencies of a given county or judicial circuit meet on a regular basis to discuss issues of mutual interest and ways of bettering the delivery of services. It should be stipulated that local and State employees can be reimbursed for expenses incurred while in attendance of such meetings.

C. Administrative Actions:

All police agencies should actively seek a climate of cooperation and coordination with all elements of the criminal justice system.

Police Standard 4.2

Police Operational Effectiveness Within the Criminal Justice System

Every police agency immediately should insure its operational effectiveness in dealing with other elements of the criminal justice system.

1. Every police agency should develop procedures in cooperation with local courts and prosecutors to allow on-duty officers to be on call when subpoenaed to testify in criminal matters.

2. Every police agency should develop and maintain liaison with:

a. Local courts and prosecutors to facilitate the timely issuance of arrest and search warrants, issuance of criminal complaints, and arraignment of prisoners;

b. Juvenile courts to divert, in appropriate circumstances, juveniles from the juvenile justice system and to preserve confidentiality of proceedings to the greatest extent possible;

c. Corrections agencies, including probation and parole, in order to exchange information on the status and activities of released persons who are still under sentence;

d. Other Federal, State, and local law enforcement agencies in order to arrange for the arrest and return of fugitives, to exchange information in criminal investigations, to establish joint plans for dealing with criminal conduct, and to share statistical and support services.

e. Police agencies, in promoting overall law enforcement cooperation, coordination, and exchange of information.

3. Every police agency should cooperate in the establishment of task force efforts with other criminal justice agencies and Federal, State, and local law enforcement agencies, where appropriate, to deal with major crime problems.

Commentary

It must be understood that for the police to operate in a vacuum deprives the citizens within its jurisdiction of the protection they deserve. The police cannot reduce crime

alone; every police agency must have the support and cooperation of other members of the criminal justice community, including other law enforcement agencies.

Liaison should be established with the courts and prosecutors to insure that police personnel are aware of any postponed or cancelled proceedings for which they must appear. They should be advised of their appearance far enough in advance so they may adequately prepare their testimony. In all cases, the prosecutor should review the case with the testifying officer.

South Dakota should establish a program whereby special strike forces made up of specialists and personnel from throughout the state could be called into action to handle special crime problems which arise within any jurisdiction in South Dakota. The strike force would assist agencies meeting situations which are too large or complicated to be handled by available personnel. The strike force should only be brought in upon the request of the person in charge at the local level.

Implementation

A. Agencies Involved:
All police agencies.
Attorney General.
Governmental chief executives.

B. Administrative Actions:
All police agencies should establish liaison with appropriate agencies. The Attorney General should establish the mechanism to activate and finance special strike forces.

C. Funding:
LEAA should provide funds to the Attorney General for the purposes of administering the deployment, financing, and composition of special strike forces utilizing in-state expertise and personnel to assist local governments to meet special crime problems.

Police Standard 4.3

Diversion

Every police agency, where permitted by law, immediately should divert from the criminal and juvenile justice systems any individual who comes to the attention of the police, and for whom the purpose of the criminal or juvenile process would be inappropriate, or in whose case other resources would be more effective. All diversion dispositions should be made pursuant to written agency policy prepared in cooperation with the other elements of the criminal and juvenile justice system that insures fairness and uniformity of treatment.

1. Police chief executives may develop written policies and procedures which allow, in appropriate cases, for juveniles who come to the attention of the agency to be diverted from the juvenile justice process. Such policies and procedures should be prepared in cooperation with other elements of the juvenile justice system.

2. These policies and procedures should allow for processing mentally ill persons who come to the attention of the agency, should be prepared in cooperation with mental health authorities and courts, and should provide for mental health agency referral of those persons who are in need of professional assistance but are not taken into custody.

3. The process of investigation, arrest, and prosecution, commonly viewed as an end in itself, should be recognized as but one of the methods used by police in performing their overall function, even though it is the most important method of dealing with serious criminal activity. Among other methods police use are, for example, the process of informal resolution of conflict, referral, and warning. The alternative methods used by police should be recognized as important and warranting improvement in number and effectiveness; and the police should be given the necessary authority to use them under circumstances in which it is desirable to do so.

Commentary

This standard recognizes that there are situations where the use of the criminal process is inappropriate in dealing with some law violators. Most agencies in South Dakota divert individuals from the criminal justice system. For diversion to be consistent within a community, policies should be established to guide the officer's use of discretion in situations which might warrant diversion. These policies should spell out what crimes and under what circumstances diversion is an alternative. Officers should also have the discretion to warn and release.

Edward Eldefonso (1967: 291-92) offers the following guidelines for police disposition in juvenile matters:

Referral to the Juvenile Court:

1. If the offense is of a serious nature.
2. If the offender has been before the court previously.
3. If the child has a record of delinquency extending over a period of time.
4. If the child or his/her parents are unwilling to work with a referral agency.
5. Treatment services needed by the child can only be obtained through the court.
6. If the child denies the delinquent action and the officer feels that judicial determination is called for.

Release to Parent or Guardian:

1. If the offense is minor.
2. If the child does not show sign of habitual delinquent behavior.
3. If the family is stable.
4. Adequate help is being given by public or voluntary agencies.

A child whose behavior is serious but not serious enough to be referred to court, whose behavior is too serious to be handled by the parents, and whose anti-social behavior is not well established should be referred to a social agency for diagnosis and treatment.

Diversion by police agencies will not become a viable function until effective programs which deal with an individual's social and psychological problems are developed and made available to police agencies.

Implementation

A. Agencies Involved:
All police agencies.
Courts.
Prosecutors.
Corrections.

B. Administrative Actions:

All police agencies should develop policy to guide the diversion of individuals in appropriate cases.

C. Funding:

All funding sources should give priority to providing treatment programs for people diverted by police agencies.

Police Standard 4.4

Citation and Release on Own Recognizance

Every police agency immediately should make maximum effective use of State statutes or court rules permitting police agencies to issue written summonses and citations in lieu of physical arrest or prearraignment confinement. Every police agency also should cooperate in programs that permit arraigned defendants to be released on their own recognizance in lieu of money bail in appropriate cases.

1. Every police agency should adopt policies and procedures that provide guidelines for the exercise of individual officer's discretion in the implementation of State statutes or court rules that permit issuance of citations and summonses, in lieu of physical arrest or prearraignment confinement.

2. Every police agency should take all available steps to insure that at the time arraigned defendants are considered for pretrial release, their previous criminal history or present conditional release status, if any, is documented and evaluated by the court in determining whether the defendants are released or confined pending trial.

3. Every police agency should train their officers to make a conscious choice between arrest and citation based on factors relevant to the necessity of arrest.

4. Every police agency should place special emphasis on expeditiously serving all outstanding arrest warrants obtained by the agency, particularly those issued due to a defendant's failure to appear at court proceedings.

Commentary

In all but the most minor violations of traffic or administrative regulations, the automatic response of the police acting without a warrant usually is to formally arrest the accused. See generally La Fave, Arrest 168 et seq, (1965). Almost no thought is given to the question whether in any given case there is a need for custody or whether, on the other hand, society's interests might be just as well or better served if the accused were to be issued a citation. It makes little sense to jail a man who, when he appears before the judge, will be clearly qualified for release without bail. (ABA, 1968:31)

If a defendant is not released at the time of police encounter, sufficient information should be presented to the court to determine whether or not the defendant should be released and on what conditions. The information provided should be relevant to the issue of whether or not the accused is likely to appear in court.

Implementation

A. Agencies Involved:

All police agencies.
Prosecutors.
Courts.

B. Legislation:

The state legislature should adopt statutes which provide the court with greater discretion in determining prearraignment release. The Interim Transportation Committee should study the feasibility of decriminalizing traffic laws. The Task Force also suggests an analysis of the North Dakota approach to decriminalization of traffic laws.

C. Administrative Actions:

All police agencies should develop procedures which make full use of citation and release on own recognizance in appropriate cases.

Police Standard 4.5

Criminal Case Followup

Every police agency immediately should develop policies and procedures to follow up on the disposition of criminal cases initiated by the agency. This should be done in cooperation with local courts and prosecuting agencies.

1. Every police agency, in cooperation with local courts and prosecuting agencies, should provide for the administrative followup of selected criminal cases. Policies and procedure should be developed:

a. To identify criminal cases which, because of extenuating circumstances or the defendants' criminal history, require special attention by the prosecuting agency; and

b. To encourage a police representative to attend personally all open judicial proceedings related to these cases, and to maintain close personal liaison with assigned prosecutors.

2. Every police agency should review administratively all major criminal cases in which prosecuting agencies decline to prosecute on the original charge or later cause to be dismissed. That review:

a. Should result in a referral of each such case to the concerned officer's commanding officer for administrative action to correct any police deficiencies which may have weakened the case; or

b. Should result in a referral of each case to the prosecuting agency for that agency's action to correct any deficiencies for which it may have been responsible.

3. Every police agency should encourage courts and prosecuting agencies routinely to evaluate investigations, case preparation, and the courtroom demeanor and testimony of police officers and to inform the police agency of those evaluations.

4. As is appropriate, every police agency formally should make information for its files available to other criminal justice agencies and to the courts for reference in making diversion, sentencing, probation, and parole determinations. In addition to records of past contacts with the defendant, useful information might include the effect the crime had on the victim, and the likelihood of future crime resulting from defendant's presence in the community.

5. Every police agency should actively encourage prosecuting agencies to routinely consult with police agencies before any reductions or dismissals are made in any criminal charges.

Commentary

Police should be consulted when other elements of the crim-

inal justice system are making decisions regarding diversion, reduction or dismissal of charges, probation and parole. The police see the tangible effects of crime. The police also have information relating to the act of the person in question and past performance. Such information is invaluable when considering placement, such as in a group home, or probation, or other treatment situations.

The Task Force recognizes the need for police agencies to inquire about and learn from mistakes which cause difficulty in prosecuting a case, but just as importantly, the prosecuting attorney should consult the arresting agency before any final determination is made as to the reduction of or dismissal of charges.

Implementation

A. Agencies Involved:
All police agencies.
Prosecutors.
Courts.

B. Administrative Actions:
All police agencies should adopt the standard as part of their operating procedure.

CHAPTER FIVE

PLANNING AND ORGANIZING

Police Standard 5.1

Responsibility for Police Service

State and local governments immediately should provide complete and competent police service through an organizational structure that most effectively and efficiently meets its responsibility. The government responsible for this service should provide for a police organization that performs the duties described as the police role.

Commentary

Every police agency should provide 24 hour access to police service and response to emergency situations. If the services cannot be provided by the agency itself, arrangements should be made for their provision through joint cooperative agreements.

Each year at budget preparation time the police chief executive should review agency organization to insure that the goals and objectives of the agency are best being met by the existing structure. If they are not, the necessary organizational changes should be made. If done during budget preparation, any changes which require additional appropriations can be included in the new budget. As an example, if the agency's goal is crime prevention but there exists no crime prevention programs, plans should be prepared at budget time to develop and finance such programs within the agency.

Recognizing the fact that line functions (especially the patrol) are the backbone of the agency, these functions should be reviewed first. Staff or support functions should be reviewed to insure that they serve the line functions effectively and efficiently.

The police chief executive should also clearly define the lines of authority of the agency. Commenserate authority should be delegated to provide for adequate fulfillment of responsibilities.

Implementation

A. Agencies Involved:
All police agencies.
Governmental chief executives.

B. Legislation:

Legislation should be enacted which provides for special levies by local units of government, if additional funds are needed for the provision of law enforcement services.

C. Administrative Actions:

Where applicable and necessary, agencies should adopt a review procedure of agency practice in relation to its goals and objectives. The best time to accomplish this as at budget review time.

D. Funding:

Additional funds will be required in most instances to provide 24 hour police service and emergency response where these services are not presently provided.

Police Standard 5.2

Combined Police Services

The State and local governments and every police agency should provide police services by the most effective and efficient organizational means available to it. In determining this means, each should acknowledge that the police organization (and any functional unit within it) should be large enough to be effective but small enough to be responsive to the people. If the most effective and efficient police service can be provided through mutual agreement or joint participation with other criminal justice agencies, the governmental entity or the police agency immediately should enter into the appropriate agreement or joint operation. At a minimum, police agencies of less than five (5) full-time sworn officers should give serious consideration to consolidation for more efficient and effective law enforcement.

1. The State should retain legislation enabling local governments and police and criminal justice agencies, with the concurrence of their governing bodies, to enter into interagency agreements to permit total or partial combination of police services. This legislation:

a. Permits police service agreements and joint participation between agencies at all levels of government;

b. Encourages interagency agreements and joint participation in police services where beneficial to agencies involved;

c. Permits reasonable local control or responsiveness to local needs.

2. Every local government should take whatever other actions are necessary to provide police services through mutual agreement or joint participation where such services can be provided most effectively.

3. No State or local government or police agency should enter into any agreement for or participate in any police service that would not be responsive to the needs of its jurisdiction and that does not at least:

a. Improve the current level of a service either at the same cost or at an increased cost if justified; or

b. Provide an additional service at least as effectively and economically as it could be provided by the agency alone.

4. The State should provide, at no cost to all police agencies within the State, those staff services such as laboratory services, information systems, and intelligence systems, which fill a need common to all these agencies and which would not be economical or effective for a single agency to provide for itself.

5. Every local government and the local police agency should study possibilities for combined and contract police services, and where appropriate, implement such services. Combined and contract service programs may include:

a. Total consolidation of local government services: the merging of two city governments, or city-county governments;

b. Total consolidation of police services: the merging of two or more police agencies or of all police agencies (i. e. regional consolidation) in a given geographic area;

c. Partial consolidation of police services: the merging of specific functional units of two or more agencies;

d. Regionalization of specific police services: the com-

bination of personnel and material resources to provide specific police services on a geographic rather than jurisdictional basis;

e. Metropolitanization: the provision of public services (including police) through a single government to the communities within a metropolitan area;

f. Contracting for total police services: the provision of all police services by contract with another government (city with city, city with county, or county with city);

g. Contracting for specific police services: the provision of limited or special police services by contract with another police or criminal justice agency; and

h. Service sharing: the sharing of support services by two or more agencies.

6. Every police agency should immediately, and annually thereafter, evaluate its staff services to determine if they are adequate and cost effective, whether these services would meet operational needs more effectively and efficiently if they were combined with those of other police or criminal justice agencies, or if agency staff services were secured from another agency by mutual agreement.

7. Every police agency that maintains cost-effective staff services should offer the services to other agencies if by so doing it can increase the cost-effectiveness of the staff service.

8. All police chief executives should identify those line operations of their agency that might be more effective and efficient in preventing, deterring, or investigating multijurisdictional criminal activity if combined with like operations of other agencies. Having identified these operations the police chief executive should:

a. Confer regularly with all other chief executives within the area, exchange information about regional criminal activity, and jointly develop and maintain the best organizational means for regional control of this activity; and

b. Cooperate in planning, organizing, and implementing regional law enforcement efforts where such efforts will directly or indirectly benefit the jurisdiction served.

Commentary

Local governments and the citizens they serve can benefit from combined police services. Combination may take the form of contracting for all police services or for specific police services.

South Dakota has recently experienced great interest in the concept of county-wide law enforcement. Under such systems there is created through contractual agreement, one law enforcement agency for the entire county. There are also many examples of agencies combining specific services, such as, communications or records.

The existing county-wide systems have been brought about because of citizen concern for better law enforcement. Many of our smaller communities which have come under pressure for better police services have not had the resources to provide better law enforcement alone. They have turned to the county for assistance in upgrading the effectiveness and efficiency of the police services provided.

The State has provided local units of government the mechanism by which they can enter into mutual assistance contracts. It is the Joint Exercise of Governmental Powers Act (SDCL 1-24). This Act provides that whatever governmental units can do singly; two or more can do in combination.

No unit of government should enter into such agreements until there has been sufficient study to determine its advantages over the present system, cost and its impact on the citizenry.

Studies have shown that it takes five full-time personnel to provide services 24 hours per day, 7 days per week. This would provide that one person was on duty at all times. The Task Force feels that at a minimum a citizen is entitled to this level of service. Every community and every county should insure that provisions are made that a sworn officer can respond to an emergency or call for service at anytime of day or night within a reasonable length of time.

Those agencies which cannot provide this minimal level of police service at the present time should study the feasibility of combining resources to do so. They may wish to approach the county, another county, or another city. A study should be conducted to determine alternative ways of providing needed services and alternative funding methods. Once it is decided to combine and how and for how much, a joint cooperative agreement should be drafted and signed by all parties involved.

Implementation

A. Agencies Involved:
   All local police agencies.
   Governmental chief executives.

B. Administrative Actions:
   All agencies and local governments, especially those not now providing 24 hour services, should review their department to determine if through some form of combination more efficient and effective services might be provided.

C. Funding:
   The State Criminal Justice Commission should continue giving priority to projects which involve the combination of services.

Police Standard 5.3

Commitment To Planning

Every police agency should develop planning processes which will anticipate short- and long-term problems and suggest alternative solutions to them. Policy should be written to guide all employees toward effective administrative and operational planning decisions. Every police agency should adopt procedures immediately to assure the planning competency of its personnel through the establishment of qualifications for selection and training.

1. Every police agency should establish written policy setting out specific goals and objectives of the planning effort, quantified and measurable where possible, which at least include the following:

a. To develop and suggest plans that will improve police service in furthering the goals of the agency;

b. To review existing agency plans to ascertain their suitability, to determine any weaknesses, to update or devise improvement when needed, and to assure they are suitably recorded;

c. To gather and organize into usable format information needed for agency planning.

2. Every police agency should stress the necessity for con-

tinual planning in all areas throughout the agency, to include at least:

a. Within administrative planning: long range, fiscal and management plans;

b. Within operational planning: specific operational, procedural, and tactical plans;

c. Extradepartmental plans; and

d. Research and development.

3. Every police agency should establish written qualifications for employees assigned specifically to planning activities.

4. Every police agency should provide training necessary for all personnel to carry out their planning responsibilities.

5. If there are planning needs that cannot be satisfied by agency personnel, the police agency should satisfy these needs through an appropriate arrangement with another police agency, another governmental agency, or a private consultant.

Commentary

Planning whether it be administrative, fiscal or operational is one of the most critical areas of concern for a police chief executive. Every police chief executive should develop a planning mechanism for the agency. Planning will permit the agency to reach its established goals by meeting delineated objectives. Planning will also assist in anticipating problems or emergencies, therefore providing a greater chance of their being met effectively and efficiently.

> Only by firmly committing himself to planning — by formulating and articulating policy, by implementing an adequate program, and by encouraging and supporting planning personnel at all levels regardless of basic assignment — can the police chief executive assure himself that his agency will perform with increasing effectiveness in a changing environment. (NAC, 1973: 119)

If an agency can hire a planner to head its planning efforts, the person hired should be trained in the planning techniques and processes. If a person within the ranks is promoted to the position or if the planning responsibility is spread throughout the agency, those involved should be adequately trained. Police agencies are encouraged to utilize the services of their District Planning Office for planning assistance.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
All police agencies should establish a planning capability. Planning is the police chief executive's responsibility. In most agencies in South Dakota, the police chief executive will have to assume the planning task. Full-time personnel or units may be assigned the planning task where budgets permit.

Police Standard 5.4

Police-Community Physical Planning

Every police agency should participate with local planning agencies and organizations, public and private, in community physical planning that affects the rate or nature of crime or the fear of crime.

1. Every government entity should seek police participation with public and private agencies and organizations involved in community physical planning within the jurisdiction.

2. Every police agency should assist in planning with public and private organizations involved in police-related community physical planning. This assistance should at least include planning involving:

a. Industrial area development;

b. Business and commercial area development;

c. Residential area development, both low rise and high rise;

d. Governmental or health facility complex development;

e. Open area development, both park and other recreation;

f. Redevelopment projects such as urban renewal; and

g. Building requirements (targets hardening), both residential and commercial.

Commentary

Time and time again buildings and developments are designed and built without input from police agencies as to how the proposed development will add to the law enforcement burden or how it could be designed to eliminate potential crime hazards. Police agencies should become actively involved with their physical and social planning bodies to provide needed expertise about proposed programs or projects to determine their effect on crime. The crime problem and law enforcement burden will increase unnecessarily if this practice is not instituted.

Implementation

A. Agencies Involved:
All police agencies.
Every governmental unit or agency with physical or social planning responsibility.

B. Administrative Actions:
Police agencies should actively seek input into planning efforts which could affect the crime rate.

Police Standard 5.5

Fiscal Management Procedures

Every police chief executive should use the most effective and appropriate fiscal management techniques available. Policy and procedures should be established to provide that budgeting is a fundamental part of the management planning process.

1. Every police chief executive should develop the fiscal controls necessary for the agency to stay within funding restrictions, to insure that funds are being spent for authorized purposes, to account properly for monies received from the public, and to alert management to possible fiscal problems requiring remedial action. This function also should include:

a. Developing policy and procedures for highly flexible interaccount transfers as changing needs arise during budget years; and

b. Preparing, on a quarterly basis in large agencies and on a monthly basis in small ones, summaries of expenditures, balances, and interaccount transfers.

Commentary

The police chief executive should establish a budget preparation procedure which allows sufficient input from all areas of the department and time for adequate preparation. The process and deadlines should be clearly spelled out. Close liaison should also be maintained with the legislative body and its chief fiscal officer.

The police chief executive should adopt control procedures over and above those set by the various legislative and fiscal control bodies. The administrator should be constantly apprised of the status of the budget categories. This control is needed so that budgetary problems can be met before they become unmanageable. If an unforseen budgetary stress is encountered, the police chief executive should be able to transfer funds between budget categories. This ability should be closely monitored.

There are various methods of budgeting. The police chief executive and/or fiscal affairs officer should be thoroughly familiar with whichever budgetary method is prescribed.

Implementation

A. Agencies Involved:
All police agencies.
Governmental chief executives.
B. Administrative Actions:
All agencies should develop procedures to provide for an effective budgeting and monitoring process.

Police Standard 5.6

Funding

Every police chief executive and every police fiscal affairs officer should be thoroughly familiar with all means by which the agency can derive all the benefits possible from local funding, city-State-Federal revenue sharing, grantsmanship, and the use of bonds. They should understand the implications of each and use these means to provide funding for agency programs.

1. No police agency should enforce local ordinances for the sole or primary purpose of raising revenue, and no income arising from enforcement action should be earmarked specifically for any single enforcement agency.

2. Every police agency should use grants under explicit conditions to fund planning and experimentation in all phases of police service.

a. Functional responsibility for the procurement of grants from Federal and State agencies and foundations should be made the specific responsibility of a police agency employee designated by the chief executive.

b. Grants should not be sought to initiate long-range programs unless the jurisdiction will commit itself to continued funding on successful completion of the funded portion of the project.

c. Any employee assigned to grant procurement should be given appropriate training.

Commentary

As revenues become more and more restricted, it becomes imperative that police chief executives are familiar with the various sources of revenue which are available to the agency and their limitations.

Revenues derived from enforcement or regulatory actions of the police agency should only be incidental to the action. The derived revenue should never be the basis for such action.

Implementation

A. Agencies Involved:
All police agencies.
B. Administrative Actions:
The police chief executive should become familiar with all revenue sources. Contact should be made with the nearest District Planning and Development Agency to acquire information regarding various available grant programs.

Police Recommendation 5.1

Measures of Effectiveness

It is recommended that a national study be undertaken to determine methods to evaluate and measure the effectiveness of individual police agencies in performing their crime control functions. Reliable indicators of police effectiveness beyond those set forth in this report should be determined to provide valid estimates of the productivity of the police agencies in preventing, deterring, and controlling crime.

CHAPTER SIX

UNUSUAL OCCURRENCES

Police Standard 6.1

Command and Control Planning

The chief executive of every municipality and/or county should have ultimate responsibility for developing plans for coordination of all government and private agencies involved in unusual occurrence control activities. Every police chief executive should develop plans immediately for the effective command and control of police resources during mass disorders and natural disasters. These plans should be developed and applied in cooperation with allied local, State, and Federal agencies and should be directed toward restoring normal conditions as rapidly as possible.

1. Every police agency should develop intraagency command and control plans to activate the resources of the agency rapidly to control any unusual occurrence that may occur within its jurisdiction. These plans should provide for:

a. Liaison with other organizations to include the participation of those organizations in quickly restoring normal order;

b. Mutual assistance agreements with other local law enforcement agencies and with State and Federal authorities, where effective control resources may be limited by agency size; and

c. The participation of other government and private agencies.

2. Every police agency should furnish current copies of command and control plans to every organization likely to participate directly in the control effort.

3. Every police agency should insure that every employee is familiar with command and control plans that relate to any function the employee might be called upon to perform, or any function that might relate to his or her performance.

Commentary

Most agencies in South Dakota are ill-prepared for any kind of unusual occurrence which would develop within their jurisdiction. Without an advance plan which details what resources will be used and how and under what conditions, a community will not be able to react properly to the emergency situation. The State or local governmental chief executive (Governor, mayor, chairperson of the County Commission) should be responsible for the preparation of an overall plan for unusual occurrences. The police chief executive should be responsible for that section of the overall plan for which the police agency is responsible.

Most agencies in South Dakota could not handle most unusual occurrences solely with the personnel and equipment within their jurisdiction. Because of this, mutual aid agreements should be obtained with other nearby local agencies spelling out what would be needed and expected in the event of an unusual occurrence. Local agencies should not overlook State and Federal assistance.

Once the plan is prepared it should be distributed to all agencies and individuals who might be involved in its implementation. Everyone must be familiar with their responsibilities in carrying out the plan.

It should be remembered that in times of unusual occurrence local agencies are the lead agencies and this authority should be usurped only in time of total collapse.

Implementation

A. Agencies Involved:

All police agencies with the exception of the Division of Criminal Investigation and the State Highway Patrol. The lead agencies in the event of unusual occurrences are local agencies.

Chief executives.

B. Administrative Actions:

The chief executive should bring together the necessary people to develop plans for the control of unusual occurrences.

C. Funding:

Needed funds for plan development should be provided by the unit of government having the planning responsibility.

Police Standard 6.2

Executive Responsibility

All police chief executives should be given responsibility immediately to command all the police resources of their own agency and to coordinate all other police resources involved in controlling unusual occurrences within the jurisdiction. This authority should be preempted only when a state of emergency is declared by the Governor, local authority breaks down, or command authority is transferred by prior agreement. In carrying out this responsibility, the police chief executive should coordinate all police activities within the affected area, and should insure that at least minimum services are provided to the remainder of the jurisdiction.

1. Every local government should provide by law that police chief executives be responsible for the command of their own personnel and coordinate all other law enforcement resources used to control unusual occurrences within the jurisdiction. The police chief executive immediately should establish a system designating executive command in the police chief executive's absence.

a. A system of succession of command should be established; and

b. A senior officer should be designated the acting chief executive in the absence of the chief executive.

2. The chief executive or chief executive's delegate should be available to assume command without delay at all times. The individual should:

a. Assess the agency's needs in the involved area and in the remainder of the jurisdiction;

b. Make decisions based on available information, and issue appropriate instructions to the agency to insure coordinated and effective deployment of personnel and equipment for control of the occurrence and for effective minimum policing of the remainder of the agency's jurisdiction;

c. Insure that all actions taken by law enforcement personnel deployed in the affected area are supervised and directed; and

d. Apply control measures according to established command and control plans and predetermined strategies.

Commentary

Every police chief executive should have full command of the agency's personnel and resources during the time of an unusual occurrence within the agency's jurisdiction.

The police chief executive of the jurisdiction wherein the unusual occurrence is taking place should coordinate the activities of all agencies responding to the situation, but command of the individual agencies responding should remain with those who normally exercise that command.

Police chief executives especially those within our smaller jurisdictions should be prepared to relinquish command when the situation is such that their knowledge and experience does not provide the tools to adequately coordinate the law enforcement resources at hand. The point of relinquishment and to whom command will be relinquished should be established in advance.

Implementation

A. Agencies Involved:
All local police agencies.
Governmental chief executives.

B. Administrative Actions:
All police chief executives and governmental chief executives should take steps to develop plans to control unusual occurrences.

Police Standard 6.3

Organizing for Control

Every police agency should develop an interim unusual occurence control organization. The organization should be capable of rapid and orderly activation, assembly, and deployment of all needed agency resources and should be flexible enough to permit incremental activation. It should provide the following services under the command of the police chief executive:

1. A control center should be established to act as the agency command post responsible for:

a. Coordinating all agency unusual occurrence control activities;

b. Obtaining all resources and assistance required for the field forces from agency and outside sources;

c. Maintaining chronological logs and preparing periodic reports concerning the unusual occurrence situations; and

d. Collecting and disseminating information from field forces, agency sources, and outside agencies.

2. An intelligence organization should be responsible for collecting, evaluating, and disseminating information. The intelligence function should be performed by:

a. Field units;

b. A coordinating unit located at the agency control center; and

c. Outside agencies contributing intelligence through the coordinating unit.

3. A personnel unit should be established to:

a. Activate a predetermined personnel call-up system;

b. Maintain current personnel availability information and a continuous accounting of all agency personnel;

c. Anticipate the personnel needs of the field forces and provide for them;

d. Advise the agency commanding officer of the availability of personnel when the number of officers committed to the unusual occurrence indicates the need for partial or total mobilization, or a request for mutual aid or military assistance; and

e. Make proper and timely notifications of deaths and injuries of agency personnel.

4. A logistics unit should be established to:

a. Procure the needed vehicles, maintenance, supplies, and equipment deployed in the unusual occurrence;

c. Determine appropriate staging areas and maintain a current list of them;

d. Receive and safeguard evidence and property for the field forces; and

e. Provide for feeding of field forces, when necessary.

5. A field command post should be established and staffed with personnel to support the field commander. The field command post should be staffed and organized to enable the field commander to:

a. Direct the operations necessary to control the unusual occurrence;

b. Assemble and assign agency resources;

c. Collect, evaluate, and disseminate intelligence concerning the incident;

d. Communicate with concerned task force officers and units;

e. Apply the strategy and tactics necessary to accomplish the police mission;

f. Gather, record, and preserve evidence; and

g. Maintain appropriate records of field operations.

6. A casualty information center should be established and staffed with qualified personnel to:

a. Gather, record, and disseminate all information concerning dead, injured, missing, and lost persons;

b. Establish liaison with relief agencies to obtain information on evacuees and evacuation centers;

c. Establish liaison with the medical examiner or coroner;

d. Deploy personnel, as needed, to hospitals, first aid stations, and morgues; and

e. Prepare casualty statistical reports periodically for the agency commanding officer.

Commentary

The immediate, organized response to emergency situations can be the determining factor in the control of many unusual occurrences. To effectively meet an unusual occurrence, the agencies must be organized. The Task Force recommends the above structures for the control of unusual occurrences. Of course the extent to which this standard can be implemented will depend upon the size of the agency involved and the resources available.

To insure a reasonable measure of safety, no agency should try to control an unusual occurrence without sufficient personnel.

Implementation

A. Agencies Involved:
All local police agencies.

B. Administrative Actions:
The structure outlined in this standard should be developed in the plan for the control of unusual occurences.

Police Standard 6.4

Mass Processing of Arrestees

Every police agency should immediately develop a system for the arrest, processing, transportation, and detention of large numbers of persons. The agency should seek alternatives to mass arrests, but if it is determined that mass arrests are necessary, a system should be available to provide adequate security for prisoners and officers and to insure that the arresting officers are returned to their field assignments as quickly as possible. The system should facilitate the restoration of order by means of lawful arrest, and preservation of all available evidence.

1. The mass arrest system should insure that arrestees are processed as rapidly as possible. The system should provide:

a. A procedure for gathering and preserving available evidence to connect arrestees to the crimes they are to be charged with. The evidence may include photographs, recordings, videotapes, statements of witnesses, or other evidence;

b. A procedure for receiving each prisoner from the arresting officer and facilitating the officer's return to his/her field assignment as soon as possible;

c. Positive identification of the arrestee and the arresting officer;

d. A procedure for receiving and maintaining continuity of evidence;

e. Rapid removal of arrestees from the affected area. Security should be provided en route to prevent attempts to free prisoners;

f. A secure detention area to prevent escape or attempts to free prisoners. The facility should be adequate to maintain custody of a number of prisoners in safety;

g. Prearranged interagency agreements to facilitate the assimilation of the arrestees into the jail system when the arresting agency is not the custodial agency;

h. Defense counsel visitations after processing. These visitations should not be permitted under field conditions or at temporary detention facilities unless adequate security is provided. Prisoners should be transported to a secure detention facility without delay; and

i. Liaison with local courts and prosecutors to determine procedures and temporary court sites for speedy arraignment of arrestees.

2. The mass arrest system should make the name and charge of persons arrested available to public inquiry as soon as possible after the arrestee has been processed. A current list of arrestees should be communicated to the agency command center as the information becomes available. Inquiries should be directed to one central location.

Commentary

During unusual occurrences the possibility of making large numbers of arrests is quite evident. If the agency is not prepared to handle large numbers of arrestees, a large amount of officer time will be unnecessarily consumed by the resulting confusion of transporting, booking and detaining large numbers of people.

This situation should be well thought out in advance so the processing, transporting, and detention of large numbers of individuals can be done as orderly as possible, thus allowing the officer to return to the street in as short a time as possible. Arrangements should be made to use other than existing departmental resources for this purpose. Such resources might include schools, military facilities, and/or the facilities of other police agencies.

Implementation

A. Agencies Involved:
All police agencies.
Prosecutors.
Courts.

B. Administrative Actions:
Where there presently exists no such plan it should immediately be developed. Agencies may wish to review the Sioux Falls Police Department or Division of Criminal Investigation plan for mass arrests when preparing their own.

Police Standard 6.5

Legal Considerations

The State and local governments should immediately review existing law and consider new legislation to permit necessary action by all control agencies and afford individuals all their constitutional guarantees during an unusual occurrence.

1. Full-time protection should be afforded every community by legislation to provide for:

a. Federal and State reimbursement of local law enforcement agencies required to react to Federal and State events, such as conventions, campaigns, or VIP visits, and extraordinary costs incurred in responding to mutual aid requests;

b. Mutual aid agreements between local, county, and State police, and the National Guard;

c. The prohibition of unnecessary force or violence in making arrests;

d. The prohibition of any sanctuary by providing police access to any area, public or private, within the jurisdiction or close enough to constitute an immediate threat to public order within the jurisdiction;

e. The prohibition of interference with or attacks upon firefighters or other emergency personnel;

f. The prohibition against failure to disperse any unlawful assemblies;

g. Prohibition of impeding pedestrian or vehicular traffic;

h. Strict controls on the manufacture, possession, transportation, or distribution of incendiary or explosive devices; and

i. Permits for parades, assemblies, and public events and regulation of the size and material used in picket signs and sign handles or any other device used in public demonstration.

2. Emergency statutes specifically designed to cope with unusual occurrences should be enacted to provide for:

a. The arrest powers of county and State police and National Guard forces when engaged with or without the local police agency's assistance in control operations within a local jurisdiction;

b. Emergency police authority enabling local police to maintain public order by suspending due process where a clear and present danger exists that mob action will render ineffective any local police agency's ability to maintain order;

c. Restrictions upon sales of gasoline, liquor, and weapons;

d. The restriction of public access to certain geographic areas under specifically defined circumstances;

e. Curfew, loitering, and other crowd control measures;

f. The restriction of public use of schools, places of amusement, water, and private aircraft; and

g. Control of the storage of firearms, firearm parts, and ammunition.

Commentary

The Task Force feels that the above legislative authority is necessary to assist police agencies to control unusual occurrences.

Restrictions on police authority in effect under normal conditions should be less restrictive when the police agency's ability to maintain order is threatened. Legislation should provide for temporary suspension of due process to permit reasonable processing of arrestees and seizing of contraband where an emergency exists. In some situations caches of guns, incendiaries, or explosives may elude seizure because of legal restrictions on searches. (NAC, 1973: 182)

In mass (NAC, 1973: 182) disorders deviations from normal arrest procedures may be necessary. Large numbers of people being processed do not permit the adherence to normal rights within a reasonable time limit, food and clothing are more immediate concerns.

Legislatures (NAC, 1973: 183) should fulfill their responsibilities to provide control agencies with laws that will give them the ability to do their job adequately.

The Task Force feels that due process rights should only be suspended in absolutely necessary situations. The legislature should define the necessary situations and provide controls against arbitrary imposition.

Implementation

A. Agencies Involved:
All police agencies

B. Legislation:
Legislation should be enacted to provide the authority to law enforcement agencies and provide for prohibitions enumerated in the standard where none presently exist.

C. Funding:
Funds should be provided where necessary to implement the provisions of this standard.

Police Standard 6.6

Training for Unusual Occurrences

Every police chief executive should immediately establish formal training programs in unusual occurrence control administration, strategy, tactics, resources, and standard operating procedures. This training should be given to selected personnel at all levels within the agency, personnel from other agencies in the criminal justice system, and from other related public and private agencies. It should be given frequently enough to maintain proficiency between training sessions, and should be routinely scheduled during periods of peak personnel strength. Otherwise, it should be scheduled in advance of anticipated events.

An unusual occurrence control training program should include both formal instruction and practical exercise.

1. Formal instruction should be implemented through:

a. Frequent inservice training, such as roll-call training, to serve as a refresher course, to practice techniques, or to introduce new procedures;

b. Periodic agency-conducted schools to familiarize personnel with agency unusual occurrence control procedures and organizational structure;

c. Regional or Federal courses, particularly when agency size does not permit development of local schools; and

d. A regional training institute to train instructors for local agencies.

2. Practical exercises should be conducted periodically to develop proficiency and teamwork among personnel through:

a. Field exercises for operational personnel to practice tactics and procedures;

b. Command post exercises for formulating strategy and evaluating existing and new procedures;

c. Regional exercises for familiarizing command personnel with mutual aid procedures and developing coordination between other local control agencies and nonlaw enforcement agencies; and

d. Criminal justice system exercises to develop coordinated participation of all interrelated criminal justice and noncriminal justice agencies.

3. The training curriculum and the subjects for practice should be directed to:

a. Administrative level personnel to familiarize them with agency and criminal justice system emergency organizational structure and procedures for requesting additional personnel and equipment from the military or through mutual aid; and

b. Operational personnel to familiarize them with strategy, tactics, and standard operating procedures. The emhasis should be placed on a coordinated effort rather than individual action; use of chemical agents, communications equipment, and other specialized equipment; applicable laws; human relations training; and procedures for procuring logistical support.

Commentary

Once an agency has established a plan for the control of unusual occurrances, training should be provided to all personnel who will be involved in the implementation of the plan. The loss to a community during a disorder or disaster can be devastating in terms of injuries, death and property loss and damage. This makes it most imperative that the agency plan and train for the control of such occurrences. The agency should accept the possibility that every person in the agency could be involved in control efforts, therefore every person must be trained.

Implementation

A. Agencies Involved:
All police agencies.

B. Funding:
Funds should be provided where applicable and necessary to provide training for personnel who would be involved in the control of unusual occurences.

CHAPTER SEVEN

PATROL

Police Standard 7.1

Establishing the Role of the Patrol Officer

Every police chief executive immediately should develop written policy that defines the role of the patrol officer and should establish operational objectives and priorities that reflect the most effective use of the patrol officer in reducing crime.

1. Every police chief executive should acknowledge that the patrol officer is the agency's primary element for the deliverance of police services and prevention of criminal activity.

2. Every police chief executive should insure maximum efficiency in the deliverance of patrol services by setting out in written policy the objectives and priorities governing these services. This policy:

a. Should insure that resources are concentrated on fundamental police duties;

b. Should insure that patrol officers are engaged in tasks that are related to the police function;

c. Should require immediate response to incidents where there is an immediate threat to the safety of an individual, a crime in progress, or a crime committed and the apprehension of the suspected offender is likely. Urban area response time — from the time a call is dispatched to the arrival at the scene — under normal conditions should not exceed 3 minutes for emergency calls, and 20 minutes for nonemergency calls;

d. Should emphasize the need for preventive patrol to reduce the opportunity for criminal activity; and

e. Should provide a procedure for accepting reports of criminal incidents not requiring a field investigation.

3. Every police chief executive should insure that all elements of the agency, especially the patrol and communications elements, know the priority placed upon each request for police service.

4. Every police chief executive should implement a public information program to inform the community of the agency's policies regarding the deliverance of police service. This program should include provisions to involve citizens in crime prevention activities.

Commentary

The primary goal of police agencies should be to provide the best services to the community at the lowest possible cost. Agencies must utilize their personnel in the most efficient manner possible. Police chief executives should determine their agencies' objectives and based on those objectives, place provided services in order of priority. Officer performance should be evaluated on the basis of these priorities and objectives.

Police must, first and foremost, perform duties which reduce priority crimes. They should not be overburdened with nonenforcement duties.

The time consumed in taking reports should be reduced to a minimum. Also, where a function can be handled by an agency of local government other than the police department it should be transferred. Building inspection, if done by the police, could be transferred to the zoning authority, for example.

Every patrol officer and communications officer should be fully aware of the priorities and objectives as established. They should use these as directives as to how they should be spending their time on patrol; they should devote the greatest portion of their time toward preventing and solving high priority criminal activity.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
The police chief executive should review personnel utilization within the agency and where necessary take steps to utilize agency personnel as efficiently as possible.

Police Standard 7.2

Enhancing the Role of the Patrol Officer

Every local government and police chief executive, recognizing that the patrol function is the most important element of the police agency, immediately should adopt policies that attract and retain highly qualified personnel in the patrol force.

1. Every local government should expand its classification and pay system to provide greater advancement opportunities within the patrol ranks. The system should provide:

a. Multiple pay grades within the basic rank;

b. Opportunity for advancement within the basic rank to permit equality between patrol officers and investigators;

c. Parity in top salary step between patrol officers and nonsupervisory officers assigned to other operational functions;

d. Proficiency pay for personnel who have demonstrated expertise in specific field activities that contribute to more efficient police service.

2. Every police chief executive should seek continually to enhance the role of the patrol officer by providing status and recognition from the agency and encouraging similar status and recognition from the community. The police chief executive should:

a. Provide distinctive insignia indicating demonstrated expertise in specific field activities;

b. Insure that all elements within the agency provide maximum assistance and cooperation to the patrol officer;

c. Implement a community information program emphasizing the importance of the patrol officer in the life of the community and encouraging community cooperation in providing police service;

d. Provide comprehensive initial and inservice training to thoroughly equip patrol officers for their role;

e. Insure that field supervisory personnel possess the knowledge and skills necessary to guide the patrol officer;

f. Implement procedures to provide agencywide recognition of patrol officers who have consistently performed in an efficient and commendable manner;

g. Encourage suggestions on changes in policies, pro-

cedures, and other matters that affect the delivery of police services and reduction of crime;

h. Provide deployment flexibility to facilitate various approaches to individual community crime problems;

i. Adopt policies and procedures that allow the patrol officer to conduct the complete investigation of crimes which do not require extensive followup investigation, and allow them to close the investigation of those crimes; and

j. Insure that promotional oral examination boards recognize that patrol work provides valuable experience for men and women seeking promotion to supervisory positions.

Commentary

The day to day job of the patrol officer is probably the most important job of the entire police agency. For this reason, every effort should be made to attract and retain qualified individuals for these positions. Every effort should be made to retain good patrol officers at that level without them having to advance in rank for job satisfaction and adequate pay increases.

The patrol function is used by most departments as an extension of basic training and as a proving ground for promotion to a higher rank or a staff position. This lends itself to high turnover and a patrol force made up of mediocre and inexperienced personnel. This will continue unless the patrol function is given the status and rewards which it deserves.

There should be a general understanding throughout the agency that the patrol force is the primary element of the agency and that all specialized and supportive elements exist to supplement the work of the patrol officer. (NAC, 1973: 197)

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
All police agencies should implement policies and procedures which enhance the role and status of the patrol officer.

C. Funding:
Additional funds will be necessary so that agency wage and incentive structures can be changed to retain qualified and able personnel in the patrol force.

Police Standard 7.3

Deployment of Patrol Officers

Every police agency immediately should develop a patrol deployment system that is responsive to the demands for police services and consistent with the effective use of the agency's patrol personnel. The deployment system should include collecting and analyzing required data, conducting a workload study, and allocating personnel to patrol assignments within the agency.

Every police agency should establish procedures for the implementation, operation, and periodic evaluation and revision of the agency's deployment system. These procedures should include provision to insure the active participation and willing cooperation of all agency personnel.

Commentary

Proper deployment of patrol personnel begins with the collection and analysis of data that reflects the community's need for various police services and the types of activities performed by patrol officers. Calls for assistance should be analyzed in relation to area and time. The information concerning area distribution should determine patrol districts. Regardless of size of the agency, deployment data should be maintained to determine the best deployment system possible.

The distribution of patrol personnel workload must be determined. In doing this three broad categories of patrol operations should be addressed: Crime, calls for services, and arrests.

Reported crimes and calls for service should be analyzed by type, date and time. Location should be analyzed by assigned area, date, shift and average time expended. Arrests should be analyzed by type, date, time, location, and average time expended. It is also necessary to determine what percentage of total patrol time is expended on nonemergency and noncriminal matters not directly connected with the primary duties of crime repression, criminal apprehension and handling calls for services.

The collection and analysis of traffic workload is also necessary. Data on traffic accidents by type, date, time, location and primary cause must be gathered and analyzed. The analysis should include average time expended on investigations of the following: fatal, injury and property accidents. All of the above information should provide the basis for decisions regarding selective traffic enforcement.

With the data listed above, the agency should be able to determine where personnel should be deployed to provide maximum prevention of crime, apprehension of criminals once a crime has been committed and reduction of fatal and non-fatal traffic accidents. (NAC, 1973)

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
All police agencies should maintain and analyze the data described to determine personnel deployment.

C. Funding:
Additional funds may be required to establish and maintain an adequate data base and to provide for an analysis of the data.

CHAPTER EIGHT

OPERATIONS SPECIALIZATION

Police Standard 8.1

State Specialists

The State, should continue to provide, upon the request of any local police agency in the State, specialists to assist in the investigation of crimes and other incidents that may require extensive or highly specialized investigative resources not otherwise available to the local agency. The State may also fund regional operational specialist activities. The State or regional specialists should not provide everyday needs to local law enforcement as is the present policy.

1. The State should continue to provide trained specialists who are properly equipped to assist local police agencies.

2. The State should publish and distribute to every local police agency in the State the request procedure for obtaining specialists.

3. The State should insure that its specialists pursue the investigation in complete cooperation with and support of the local agency.

Commentary

South Dakota does now provide to local agencies specialists for assistance in criminal investigations. This service is provided by the Attorney General through the Division of Criminal Investigation (DCI).

The agents of the DCI have been trained extensively in criminal investigation and are equipped to conduct such investigations. The DCI will provide assistance when requested by a local agency. Local agencies should become familiar with the agent assigned to their area and with available services.

Implementation

A. Agencies Involved:
Attorney General.

B. Administrative Actions:

The Attorney General should provide to every police agency the name, address and telephone number of the DCI field agent available to assist with investigations. The policy and procedures related to DCI assistance should also be made known.

Police Standard 8.2

Juvenile Operations

Every police chief executive immediately should develop written policy governing their agency's involvement in the detection, deterrence, and prevention of delinquent behavior and juvenile crime.

1. Every police agency should provide all its police officers with specific training in preventing delinquent behavior and juvenile crime.

2. Every police agency should cooperate actively with other agencies and organizations, public and private, in order to employ all available resources to detect and deter delinquent behavior and combat juvenile crime.

3. Every police agency should establish in cooperation with courts written policies and procedures governing agency action in juvenile matters. These policies and procedures should stipulate at least:

a. The specific form of agency cooperation with other governmental agencies concerned with delinquent behavior, abandonment, neglect, and juvenile crime;

b. The specific form of agency cooperation with nongovernmental agencies and organizations where assistance in juvenile matters may be obtained;

c. The procedures for release of juveniles into parental custody; and

d. The procedures for the detention of juveniles.

4. Every police agency having more than 15 employees should establish juvenile investigation capabilities.

a. The specific duties and responsibilities of these positions should be based upon the particular juvenile problems within the community.

b. The juvenile specialists, besides concentrating on law enforcement as related to juveniles, should provide support and coordination of all community efforts for the benefit of juveniles.

5. Every police agency having more than 75 employees should establish a juvenile investigation unit, and every smaller police agency should establish a juvenile investigation unit if community conditions warrant. This unit:

a. Should be assigned responsibility for conducting as many juvenile investigations as practicable, assisting field officers in juvenile matters, and maintaining liaison with other agencies and organizations interested in juvenile matters; and

b. Should be functionally decentralized to the most effective command level.

Commentary

Police agencies not only have an obligation to apprehend juveniles who commit crimes, but also to prevent delinquency. To do this, police officers should be provided training which will enable them to identify neglected and dependent children, to detect predelinquent behavior and provide an insight into juvenile crime and its causes.

The police should work closely with other resources within the community which can offer needed service to juveniles. It should be recognized that the police can not directly handle all juveniles with problems and that they should make referrals when necessary and appropriate. The referral may be to the court or to a private or public agency or program.

The police chief executive should develop policy and procedures related to the handling of juveniles contacted by agency personnel.

If an agency decides to develop a juvenile specialist or division, the assigned personnel should be provided with adequate training to provide them with the necessary tools of their specialization. Such training can be received from the Juvenile Officers Institute at the University of Minnesota or other similar training centers.

Implementation

A. Agencies Involved:
All police agencies.
Courts.
Law Enforcement Officer's Training and Standards Commission.

B. Administrative Actions:

All police agencies should establish, with input from the court, policies which govern the detection, apprehension and detention of juveniles. The Law Enforcement Officer's Training and Standards Commission should develop, as part of its basic recruit training, instruction in the detection, apprehension and detention of juveniles. The instruction should also provide the recruit with an understanding of the causes and treatment of juvenile delinquency.

C. Funding:

Funds may be necessary to provide basic recruit training in juvenile crime. Additional monies may also be necessary for the establishment of juvenile investigative units, where appropriate.

Police Standard 8.3

Traffic Operations

Every police agency and every local government responsible for highway traffic safety should perform the basic function of traffic law enforcement, traffic direction and control.

1. Every police agency should perform the basic function of traffic law enforcement — the police activity specifically directed toward controlling traffic violations through preventive patrol and enforcement, case preparation, and court testimony. This function:

a. Should include line patrol, area patrol, and records and logistics; and

b. Should be a fundamental responsibility of all uniformed officers.

2. Every police agency should perform the basic functions of traffic accident management. This function relates to police activities connected with traffic collisions, and includes providing assistance to the injured, protecting the scene, preparing reports, taking necessary enforcement action, and conducting followup investigations. The function should include:

a. Initial traffic accident investigation, traffic control at the scene, injury control, enforcement action, records, reports, and notifications; and

b. On-scene investigations of all accidents involving a fatality, personal injury, or one or more vehicles that must be towed from the scene.

3. Every local government with responsibility for traffic direction and control should perform the basic function of traffic control and direction which has a direct and immediate effect on traffic flow. Such activities are those which have an immediate and direct effect. These activities:

a. May include intersection control, parking control, police escort, special event control, and hazard control;

b. Should be transferred, wherever possible, from the police agency to another local government agency, or be undertaken by the police agency but assigned to nonsworn employees;

c. Should not be performed by employees if the need can be anticipated in advance, and electronic traffic control devices can be installed, unless employees are cost-effective.

4. Every police agency should develop and implement written policies governing the investigation of traffic accidents, enforcement of State and local traffic laws and regulations, and traffic direction. Police chief executives should insure that these policies are regularly communicated to all supervisors and line personnel. These policies should include guidelines on:

a. Physical arrests, issuance of warnings and citations, and transportation of arrestees;

b. Investigation of traffic accidents;

c. Interjurisdictional responsibility and authority for traffic supervision; and

d. Ancilliary services that have an indirect effect on traffic flow.

5. The State should continue to assume complete responsibility for licensing all drivers of motor vehicles, vehicle registration, vehicle inspection, vehicle weight control, carrier and commercial regulation.

a. Activities that do not require peace officer status should be assigned to nonsworn personnel.

b. Observed failure to comply with driver licensing, vehicle registration, and equipment and safety regulations, should be subject to citation or reported to the appropriate agency through clearly established channels of communication.

6. Every police agency should employ, where necessary, specialized equipment operated by specially trained personnel to implement effective traffic programs.

7. Every police agency should make assignments for all traffic functions on the basis of traffic volume, accident experience, violation frequency, and congestion.

a. Selective enforcement techniques should be implemented through assignment of personnel and equipment by time and location on the basis of demonstrated need.

b. The establishment of a selective enforcement task force should be considered when the State or community accident death rate exceeds the national average or exceeds the average for the State or community for the last 3 years.

c. Specialization should be limited according to need, and the major street traffic duties should be performed by patrol officers.

8. Every police agency should be capable of performing, or arrange for the performance of, activities necessary to support traffic line functions. These activities:

a. May include administration, planning, budgeting, personnel management, research and analysis, public information, training, communications, transportation, records and identification, property control, equipment supply, and laboratory service; and

b. Should enable the police agency to gather and analyze traffic information to maintain records to guide the agency in the safe movement of traffic.

9. Every police agency should periodically release traffic safety information and traffic safety educational material to the general public and should cooperate with appropriate educational institutions in the preparation and presentation of traffic safety educational programs.

Commentary

The major aim of traffic law enforcement is to provide a deterrent to violators or potential violators of traffic laws and regulations. The ultimate goal is to produce voluntary compliance with traffic regulations and to provide maximum mobility with minimum interruption.

To meet these objectives, an agency must perform a number of activities. An agency must keep accurate records of traffic accidents and violations. Such records will enable an agency to determine where preventive patrol would be most effective. These records enable an agency to assess where the accidents are most frequently taking place and what violations lead to traffic accidents. The data can help determine where officers should be deployed and also what violations to look for.

All traffic accidents must be thoroughly and properly investigated. When a violation is determined to have been a factor in the accident, the violator should be cited. Accidents must be completely and accurately reported, so that they can be analyzed and management decisions made from accident information.

Civilians should be considered for use in positions which do not require a sworn police officer. Such areas may be meter patrol, school crossing supervision, traffic direction, etc. The placement of civilians in such positions will provide more sworn officers on the street and in the patrol car where their skills and training are needed.

Police agencies should explore the use of selective traffic enforcement programs within their jurisdiction. Selective traffic enforcement is the process of deploying personnel at locations where and at times when accidents are most likely to occur. The initiation of such programs requires that accurate accident data be compiled and analyzed.

Police agencies can also have an effect on traffic safety and compliance through public education.

Implementation

A. Agencies Involved:

All police agencies which assume traffic control functions.

B. Administrative Actions:

All police agencies which assume traffic control functions should initiate policy and procedures which enable them to meet this standard.

Police Standard 8.4
Criminal Investigation

Every police agency immediately should direct patrol officers to conduct thorough preliminary investigations and should establish in writing priorities to insure that investigative efforts are spent in a manner that will best achieve organizational goals.

1. Every police agency should recognize that patrol officers are preliminary investigators and that they should conduct thorough preliminary investigations. However, investigative specialists should be assigned to very serious or complex preliminary investigations when delay will not hamper the investigation.

2. Every police agency should establish only as many specialized criminal investigative units as needed, staffed only with the number of personnel necessary to conduct timely investigations that lead to organizational objectives. The thoroughness of preliminary investigations by patrol officers should be insured, to reduce followup investigative efforts.

3. Every police agency should establish investigative priorities according to the seriousness of the crime, how recently it was reported, the amount of readily available information about suspects, the availability of agency resources, and community attitudes.

4. Every police agency employing 75 or more personnel should assign full-time criminal investigators. Every agency with fewer than 75 personnel should assign criminal investigation specialists only where specific needs are present.

a. Specialization within the criminal investigation unit should take place only when necessary to improve overall efficiency within the agency.

b. Criminal investigation operations should be decentralized to the most effective command level. However, unusual cases or types of cases may be investigated by a centralized unit.

5. Every police agency should establish quality control procedures to insure that every reported crime receives the investigation it warrants. These procedures should include:

a. Constant inspection and review of individual, team, and unit criminal investigation reports and investigator activity summaries; and

b. Individual, team, and unit performance measures based at least on arrests and dispositions, crimes cleared, property recovered, and caseload.

6. Every police agency with 75 or more personnel should consider the use of a case preparation operation to insure that all evidence that may lead to the conviction or acquittal of defendants is systematically prepared and presented for review by the prosecuting authority. A technician should be employed to handle any or all the functions listed, whenever an agency can improve the quality of case preparation at the same or reduced cost.

a. Policies and procedures should be developed in cooperation with representatives of the local prosecutorial and judicial systems and should contain the information required by all three systems.

b. All police information on each case prepared for prosecution should be a systematically prepared, written report that contains the following documentation: copies of the incident report, followup reports, identification and laboratory reports, and any other reports necessitated by the investigation.

c. Every case also should contain written documentation relating to all case disposition information and notification records.

d. The case preparation technician may: establish case files and insure their completeness; present case files to prosecutors; present subjects in custody for arraignment, or obtain a warrant and disseminate warrant information; represent the agency at all pretrial hearings; notify witnesses; document final dispositions of cases; and return the case report file to the originating unit for retention.

7. Every police agency should coordinate criminal investigations with all other agency operations. This coordination should be supported by clearly defined procedures for the exchange of information between investigative specialists and between those specialists and uniformed patrol officers.

Commentary

If the patrol force of a police department cannot effectively conduct criminal investigations from the preliminary investigation through presentation in court, the police chief executive should consider specialization. If a criminal investigation division is initiated, it should be done with full knowledge that its primary purpose is supportive of the patrol function.

Police agencies should ablish priorities concerning offenses to be investigated based on community needs and problems. Assignment of personnel and resouces should be based on these priorities.

Agencies of fewer than 75 personnel should develop generalist investigators and only where effficiency can be increased should an agency specialize according to a type of crime or a specific area in the community or juridiction.

Each agency should establish an inspection system which provides command personnel with knowledge as to whether or not each complaint receives the investigation it warrants. An agency cannot evaluate its services without inspections. Inspections should lead to needed improvements. An agency may wish to rotate patrol personnel into the investigative division to locate protential investigators and also as a method of raising morale within the patrol ranks. Morale problems can arise in a patrol division because of the higher status given investigators. Rotation can help lessen these morale problems.

Implementation

A. Agencies Involved:
All police agencies.
Courts.
Prosecutors.

B. Administrative Actions:
All police chief executives should evaluate their agency's investigative requirements and present practices to determine if specialization is required and if present investigations are adequate.

C. Funding:
Funds may be required to initiate needed investigative capabilities.

Police Standard 8.5
Narcotic and Drug Investigations

Every police agency should acknowledge the direct relationship between narcotic and drug offenses and other criminal activity, and should have available a narcotic and drug investigation capability based on that acknowledgment.

1. Every police agency should provide fundamental narcotic and drug investigation training to every officer during basic training.

2. Every police agency should cooperate in and, where necessary, establish narcotic and drug abuse public awareness programs such as school system educational programs, civic group programs, multiagency community programs, analysis anonymous programs, and crime tip programs.

3. Every police agency employing more than 75 personnel should have a full-time narcotic and drug investigation capability. Personnel in smaller agencies may be assigned where justified by the local problem.

a. The number of personnel assigned to the narcotic and drug operation should be determined by the local problem.

b. A central drug and narcotic unit should be maintained to coordinate any decentralized operations.

4. Every police agency should insure coordination and the continual exchange of information between officers assigned to narcotic and drug enforcement, vice enforcement, intelligence, and uniformed patrol.

5. Every chief executive should establish written policies and procedures requiring that every narcotic and drug complaint will be reported in writing and thoroughly investigated. These policies and procedures should provide that:

a. All narcotic and drug complaints be distributed to the chief executive or delegate, and to the central narcotic and drug unit;

b. Individual, team and unit narcotic and drug investigation reports and activity summaries be inspected and reviewed continually.

6. Every police agency should provide narcotic operations with special funds and specialized equipment such as vehicles, electronic equipment, and vision devices necessary to conduct effective narcotic and drug operations.

Commentary

Most agencies in South Dakota do not have sufficient personnel to assign drug investigators full-time. Few deploy personnel exclusively for drug investigation.

The nature of the problem makes it imperative that whatever effort made by an agency toward drug investigation be coordinated and communicated to surrounding agencies and and State agency engaged in inttlligence and drug investigation. Individual investigations and enforcement actions can have a great effect on the efforts of other agencies. Without coordination and cooperation, the problem cannot be met with any efficiency or effectiveness.

The standard identifies two specific programs, along with general programs, for drug abuse prevention and enforcement. The list is not to be taken as all-encompassing. By way of explanation, Analysis Anonymous is a program which allows individuals to have drug samples analyzed without disclosing their identity. Anonimity is maintained through the use of a selected number given by the person requesting the analysis and used at the time of inquiry as to the results of the analysis. The program allows parents to determine whether or not a substance found is a dangerous drug. Also users can determine whether or not the substances purchased are what they are supposed to be and that they are not lethal.

A crime tip program such as the one operating in Sioux Falls provides for the anonymous provision of crime leads or tips by citizens to the police. These programs have proven to be very effective in obtaining tips which otherwise would not have been gained if the persons supplying the information would have had to reveal their identity. In some instances, such programs have also offered rewards for information.

South Dakota has initiated a statewide drug investigation effort within the Attorney General's Office. The Police Task Force strongly supports this unit and would urge that the State provide the necessary funds to continue the program when federal funds are no longer available for its continuance.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
Agencies should analyze the existing drug problem in their communities and deploy the necessary personnel to investigate and prevent drug abuse consistent with the guidelines offered in this standard.

C. Funding:
Where necessary and applicable, funds should be provided to establish needed drug investigation capabilities. The South Dakota legislature should fund the drug investigation and enforcement unit of the Attorney General's Office at a level which ensures an effective fight against drug abuse in South Dakota.

Police Standard 8.6

Intelligence Operations

Every police agency and the State immediately should establish and maintain the capability to gather and evaluate information and to disseminate intelligence in a manner which protects every individual's right to privacy while it curtails organized crime and public disorder.

1. The State should establish a central gathering, analysis, and storage capability, and intelligence dissemination system.

a. Every police agency should actively participate in providing information and receiving intelligence from this system.

b. Every police agency should designate at least one person to be responsible for liaison with the State intelligence system.

c. The State intelligence system should disseminate specific intelligence to local agencies according to local needs and should disseminate general information throughout the State.

2. Every police agency with more than 75 personnel should have a full-time intelligence capability.

a. The number of personnel assigned to this operation should be based on local conditions.

b. The intelligence operation should be centralized; however, intelligence specialists may be assigned, where appropriate, to major transportation centers.

c. When the size of the intelligence operation permits, organized crime intelligence should be separate from civil disorder intelligence.

d. In smaller agencies the intelligence specialist should be required to take direct enforcement action only where limited agency resources make it absolutely necessary. In larger agencies the intelligence specialist should be required to take direct enforcement action only where a serious threat to life or property makes it absolutely necessary.

e. The intelligence operation should include an independent and well-secured reporting and record system.

3. Every police agency should insure exchange of information and coordination between the intelligence operation and all other operational entities of the agency and with other government agencies.

4. Every police agency should supply its intelligence operation with the funds, vehicles, vision devices, and other specialized equipment necessary to implement an effective intelligence operation.

Commentary

Every police agency needs to be aware of criminal or potential criminal activities within the community. The necessary information which enables the police chief executive to take action to either prevent or lessen the impact of criminal conduct must be gathered. This necessary information must be gathered in such a way as not to infringe upon an individual's right to privacy. Information which is gathered should only be transferred on a need to know basis. The police chief executive should develop guidelines for the dissemination of information. The guidelines should establish to whom, of what type and in what form information can be disseminated.

Intelligence systems should provide the police chief executive with useful intelligence, in a timely fashion, on which effective action programs can be based. The system should protect individual security and privacy.

Implementation

A. Agencies Involved:
All police agencies.
Division of Criminal Investigation, Intelligence Unit.

B. Administrative Actions:
Each police chief executive should appoint an intelligence officer whose functions would include intelligence accumulation, dissemination and liaison with the State intelligence unit within the Division of Criminal Investigation.

C. Funding:
Funding may be required to purchase equipment necessary to gather and store intelligence information.

Police Standard 8.7

Vice Operations

Every police agency should immediately insure its capability to conduct effective vice operations against illegal gambling, traffic in liquor, prostitution, pandering, pornography, and obscene conduct. These operations should be capable of reducing the incidence of vice crimes and related criminal activity.

1. Every chief executive should establish written policies governing vice operations. These policies, consistent with existing statutes:

a. Should reflect the severity of the local vice problem and the effect of the vice problem on other local crime problems.

b. Should acknowledge that the patrol force is responsible for taking enforcement action against all vice violations they see.

2. Every chief executive should insure close coordination and continual exchange of information between vice, narcotic and drug, patrol, and intelligence operations and close liaison with other agencies conducting similar operations.

3. Every police agency should provide vice operations with special funds, specialized equipment, vehicles, vision devices, and any other physical support necessary to conduct effective vice operations.

4. All police chief executives should insure through written policies and procedures, that every vice complaint received by their agency will be reduced to writing and investigated as thoroughly as possible. Vice complaint policies and procedures should provide that all vice complaints be distributed to the chief executive or the chief's designee, and to the vice unit.

Commentary

Vice operations are usually directed at illegal gambling, traffic in liquor, prostitution, pornography and obsecene conduct. Vice operations face enforcement problems which are not generally associated with other crime problems in the community. First, the illegal acts generally take place between two consenting individuals, each of whom may be committing a crime. Thus, detection is generally more difficult. In the same vane, there is generally little community support for the police department's enforcement of laws dealing with vice, because of a high level of tolerance by the general public. Third, there is the likelihood that such activities are linked to an organized criminal effort.

The day of the street cop in South Dakota's larger communities has given way to the motorized patrol officer. This has created a loss of contact between the officer and the community. This loss of contact makes it of greater importance that the larger communities establish vice units to replace the foot patrol officer who was in a better position to detect vice operations prior to motorized patrol.

Motorized patrol units should not cease their activities against vice operations when a special vice unit is established. They should be constantly alert to the signs of vice. Field commanders should be held responsible for vice activities within their assigned area.

Implementation

A. Agencies Involved:

All police agencies; especially those with 75 or more sworn personnel.

B. Funding:

Special equipment may have to be provided to carry out effective vice operations.

CHAPTER NINE

PERSONNEL ALTERNATIVES

Police Standard 9.1

Assignment of Civilian Police Personnel

Every police agency should assign civilian personnel to positions that do not require the exercise of police authority or the application of the special knowledge, skills, and aptitude of the professional peace officer. To determine the proper deployment of civilian and sworn personnel, every agency immediately:

1. Should identify those sworn positions which:
   a. Do not require that the incumbent have peace officer status under local, State, or Federal statute;
   b. Do not require that the incumbent exercise the full police power and authority normally exercised by a peace officer;
   c. Do not require that the incumbent possess expertise which can be acquired only through actual field experience as a sworn police officer; and
   d. Do not contribute significantly to the professional development of sworn personnel.
2. Should designate as civilian those positions that can be filled by a civilian employee according to the foregoing criteria;
3. Should staff with qualified civilian personnel all positions designated for civilians;
4. Should provide a continuing audit of all existing and future positions to determine the feasibility of staffing with civilian personnel;
5. Should develop a salary and benefit structure for civilian personnel commensurate with their position classifications;
6. Should insure that an opportunity for career development exists within each civilian position classification where the nature of the position does not limit or bar such opportunity;
7. Should conduct indepth personal background investigations of civilian applicants for confidential or sensitive positions. These background investigations should be as thorough as those of sworn applicants;
8. Should provide civilian training programs that insure the level of proficiency necessary to perform the duties of each assignment;
9. Should inform all civilian employees of the requirements for sworn police status and interview them to determine their interest or desire to seek such status subsequently and should record all information obtained during such interviews; and
10. Should assign where deemed desirable those civilian employees who express a desire to seek sworn status later to positions that will contribute to their professional development as police officers.

Commentary

Civilian personnel can provide many benefits for police departments in South Dakota. They can provide a financial savings to the police department and at the same time put more professional personnel on the streets. If sworn, fully-trained officers are relieved of tasks which do not require their expertise and training, they will develop a greater sense of professionalism. Civilian employees also make a fine source for new certified personnel.

Implementation

A. Agencies Involved:
   All police agencies.
B. Administrative Actions:
   All police agencies should review their present positions and determine, according to the above guidelines, which of their positions now filled with sworn personnel could be filled by civilians.

Police Standard 9.2

Selection and Assignment of Reserve Police Officers

Every police agency should consider utilization of police reserve officers immediately to supplement the regular force of sworn personnel and increase community involvement in local police service.

1. The State immediately should establish minimum standards for reserve police officer selection and training according to the following criteria:
   a. Reserve officer selection standards should be established to insure the highest possible caliber of personnel. Reserve officer medical and age requirements may differ from those of regular sworn personnel, since the retirement liability does not exist.
   b. Reserve officer training standards should be established that are sufficient to provide reserve officers with adequate background to perform their duties in the best possible way.
2. Every police agency that has identified a specific need to augment its regular force of sworn personnel, to alleviate personnel shortages or to cope with unique deployment problems, should immediately establish a police reserve program. To realize the maximum benefit from such a program, every agency:
   a. Should establish recruitment and selection criteria which will provide the highest caliber of reserve possible;
   b. Should provide reserve training which will provide reserve officers with the necessary skills required for the successful fulfillment of their assigned duties, authority, and responsibility;
   c. Should assign the reserve generalist to supplement regular police personnel in the day-to-day delivery of police services and assign the reserve specialist to perform services within a particular field of expertise. The reserve officer should at all times be under the direct supervision of a sworn full-time law enforcement officer;
   d. Should furnish reserve officers their uniform and equipment. The uniform should always readily identify the person as a reserve officer. Under no circumstances should the reserve officer and the regular officer wear identical uniforms.

Commentary

For the purposes of definition, the Task Force defines a reserve officer as one who provides police services at no cost to the jurisdiction.

Police reserve units are not uncommon in South Dakota. Generally, police agencies have set selection requirements for their reservists, but there are those units operating today which have no set selection standards. The reserves now serving have had from 10 hours of training to as much as 140 hours of training, depending on where they serve.

The Task Force feels that a reserve unit is an acceptable body to augment police resources, only when the officers meet certain selection and training requirements which provide them with the skills necessary to adequately perform in the positions to which they will be assigned.

Implementation

A. Agencies Involved:

All police agencies.

South Dakota Law Enforcement Officer's Training and Standards Commission.

B. Administrative Actions:

If an agency is without adequate personnel numbers, it should consider augmenting the regular force with a reserve unit of qualified and trained individuals, but a reserve unit should not be used to supplant needed police personnel.

CHAPTER TEN

PROFESSIONAL ASSISTANCE

Police Standard 10.1

Use of Professional Expertise

Every police agency should immediately establish liaison with professionals outside the police service who have expertise that can contribute to effective and efficient performance beyond the capabilities of agency employees. At a minimum, this liaison should implement working relations, as necessary, with:

1. Medical professionals, particularly those with specific expertise in:
   a. Pathology;
   b. Gynecology;
   c. Psychiatry;
   d. Dentistry and orthodontics;
   e. Traumatic injuries;
   f. Medical laboratory technology; and
   g. Pharmacology.
2. Business, trade, and industrial professionals, particularly those knowledgeable in:
   a. Banking;
   b. Bookkeeping and accounting;
   c. Labor relations;
   d. The local economy; and
   e. Local industry, business, and trades.
3. Educational professionals, particularly those with expertise in:
   a. Elementary, secondary, and vocational education;
   b. The physical, natural, and behavioral sciences; and
   c. Research.
4. Behavioral science resources with expertise in:
   a. Personnel selection, vocational assessment, and career counseling;
   b. Teaching, training, and educational programing;
   c. Research;
   d. Management consultation;
   e. Personal problem counseling; and
   f. Specialist consultation.
5. Members of the clergy.

Commentary

"The police agency (NAC, 1973:272) that does not make maximum use of available professional outside expertise will rarely, if ever, adequately fulfill its role." Such expertise must be available when needed by the agency or by agency personnel. This expertise should be identified and agreements reached prior to the need for their use.

Implementation

A. Agencies Involved:
   All police agencies.
B. Administrative Actions:
   Where applicable, agencies should develop liaison with the professionals identified above.

Police Standard 10.2

Legal Assistance

Every police agency should immediately acquire the legal assistance necessary to insure maximum effectiveness and efficiency in all its operations.

1. Every police agency should make maximum use of the offices of its city attorney or state's attorney, and State attorney general, to acquire the legal assistance it needs. If it is necessary to provide legal assistance supplementary to these sources, a police legal adviser should be employed.
2. Every police agency with fewer than 200 personnel may justify the establishment of a police legal unit with at least one full-time attorney legal adviser. When a full-time attorney legal advisor cannot be justified, and adequate legal advice cannot be obtained by enlargement of the city or state's attorney's role, the agency should obtain legal assistance through:
   a. Employment of part-time and contracted legal advisers; or
   b. Use of the services of a multiagency or a State police legal unit.
3. Every police agency, in determining the need for a legal unit and the size of its staff, should consider at least the following:
   a. Whether the city and/or state's attorney are located near police headquarters;
   b. Whether the staffs of the city and/or state's attorney are full-time or part-time, and whether they are permitted to engage in private practice;
   c. Whether the city and/or state's attorney have effective legislative programs;
   d. Whether the city or state's attorney's office can be consulted routinely on planned enforcement actions prior to arrests;
   e. Whether assistant prosecutors discuss pending cases adequately with arresting officers prior to trial;
   f. Whether the city or state's attorney's office will draft affidavits for arrest and search warrants and give other legal assistance whenever needed;
   g. Whether the city or state's attorney's staff is willing to answer routine questions; how promptly they respond to requests for written opinions; and how detailed and complete such opinions are;
   h. How willing the city or state's attorney files suits on behalf of the agency; how vigorously suits against the agency and its members are defended; and how experienced the staff is in matters of criminal law and police liability;
   i. The educational level of police employees, comprehensiveness of preservice training given officers; and the quantity and quality of agency inservice training.

Commentary

Police agencies should utilize their available legal assistance to its maximum. Often it is difficult for police agencies to obtain speedy and knowledgeable legal assistance. If an agency feels that it is not getting adequate legal assistance from traditional sources, it should investigate the feasibility of hiring its own legal assistance. This assistance may be

full-time, part-time or retained on a regional basis depending on the resources available to the agency.

The legal assistance may be provided in the following areas, depending on the preceived needs of the agency: (a) legal counsel to the police chief executive in all phases of administration and operations; (b) liaison with other criminal justice agencies and bar associations; (c) review of general orders, training bulletins and other directives; (d) case consultation with arresting officers; (e) attendance at major disturbances and on call for minor ones; (f) participation in agency training; (g) drafting of procedural guides for the implementation of recent court decisions and newly enacted legislation; and (h) provision of legal counsel for **ad hoc** projects, grant proposal development, and special enforcement problems. (NAC, 1973)

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
All police agencies should assess their present or desired legal assistance requirements, determine if present sources are filling these requirements satisfactorily, and if they are not, investigate the feasibility of obtaining other legal assistance.

C. Funding Policies:
The State Criminal Justice Commission should provide funds for at least one pilot project of police legal assistance.

Police Standard 10.3

Management Consultation and Technical Assistance

South Dakota should immediately establish a police management consultation service to make technical assistance available to every police agency within the State.

1. The State should provide technical assistance teams capable of conducting an evaluation of an entire police agency or of a specific division or operation thereof, analyzing its effectiveness, and making recommendations for improvement.

2. The State should make this service available only upon the request of the chief executive of the police agency or chief executive of the governmental unit.

3. The technical assistance team should submit a written report of its findings, together with its recommendations for improvements, to the police chief executive and chief executive of the agency.

Commentary

To be effective, police must continually review agency structure, management techniques and operational procedures to determine if there are any problems which inhibit effectiveness. This review may be best provided by an outside competent organization.

The State under the Law Enforcement Officer's Training and Standards Commission should inventory existing expertise within and outside the State. Once the inventory is complete it should draw upon that expertise to provide management consultation and technical assistance to local law enforcement agencies.

The State may choose to provide this service at no cost to local agencies, but if a fee is to be charged to local agencies it should not exceed the cost of the travel, lodging and subsistence of those providing the service.

Implementation

A. Agencies Involved:
All police agencies.
Governmental chief executives.
Law Enforcement Officer's Training and Standards Commission.

B. Legislation:
Legislation should be enacted providing the authority to the Law Enforcement Officer's Training and Standards Commission to carry out the intent of this standard.

C. Funding:
Funds should be provided by the legislature to carry out the intent of this standard.

CHAPTER ELEVEN

SUPPORT SERVICES

Police Standard 11.1

The Evidence Technician

State and local police agencies should acknowledge the importance of efficient identification, collection, and preservation of physical evidence; its accurate and speedy analysis; and its proper presentation in criminal court proceedings. These are essential to professional criminal investigation, increased clearance of criminal cases, and ultimately, the reduction of crime. Every agency should insure the deployment of specially trained personnel to gather physical evidence 24 hours a day.

1. Every police agency immediately should consider the use of specially trained regular patrol officers to devote a maximum of 25 percent of their regular duty time to the location, collection, and preservation of physical evidence.

2. Every police agency with 75 or more personnel should consider immediately the use of specially trained evidence technicians to locate, collect, and preserve physical evidence at crime scenes and to deliver such evidence to the appropriate laboratory facility. These technicians may partially or entirely eliminate the need for deployment of specially trained regular patrol officers in gathering physical evidence.

3. Every police agency should immediately provide for all incoming sworn personnel a formalized basic training course in evidence-gathering techniques to develop the agency's capacity to retrieve and use any physical evidence present at the scene of a criminal investigation. Every sworn officer should then be held responsible for evidence collection in cases where an evidence technician or specially trained patrol officer is not available.

4. Every police agency should be responsible for its own crime scene searches and should immediately insure that all crime scenes are thoroughly examined for physical evidence, and that all evidence collected is submitted to the appropriate laboratory facility for analysis.

5. The State should provide specialized training for local evidence technicians on a centralized or regional basis in order to achieve a statewide level of proficiency in the collection of physical evidence.

Commentary

Proper evidence search, identification and collection and transportation are very critical aspects of any investigation. Evidence which is improperly handled can mean the ruin of an investigation. If evidence is improperly handled and therefore excluded as evidence in a court of law, a conviction is harder, if not impossible to obtain.

Because often times the prosecution hinges on physical evidence gathered during the investigation of a crime, all officers must be trained in its detection and preservation. In departments large enough, specialized officers should have this responsibility.

Basic recruits now receive training in evidence detection, collection and transportation. This portion of the training course should be continued.

Implementation

A. Agencies Involved:

All police agencies.

South Dakota Law Enforcement Officer's Training and Standards Commission.

B. Administrative Actions:

Every police chief executive should recognize the importance of preserving the chain of evidence and develop procedures to implement this standard as it applies to the agency.

C. Funding:

LEAA should continue to fund officers attending specialized training sessions related to evidence collection.

Police Standard 11.2

The Crime Laboratory

Every police agency should have speedy access to a facility for the analysis of drug and blood alcohol samples. These facilitiies should be situated in accordance with the demand for such services, to affect utilization of existing professional personnel and equipment, and crime rates.

1. Prior to any expansion of criminalistic services in South Dakota, adequate investigation should take place to insure that any new criminalistic service can be economically and professionally provided for.

2. Facilities used for criminalistics where evidentiary material is stored and analyzed should provide for the following:

a. Proper handling procedures to reduce the likelihood of contamination, loss or theft of evidentiary materials; and

b. Proper structural safeguards and security systems to decrease the likelihood of theft after business hours.

3. The criminalistics laboratory should have sufficient space to carry out its responsibilities in an efficient and effective manner. At a minimum the following should be provided:

a. 250 square feet per chemist.

b. Instrumentation room (room for separation of sensitive equipment from harmful fumes, substances and other disturbances.

c. Chemical storage room,

e. Glassware and equipment storage,

f. Evidence vault,

g. Glassware washing room,

h. Library, and

i. Office space.

4. Every criminalistics laboratory should have the following mechanical services available:

a. Hot and cold water,

b. Distilled water,

c. Sufficient electrical outlets,

d. Steam,

e. Vacuum,

f. Air pressure,

g. Gas,

h. Drains,

i. Fume Exhaust, and

j. Emergency eyewash and shower.

5. Laboratory personnel should hold at least a baccalaureate degree in chemistry, criminalistics or closely related field. Employees should be properly trained in the various areas

of criminalistics as required by the laboratory based on caseload demands.

Commentary

The crime laboratory is essential to all police agencies. Their services provide the necessary back-up to the patrol and detective divisions. They are the scientific arm of the police service. Their services are necessary for the arrest and conviction of a large percentage of offenders.

Police agencies in South Dakota rely on the following laboratories. The State Chemical Lab located at the University of South Dakota provides drug analysis, blood lacohol analysis and some analysis of poisonous substances. Drug analysis for Pennington County is provided by a professor at the South Dakota School of Mines and Technology. The Division of Criminal Investigation provides fingerprint identification services and some photography services for police agencies. All other laboratory work must be sent to an out-of-state laboratory, such as the FBI or the laboratory of a nearby state. The services provided by out-of-state labs are generally good, but often it may take from 2 to 3 weeks to receive the findings. The volume of requests for analysis by the FBI by South Dakota agencies is low. There were 114 requests made in FY '75. Part of this low request rate is probably due to the waiting period required.

If South Dakota is to expand its laboratory services, adequate research must first be undertaken to insure that present services are not duplicated and to determine as accurately as possible what additional services can be performed on a cost effective basis.

The estimated cost of equipping a laboratory runs from $30,000 to $70,000 or more. This figure accounts for equipment for a bareboned laboratory and does not take into account needed building space or personnel. For this reason alone it is unwise to duplicate laboratory functions. South Dakota must also be careful not to attempt to provide laboratory analysis where that service will not be cost effective. It is recommended that before any additional services are provided that adequate study be undertaken to insure its cost effectiveness.

The Task Force would recommend that it would be desireable to have police laboratory services under the supervision of law enforcement.

Implementation

A. Agencies Involved:
   All police agencies.
   Attorney General.
   State Chemical Laboratory.

B. Administrative Actions:

All agencies which intend to establish or expand laboratory services should first study the need for, costs and present availability of such services. The results of such study should show that the new service is needed, is cost effective and does not unnecessarily duplicate existing services before such service is established.

Police Standard 11.3
The Property System

Every police agency immediately should establish a system for the secure and efficient storage, classification, retrieval, and disposition of items of evidentiary or other value that come into the custody of the agency.

1. Every police agency should establish a filing system that includes, but is not limited to:

a. A chronological record of each occasion when property is taken into police custody;

b. A separate itemized list of all items of property that are taken into custody;

c. A record that indicates the continuity of the property from its entry into the system to its final disposition. This record should include the name of each person accountable for each item of property at any given time.

2. Every police agency should conduct regular property inventories and property record audits to insure the integrity of the system. Such measures should be performed by personnel who are not charged with the care and custody of the property, and the results should be reported to the police chief executive.

3. Every police agency should publish written procedures governing the function of the property system. All components of a multicomponent property system should be governed by the same procedures.

4. Every police agency that uses full-time employees in its property function should assign civilian personnel to all elements of the property system in order to release sworn officers for assignment to those police functions requiring them.

5. Every police agency should assign to the property function only those employees who are trained in the operation of the system.

6. Every police agency should insure that personnel assigned to the property function are not involved in authorizing the booking, release, or disposition of property. Such authorization should be provided by the booking officer, the investigating officer, or another designated sworn employee.

7. Every police agency should clearly designate the employees responsible for around-the-clock security of the property area and restrict entry of all other personnel into this area.

8. Every police agency should institute close security and control measures to safeguard all money that comes into agency custody.

9. Every police agency should institute procedures to facilitate the removal of property from the system as soon as possible.

a. All identifiable property should be returned as soon as practicable after the rightful owner is located. Prior to disposition, all such property should be checked against stolen property records and all firearms should be compared with gun records to make certain that no "wants" or "holds" exist for such items.

b. When practical, personnel assigned to locate the owners of identifiable property should not be involved in the arrest or prosecution of the persons accused of crimes involving that property.

c. When property is no longer needed for presentation in court, and the owner cannot be determined, it should be disposed of promptly.

10. Every police agency should insure that the property room includes:

a. A sufficient amount of space and facilities for efficient storage of property and records;

b. A temporary storage area for perishable property; and

c. An area that provides an extra measure of security for the storage of narcotics and firearms.

Commentary

Every police agency must take into its custody property siezed in an investigation and found articles, also. This property must be identified and accounted for from the time it enters the property storage area until it is disposed of or returned to its owner. The above standard will provide for the secure storage, accurate accounting, and proper disposal or return of all property.

Implementation

A. Agencies Involved:
All police agencies.

B. Legislation:
Legislation should be enacted which clearly defines and guides the disposal or return of items of evidentiary or other value that come into the custody of police agencies. The legislature may consider providing for disposal by the courts rather than the police.

C. Administrative Actions:
Every police agency should immediately establish procedures for the storage, accountability, and disposal or return of property based on the above guidelines.

Police Standard 11.4

The Detention System

Every police agency currently operating a detention facility should immediately insure professionalism in its jail management and provide adequate detention services. Every municipal police agency should, by 1982, turn over all its detention and correctional facilities to an appropriate county, regional, or State agency, and should continue to maintain only those facilities necessary for short term processing of prisoners immediately following arrest.

1. Every police agency which operates a detention facility should immediately hire and train detention personnel on a full-time basis.

2. Every municipal police agency currently operating its own detention facility should immediately consider using an easily accessible State or county facility for all detention except that required for initial processing of arrestees. Every agency should also consider using State or county facilities for the transfer of arrestees from initial processing detention to arraignment detention.

Commentary

Full-time supervision is necessary to insure the health and safety of those confined in the lock-ups and jails of South Dakota. Where the numbers of prisoners held is not sufficient to warrant full-time, 24-hour supervision, that jurisdiction should transport its prisoners to a facility which does.

Facilities which can provide 24-hour supervision should make every effort to provide needed services, such as, work release, recreation, and education to those they confine. Police agencies which anticipate providing detention facilities on a regional basis should hire and train civilians to supervise the inmates so as to free the trained and sworn officer for duties other than those within the jail.

Implementation

A. Agencies Involved:
All police agencies.
Board of Charities and Corrections.

B. Administrative Actions:
The Board of Charities and Corrections should regularly inspect all holding and detention facilities to assure the highest possible quality of detention facilities.

C. Funding:
The State should provide the Board of Charities and Corrections with sufficient personnel to inspect all holding and detention facilities on a regular basis.

Police Recommendation 11.1

Certification of Crime Laboratories

It is recommended that a national program be established to insure that all tests and analyses performed by State, regional, or local laboratory facilities are procedurally sound and scientifically valid. The program should provide for the certification of those facilities whose testing procedures and scientific analyses meet the minimum standards set by the agency administering the program.

1. An existing national agency or organization should be designated to adminster the program. This body should develop minimum standards by which it can measure every crime laboratory's level of proficiency.

2. The national agency or organization should conduct periodic evaluations of every State, regional, and local laboratory to determine its level of proficiency in performing laboratory tests. In conducting the evaluation, it should rate the laboratory only on the basis of those tests which it actually performs in rendering services.

3. The national agency or organization should, on the basis of the evaluation, certify every laboratory that meets or exceeds the designated minimum standards in all the tests which it performs.

Commentary

The Police Task Force makes this recommendation as an attempt to help insure that crime laboratories which provide services to law enforcement agencies meet minimum qualifications of professional competency. The issuance to and analysis of evidence by a laboratory which does not possess a minimal level of competency could be disastrous. Such a certification procedure could provide agencies with a list of crime laboratories proficient in conducting certain types of analysis.

The Task Force does not want to imply that the certification agency develop a specific list of uniform methodology for analysis. It is feared that such an approach would stifle experimentation. It would, however, support a listing of acceptable methods of analysis rather than a uniform methodology of analysis.

CHAPTER TWELVE

RECRUITMENT AND SELECTION

Police Standard 12.1

General Police Recruiting

Every police agency should insure the availability of qualified applicants to fill police officer vacancies by aggressively recruiting applicants when qualified candidates are not readily available.

1. The police agency should administer its own recruitment program.

a. The agency should assign to specialized recruitment activities employees who are thoroughly familiar with the policies and procedures of the agency and with ideals and practices of professional law enforcement; and

b. Agencies without the expertise to recruit police applicants successfully should seek expertise from the central personnel agency at the appropriate level of State or local government, or form cooperative personnel systems with other police agencies that are likely to benefit from such an association: every police agency, however, should retain administrative control of its recruitment activities.

2. The police agency should direct recruitment exclusively toward attracting the best qualified candidates. In so doing it:

a. Should consider making college-educated applicants the primary target of all recruitment efforts.

b. Should concentrate recruitment resources according to the agency's need for personnel from varied ethnic backgrounds.

3. Residency should be eliminated as a preemployment requirement.

4. The Standards and Training Commission should provide application and testing procedures at decentralized locations in order to facilitate the applicant's access to the selection process.

The initial application form should be a short, simple record of the minimum information necessary to initiate the selection process.

5. The police agency, through various incentives, should involve all agency personnel in the recruitment and selection process.

6. The police agency should research and develop increasingly effective recruitment methods.

7. The police agency should evaluate the effectiveness of all recruitment methods continually so that successful methods may be emphasized and unsuccessful ones discarded.

Commentary

Blum (1964) in Police Selection offers some sound advice to police administrators when recruiting police officers. He says the chief should first determine what kind of department is desired, what kind of person will be required to provide for that department and lastly, what relationship is desired between the community and the department. Once these questions are answered recruitment can begin.

The Task Force offers the preceeding guideline to police agencies to be followed to provide for the recruitment of the most qualified applicant available. The Task Force discourages the use of residency requirements because such a requirement unnecessarily discourages qualified applicants. The use of police personnel in the recruitment process can be very beneficial to the department. This has been found especially true in using minority police officers in the recruitment of minority personnel. They do not have to overcome many of the barriers, such as mistrust, that an officer outside the minority group would have to overcome.

The Task Force would also encourage local agencies to take advantage of what advertising or media expertise exists within the community when designing a recruitment campaign. This may only be a conversation with the editor of the local newspaper about advertisement, word selection or usage. Such assistance could prove invaluable in attracting qualified applicants to the police service.

Implementation

A. Agencies Involved:

All police agencies.

South Dakota Law Enforcement Officer's Training and Standards Commission.

B. Administrative Actions:

The recruitment methods enumerated in the standard should be used by all agencies which are not now utilizing all methods at their disposal to attract qualified applicants. See Standard 12.4

C. Funding:

Funds should be provided where necessary to implement this standard.

Police Standard 12.2

College Recruiting

Every police agency that does not have a sufficient number of qualified applicants having appropriate college backgrounds to fill police officer vacancies as they occur should immediately implement a specialized recruitment program to satisfy this need.

1. The police agency should establish permanent liaison with:

a. Placement officers and career counselors in colleges and universities within the State.

b. Faculty members and heads of departments that provide a curriculum specifically designed to prepare students for the police service.

2. The police agency should compete actively with other governmental and private sector employers in recruitment efforts at nearby colleges and universities. The opportunity for a police officer to perform a valuable social service, and the opportunity for a progressive career, should be emphasized in college recruiting.

Commentary

The Task Force is calling for the raising of the educational qualifications for police officers to one year of college education by 1978, for police officer eligibility or if not so qualified at time of application, completion of the requirement within five years of the date of employment. This standard and Standard 14.1 will necessitate the development

of liaison between police agencies and college placement bureaus and programs in criminal justice or closely related fields.

> The police service must recruit and employe the caliber of personnel that are now found within our colleges and universities, those (personnel) possessing intellectual curiosity, analytical ability, articulateness, and capacity to relate the events of the day to the social, political, and historical context in which they occur. (NAC, 1973:327)

The commentary to Standard 14.1 specifies some of the positive attributes associated with college trained officers which also should be considered.

Implementation

A. Agencies Involved:
All police agencies.
B. Administrative Actions:
College placement offices or college programs related to law enforcement should be contacted to determine the availability of eligible college students when vacancies arise.
C. Funding:
Where necessary and applicable, funds should be provided to carry out the intent of this standard. In most instances, additional funds would not be required to develop and maintain liaison with college placement offices or college programs related to law enforcement.

Police Standard 12.3

Minority Recruiting

Every police agency immediately should insure that it presents no artificial or arbitrary barriers — cultural or institutional — to discourage qualified individuals from seeking employment or from being employed as police officers.

1. Every police agency should engage in positive efforts to employ minority group members when a substantial minority population resides within the jurisdiction. Every police agency should insure that recruitment, selection, training, duty and salary policies neither favor nor discriminate against minorities.

2. Every police agency seeking to employ qualified minority members should research, develop, and implement specialized minority recruitment methods.

3. Every police chief executive should insure that hiring, assignment, and promotion policies and practices do not discriminate against minority group members.

4. Every police agency should evaluate continually the effectiveness of specialized minority recruitment methods so that successful methods are emphasized and unsuccessful ones discarded.

Commentary

This standard calls for police agencies, especially those with substantial minority members within their jurisdiction, to take the initiative to bring about minority representation within the police agency. Minority group member employees can assist with the betterment of police-minority group relations and reduce prejudice within the agency and its members.

Minority member special talents and abilities should be used to compensate for other deficiencies, which are culturally derived.

Special methods of recruitment, such as, use of minority group police officers in recruitment, liaison with minority group leadership, special advertisements depicting minority members engaging in police work, and emphasizing community service aspects of police work, should be used to attract qualified minority applicants.

Every agency should determine whether or not is application and selection requirements and tests discriminate against minority group members. Those requirements or tests which have no relationship to job performance should be discarded.

Implementation

A. Agencies Involved:
All police agencies.
B. Administrative Actions:
Agencies should develop affirmative action plans as soon as possible to insure compliance with Equal Employment Opportunity regulations. All agencies should review their existing recruitment methods to determine whether or not they could be strengthened in regard to their ability to attract minority applicants. This is especially necessary in areas which have experienced racial tensions.

Police Standard 12.4

State Mandated Minimum Standards for the Selection of Police Officers

South Dakota should continue the Law Enforcement Officer's Standards and Training Commission and its activities related to the development and enforcement of State minimum mandatory standards for the selection of police officers.

1. The Commission should continue to insure that standards are met by inspecting for local compliance and certifying as competent to exercise police authority, only those police officers who have met the mandated standards. The Commission should continue to establish minimum standards for:

a. Age;

b. Physical health, strength, stature and ability, with consideration given to the physical demands of police work;

c. Character, with consideration given to the responsibilities of police officers and the need for public trust and confidence in police personnel;

d. Personality profile, with consideration given to the responsibilities of police officers and the need for public trust and confidence in police personnel;

d. Personality profile, with consideration given to the need for personnel who are psychologically healthy and capable of enduring emotional stress; and

e. Education, with consideration given to the mental skills and knowledge necessary to perform the police function properly.

2. The Commission should establish minimum standards that incorporate compensating factors such as education, language skills, or experience in excess of that required if such factors can overcome minor deficiencies in physical requirements such as age, height, or weight.

3. South Dakota should provide sufficient funds to enable the Commission:

a. To employ a full-time executive director and staff large enough to carry out the basic duties of the commission; and

b. To meet periodically.

Commentary

The Task Force offers this standard with the full understanding that such a commission exists within the State. The Task Force wholeheartedly supports the South Dakota Law Enforcement Officer's Standards and Training Commission and would like to see its responsibilities expanded in the following areas.

First, to provide a central testing and recruitment repository for the State. Many of the standards offered by this Task Force regarding officer recruitment, selection, career development, and testing do not lie within the financial means of most communities of South Dakota to meet. Large scale implementation is dependent upon the establishment of a central facility for such purposes. The Task Force regards this function as an integral part of the Standards and Training Commission's responsibility. The criminal justice system will not be changed unless the caliber of its personnel is upgraded, to do this the smaller communities in South Dakota require the assistance of a central agency for the provision of the services listed above. It should be noted that the employing agency should have the final say as to who will be hired.

The second area where expanded services will be required is in the area of management assistance to police agencies in South Dakota. This concept is discussed in the commentary for Standard 10.3.

Implementation

A. Agencies Involved:

South Dakota Law Enforcement Officer's Training and Standards Commission.

B. Legislation:

Legislation will be required to allow for the provision of these services by the Standards and Training Commission.

C. Funding:

LEAA should provide funding for these services to the State for at least three years with the gradual assumption of costs by the State.

Police Standard 12.5

The Selection Process

Every police agency immediately should employ a formal process for the selection of qualified police applicants. This process should include a written test of mental ability or aptitude, an oral interview, a physical examination, a psychological examination, and an in-depth background investigation.

1. Every police agency should measure applicants' mental ability through the use of job-related ability or aptitude tests rather than general aptitude tests. These job-related ability tests should meet the requirements of Federal Equal Employment Opportunities Commission guidelines.

2. Every police agency, by 1978, should utilize the services of a qualified psychiatrist or psychologist to conduct psychological testing of police applicants in order to screen out those who have mental disorders or are emotionally unfit for police work.

3. Every police agency should use the results of psychological testing as a positive predictor of later performance within the police service only when scientific research establishes the validity and reliability of such a predictor.

4. Every police agency should conduct an indepth background investigation of every police applicant before employment. The policies and procedures governing these investigations at least should insure that:

a. To the extent practicable, investigations are based upon personal interviews with all persons who have valuable knowledge of the applicant;

b. The polygraph examination is used where appropriate, but is not allowed to substitute for a field investigation;

c. The rejection of police applicants is job-related; and

d. Police applicants are not disqualified on the basis of arrest or conviction records alone, without consideration of circumstances and disposition.

5. Every police agency should insure that no more than 8 weeks pass from the time of initial application to final determination of employability; that applicants are promptly notified of the results of each major step in the selection process; and that the selection process is cost effective.

Commentary

The selection of police officers is one of the most, if not the most, important factor in determining the quality of police services provided to a community. Communities can no longer afford to hire the first person to apply for the position who seems to have "common sense." The security and welfare of the community can not be placed in the hands of someone with only these qualifications. The Task Force feels that at a minimum the steps listed in the standard should be followed. If not, agencies can not be assured that they are selecting the best qualified individual.

It is important to note that the standard calls for job-related tests which meet Equal Employment Opportunity Commission (EEOC) guidelines. The EEOC says that tests must test what they purport to test, on an equal basis, and that the ability being tested must be directly related to satisfactory performance as a police officer. If tests do not meet the above guideline they should not be used because a person's ability to pass the test does not relate to that person's ability to perform as a police officer.

A speedy process of officer selection is necessary so that interested applicants do not obtain other employment while waiting for selection or lose interest because of long waiting periods.

Psychological and medical examinations, extensive background investigations and polygraph examinations can be expensive. Such tests should be administered by a central testing center as described in the commentary for Standard 12.4. The utilization of a central testing center should not be mandatory for agencies which can comply by utilizing their own resources.

Implementation

A. Agencies Involved:
All police agencies.
South Dakota Law Enforcement Officer's Training and Standards Commission.

B. Administrative Actions:

Agencies must decide to hire the best applicants as determined through valid, job-related testing. Agencies should immediately seek out a qualified psychologist to adminster personality tests determined to meet EEOC guidelines. Also, adequate personnel resources should be committed to conducting thorough background investigations. The services of an experienced polygraph operator should also be sought out.

C. Funding:

The tests called for in the standard will require additional funds for their purchase and administration. It is hoped that a central testing service as described in the commentary to Standard 12.4 can be established to help alleviate the financial burden of such a testing procedure on our small communities and counties.

Police Standard 12.6

Employment of Women

Every police agency should immediately insure that there exists no agency policy that discourages qualified women from seeking employment as sworn or civilian personnel or prevents them from realizing their full employment potential. Every police agency should:

1. Institute selection procedures to facilitate the employment of women; no agency, however, should alter selection standards solely to employ female personnel;

2. Insure that recruitment, selection, training, duty and salary policies neither favor nor discriminate against women;

3. Provide career paths for women allowing each individual to attain a position classification commensurate with her particular degree of experience, skill, and ability; and

4. Immediately abolish all separate organizational entities composed solely of policewomen except those which are identified by function or objective, such as a female jail facility within a multiunit police organization.

Commentary

Women have been employed in police departments in the United States since about 1845. It was recognized that women could perform certain jobs better that men, such as, jail matrons, juvenile officers, and others. There have been instances where women have been placed in patrol functions as well.

The Equal Employment Opportunity Commission is empowered to enforce Title VII of the Civil Rights Act of 1964 as it applies to women. "The dominate principle of the law is that all jobs must be open to both men and women unless it can be proved that sex is a bonafide occupational qualification necessary to the normal operation of that particular business or enterprise." (NAC, 1973:343)

Each agency must establish criteria which will not prohibit women from applying for positions, selection, or promotion, and which will not reduce the effectiveness of the agency.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:

Women should not be discouraged from applying for employment in a police agency. Agencies should review their selection and promotion policies to insure that women are treated without discrimination based on their sex.

Police Standard 12.7

Job Security

All police officers should be secure in their position to enable them to carry out their responsibilities without fear of removal from service without just cause. To ensure this security, all police personnel other than police chief executives should be placed under a merit or civil service system... Any such merit or civil service system should not discourage lateral entry.

The established system should provide that police chief executives either appointed or elected be able to return to their former rank or position within the agency once they are no longer the chief executive. The privilege should not be bestowed if the chief executive leaves the office under other than honorable circumstances.

Commentary

Job security is as important to police officers as it is to most people. Police officers should be offered the same job security as others. The Task Force believes that this job security can be gained only through a merit or civil service system. Police officers should only be relieved of their duties under a finding of just cause by an impartial panel. Such a system should protect the individual in performing duly prescribed duties and responsibilities associated with the oath of office in a reasonable manner, but should not be so restrictive as to prohibit removal when justified. Also, the merit or civil service system should not be so designed or regulated as to prohibit lateral entry by personnel from outside the system.

The following conditions would be considered as less than honorable circumstances of removal from the position as police chief executive: removal for malfeasance, nonfeasance or misfeasance in office.

If a police chief executive has continued to take advancement tests, return to the ranks should be to the highest position to which he/she is eligible.

Implementation

A. Agencies Involved:
All police agencies.
Local governmental units.

B. Legislation:

Enabling legislation would be required to allow counties the ability to establish such systems for their deputy sheriffs.

Police Recommendation 12.1

Job-Related Ability and Personality Inventory Tests for Police Applicants

It is recommended that a competent body of police practitioners and behavioral scientists conduct research to develop job-related mental ability and aptitude tests, and personality profile inventories for the identification of qualified police applicants.

1. This research should identify the personality profile, mental skills, aptitude, and knowledge necessary for successful performance of various police tasks.

a. The functional complexity of the police mission in urban and non-urban law enforcement should be defined specifically, following a comprehensive analysis of the police tasks involved in each environment.

b. Various mental skills, knowledge levels, and personality profiles should be defined and matched to the urban and nonurban police function.

2. Based on results of this research, tests, or test models and personality profile norms, should be developed and validated to determine reliably whether applicants are qualified to perform the tasks of the position for which they apply.

Commentary

Because of the uncertainty of job-related ability and personality inventory tests for promotion and selection, the Task Force offers the above recommendation. Such a study should provide guidance to police agencies in the development and administration of valid tests to provide for the selection and promotion of the most qualified individual.

CHAPTER THIRTEEN

CLASSIFICATION AND PAY

Police Standard 13.1

Police Salaries

State and local governments should establish and maintain salaries that attract and retain qualified sworn personnel capable of performing the increasingly complex and demanding functions of police work. Through appropriate legislation, a salary review procedure should be established to insure the automatic annual adjustment of police salaries to reflect the prevailing wages in the local economy.

1. Every local government should immediately establish an entry-level sworn police personnel salary that enables the agency to compete successfully with other employers seeking individuals of the same age, intelligence, abilities, integrity, and education. In setting an entry-level salary the following should be considered:

a. The employment standards of the agency;

b. The specific police functions performed by the agency;

c. The economy of the area served by the agency; and

d. The availability of qualified applicants in the local labor market.

2. Every local government should immediately establish a wide salary range within its basic occupational classification, with the maximum salary sufficient to retain qualified personnel by providing them with the opportunity for significant salary advancement without promotion to supervisory or management positions.

3. Every local government should immediately establish a salary review procedure to insure the automatic annual adjustment of police salaries to reflect the prevailing wages in the local economy and to meet the competition from other employers. The criteria applied in this annual salary review procedure should not be limited to cost of living increases, average earnings in other occupations, or other economic considerations which, applied in isolation, can inhibit effective salary administration.

4. Every local government should immediately establish a sufficient salary separation between job classifications to provide promotional incentives and to retain competent supervisors and managers.

5. Every local government should immediately provide its police agency's chief executive with a salary that is equivalent to that received by the chief executives of other governmental agencies and by members of the judiciary.

6. Every local government should immediately establish within its salary structure a merit system that rewards demonstrated excellence in the performance of assigned duties.

7. Every local government should immediately establish or maintain a police salary structure separate and distinct from that of any other government agency.

Commentary

Every police agency in South Dakota should employ the most qualified individuals available. To obtain the most qualified individuals, police agencies must compete with other employers. One of the first areas in which an organization must compete is salaries.

Once an agency has attracted the most qualified individual, it must strive to keep that individual. Agencies must provide sufficient salary spread within the basic rank to retain qualified personnel. Within most departments, officers must be promoted from the patrol rank to a managerial position to realize a substantial pay increase over that at which they started. Departments lose good personnel because they do not wish to be promoted to a managerial position, but the top salary in the patrol rank will not adequately compensate them.

The police salary schedule must be flexible enough to handle changing conditions inside the agency, i. e. workload and changes in duty or assignment, and outside the agency, i.e. economic fluctuation and increases or decreases in the cost of living. Every agency should have an internal mechanism for the review and adjustment of salaries.

The spread between classifications should be large enough to encourage qualified personnel to strive for promotion to managerial or supervisory positions. Police agencies should also provide merit pay to distinguish and compensate outstanding performances from mediocre performances.

Implementation

A. Agencies Inolved:
All police agencies.

B. Administrative Actions:
Police departments should immediately change their salary schedule to provide for the attraction and retention of qualified personnel.

C. Funding:
State, but more importantly local government, should make every effort to raise the salaries of their police personnel to a level commensurate with the duties and responsibilities of the police function.

Police Standard 13.2

Position Classification Plan

State and local governments should establish immediately a broad police classification plan based upon the principle of merit. The plan should include few position classifications but multiple pay-grade levels within each classification to enable the agency's chief executive to exercise flexibility in the assignment of personnel. The plan should also provide, within the basic position classification, sufficient career incentives and opportunities to retain qualified generalists and specialists in nonmanagement positions.

1. Every police agency with more than three levels of classification below the chief executive should consider the adoption of three broad occupational classifications for sworn personnel, to permit mobility within each classification and salary advancement without promotion. The three fundamental classifications should include:

a. A patrol officer-investigator classification for the generalist and specialist at the basic rank level;

b. A supervisor-manager classification for supervisory and midmanagement personnel; and

c. A command-staff classification for police executives and administrators.

2. Every agency's classification plan should include, within

each position classification, several pay grade levels, each of which requires a certain degree of experience, skill, and ability, or which entails the performance of a specialized function. The plan should provide compensation commensurate with the duties and responsibilities of the job performed, and should permit flexibility in the assignment of personnel.

3. Every police agency should provide career paths that allow sworn personnel to progress not only as managers but as generalists and specialists as well. Non-managerial career paths should provide the incentive necessary to encourage personnel with proven professional and technical expertise to remain within the functions they choose, while continuing to provide efficient and effective delivery of police service.

a. Nonmanagerial career paths should incorporate progressive career steps for the generalist and specialist; these steps should be predicated on the completion of appropriate levels of education and training, and the achievement of experience and expertise within a professional-technical area. Progression to the end of a nonmanagerial career path should bring a salary greater than that for the first level of supervision.

b. Managerial career paths should also incorporate progressive career steps predicated on the completion of appropriate levels of education and training and the achievement of management skills necessary to function satisfactorily at the next level of management.

4. Every police agency should insure that the merit principle dominates promotions and assignments. Any existing civil service procedure should apply only to retention in, or promotion to, broad position classifications. Movement between pay grade levels within such position classifications should remain free from restrictive civil service procedures, but subject to internal controls, to insure placement and corresponding pay on the basis of merit.

a. Every classification plan that encourages the practices of a "spoils system," or in which the advancement of personnel is not governed by the merit principle, should be corrected or abolished.

b. Every agency should insure that no civil service system imposes any restriction on the agency's classification plan that would unnecessarily inhibit flexibility in the assignment of personnel or encourage mediocrity in job performance.

Commentary

Historically, police departments have maintained employee classification systems which have made it mandatory for employees to step from patrol functions to supervisory functions before they could substantially enhance their positions or salaries. For this reason, good officers who did not wish to take a supervisory or management position as a way of advancing their career would either reluctantly step into supervisory or management positions or quit the department. Position classifications should have sufficient position and salary advancement to retain the qualified patrol officer who does not wish to advance to the next classification.

Advancement within the various classifications should be based on objective and well established criteria. Advancement should be based on educational and training requirements and any other criteria relevant to the duties and responsibilities of the classification or position. The day is past in which agencies can afford to promote individuals on any other basis than demonstrated abilities which relate directly to the adequate performance of the duties and responsibilities of a position.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
All agencies should immediately adopt this standard to guide the development of their classification system.

CHAPTER FOURTEEN

EDUCATION

Police Standard 14.1

Educational Standards for the Selection of Police Personnel

To insure the selection of personnel with the qualifications to perform police duties properly, every police agency should establish the following entry-level educational requirements:

1. Every police agency should require by 1978 as a condition of initial employment, the completion of at least 1 year of education (30 semester units) at an accredited college or university or accredited post secondary institution.

   a. Otherwise qualified police applicants who do not satisfy this condition, but who have earned a high school diploma or its equivalent, should be employed under a contract requiring completion of the educational requirement within five years of initial employment.

2. Police agencies should support further educational achievement on the part of police personnel by adopting such devices as educational incentive pay plans and by gradually instituting requirements for the completion of specified periods of college work as a prerequisite for initial appointment and for promotion. To increase the number of qualified personnel, police departments should initiate or expand police cadet or student intern programs which subsidize the education and training of potential police candidates.

Commentary

Improving police equipment and facilities will not significantly improve the quality of police service in South Dakota. The caliber of personnel must improve before any substantial improvement will come about.

The Task Force recognized the need for higher educational standards for police agencies in South Dakota. A college trained officer, according to recent studies, is less likely to receive civilian complaints, have fewer disciplinary actions, and have lower rates of sickness or injury. Also, because of the complexity of the police responsibilities and the impact on the community, college training in the humanities and social sciences is deemed a necessary requirement.

The Task Force recognized the need for higher educational standards but also felt that the distribution of population in South Dakota would not permit the establishment of a higher standard at this time. For this reason, the Task Force has left it up to the discretion of the individual agency to decide when it can increase the required number of credit hours for employment and promotion within its agency.

Implementation

A. Agencies Involved:

All police agencies.

South Dakota Law Enforcement Officer's Training and Standards Commission.

B. Administrative Actions:

The South Dakota Law Enforcement Officer's Training and Standards Commission should change the required educational minimum for employment as a law enforcement officer from a high school diploma or its equivalency to 30 hours of college credit. It should continue to upgrade the standard as times and conditions permit.

Police Standard 14.2

Educational Incentives for Police Officers

Every police agency should immediately adopt a formal program of educational incentives to encourage police officers to achieve a college-level education in fields related to the law enforcement function. Colleges and universities particularly those providing educational programs expressly for police personnel, should schedule classes at a time when police officers can attend.

1. When it does not interfere with the efficient administration of police personnel, duty and shift assignments should be made to accommodate attendance at local colleges; any shift or duty rotation system should also be designed to facilitate college attendance.

2. Financial assistance to defray the expense of books, materials, tuition and other reasonable expenses should be provided to police officers when:

   a. They are enrolled in courses or pursuing a degree that will increase directly or indirectly, their value to the police service; and

   b. Their job performance is satisfactory.

3. Incentive pay should be provided for the attainment of specified levels of academic achievement. This pay should be in addition to any other salary incentive. It should amount to at least 2.5 percent of the employee's current salary for each 30 semester units of college work completed in pursuance of a degree that will lead, directly or indirectly, to service betterment warranting the expense of the salary incentive.

4. Colleges and universities, particularly those providing educational programs expressly for police personnel, should schedule classes at hours and locations that will facilitate the attendance of police officers.

   a. Classes should be scheduled for presentation during the daytime and evening hours within the same academic period, semester, or quarter.

   b. When appropriate, colleges and universities should present classes at locations other than the main campus so police officers can attend more conveniently.

Commentary

The Task Force was concerned that by offering incentives police agencies may be paying for officers to be educated in fields unrelated to the police function. The Task Force recognized the value of courses in, for example, sociology, psychology, etc., but questions, for example, whether courses leading to a degree in engineering would be appropriate. The Task Force suggests that police chief executives decide which courses the department would feel appropriate for financial assistance.

Perhaps as a guide, departments could follow the lead of the Law Enforcement Education Program (LEEP). LEEP provides funds to students taking courses in liberal arts, the humanities, behavioral and social sciences as well as law enforcement and criminal justice.

Implementation

A. Agencies Involved:

All police agencies.

All colleges and universities offering courses in criminal justice or law enforcement.

B. Legislation:

Legislation relative to pay incentives should be enacted along the guidelines presented in the standard.

C. Administrative Actions:

Police chief executives must decide as to what courses of study the department will accept as appropriate.

D. Funding:

State and local police agencies should budget for incentive pay and financial assistance to its officers attending courses deemed appropriate for financial assistance by the police chief administrator.

Police Standard 14.3

College Credit for the Completion of Police Training Programs

Every police agency should pursue the affiliation of police training programs with academic institutions to upgrade its level of training and to provide incentive for further education.

1. All police training courses for college credit should be academically equivalent to courses that are part of the regular college curriculum.

2. Every member of the faculty who teaches any course for credit in the police training curriculum should be specifically qualified to teach that course.

a. The instructor in a police training course, for which an affiliated college is granting credit, should be academically qualified to teach that course.

b. Police personnel not academically qualified to teach a course in the regular college curriculum may, if otherwise qualified, serve as teaching assistants under the supervision of an academically qualified instructor.

Commentary

The Task Force feels that South Dakota should follow the example presented by the Federal Bureau of Investigation, in regard to college credit for police training. The FBI through the University of Virginia offers credit hours for successful completion of the 14 week FBI National Academy Program. Thus, an officer can receive up to 9 hours of college credit for successful completion of the 14 week FBI National Academy program.

If the police training provided by the South Dakota Criminal Justice Training Center is at a college level, college credit should be given to officers for successful completion of the course.

Implementation

A. Agencies Involved:

South Dakota Law Enforcement Officer's Training and Standards Commission.

Colleges and universities in the State.

Police Recommendation 14.1

Identification of Police Educational Needs

It is recommended that a national body comprised of educators, police, and other criminal justice administrators be formed immediately to establish curriculum guidelines for police educational programs.

This national body should identify the educational needs of the police service, including the needs of the police generalist, the police specialist, and the police manager.

1. Having identified these educational needs, this national body should prepare a model curriculum that will satisfy the Nation's law enforcement needs.

2. This national body should urge the modification of existing police educational programs and, where none exist, the institution of new programs designed upon the model curriculum.

Commentary

The Task Force recommends that the National Association of State Directors of Law Enforcement Training, the Academy of Criminal Justice Sciences, and the American Academy for Professional Law Enforcement combine their efforts to meet the mandates of this recommendation. All three organizations are working on these problems at the present time and their efforts should be coordinated.

CHAPTER FIFTEEN

TRAINING

Police Standard 15.1

State Legislation and Fiscal Assistance for Police Training

South Dakota, should retain legislation establishing mandatory minimum basic training for police, a representative body to develop and administer training standards and programs for police, and financial support for mandated training for police on a continuing basis to provide the public with a common quality of protection and service from police employees throughout the state. By 1977, South Dakota should certify ALL sworn police employees.

1. South Dakota should continue to mandate minimum basic training for all sworn police employees to be completed during their first year of employment.

2. The State should continue to develop and administer State standards for the training of police personnel. The State should provide sufficient funds to enable this commission to meet periodically and to employ a full-time staff large enough to carry out the basic duties of the commission. In addition to any other duties deemed necessary, this commission should:

a. Develop minimum curriculum requirements for mandated training for police;

b. Certify police training centers and institutions that provide training that meets the requirements of the State's police training standards;

c. Establish minimum police instructor qualifications and certify individuals to act as police instructors;

d. Inspect and evaluate all police training programs to insure compliance with the State's police training standards;

e. Provide a consulting service for police training and education centers; and

f. Administer the financial support for police training and education.

3. South Dakota should enact a penalty assessment system to reimburse every police agency 100 percent of the salary or provide appropriate State financed incentives for every police employee's satisfactory completion of any State mandated and approved police training program.

4. South Dakota, through the police training body, by 1977, should certify as qualified to exercise police authority every sworn police employee who satisfactorily completes the State basic police training and meets other entrance requirements.

Commentary

At the present time South Dakota complies with this standard. The State has a commission which embodies the responsibilities as enumerated. The Task Force feels that the commission should continue its work. Every sworn officer, no matter how small the community worked in is, should be certified. All citizens of South Dakota deserve the services of qualified and trained police officers.

At the present time, the State Criminal Justice Commission is providing funds to defray the training cost of police officers. This support may end in the near future and the State should be in a position to assume the costs now covered by the Criminal Justice Commission.

Implementation

A. Agencies Involved:

South Dakota Law Enforcement Officer's Training and Standards Commission.

B. Legislation:

The State should enact legislation which generates revenue for police training through a penalty assessment system. This would be a system whereby an additional fee would be added to all fines to pay for police officer training.

C. Funding:

The State should provide funds for the purpose of reimbursement to local government of the costs incurred in training police officers under police training programs which are mandated and approved by the State.

Police Standard 15.2

Program Development

Every police training academy and criminal justice training center should immediately develop effective training programs, the length, content, and presentation of which will vary according to specific subject matter, participating police employees, and agency and community needs.

1. Every police training academy should insure that the duration and content of its training programs cover the subjects all police employees need to learn to perform acceptably the tasks for which they will be assigned.

2. Every police training academy should define specific courses according to the performance objective of the course and should specify what the trainee must do to demonstrate achievement of the performance objective.

3. Every police training academy serving more than one police agency should enable the police chief executives of participating agencies to choose for their personnel elective subjects in addition to the minimum mandated training.

4. Every police training academy should insure that its training programs satisfy State standards for police training as well as meet the needs of participating police agencies and that its training is timely and effective. These measures should at least include:

a. Regular review and evaluation of all training programs by an advisory body composed of police practitioners from participating agencies.

b. Periodic field observation of the operations of participating police agencies by the training staff; and

c. Continual critique of training programs through feedback from police employees who have completed the training programs and have subsequently utilized that training in field operations and from their field supervisors.

Commentary

The Task Force is not only concerned that personnel be trained, but that the training received be of the highest quality possible and be relevant to the duties of the officer.

The duties and responsibilities of the patrol officer in South Dakota should be defined. This definition should include the area of order maintenance as well as law enforcement. The

courses established should be related directly to the defined duties and responsibilities. The officer should come away from the training possessing the necessary skills and knowledge which will permit successful performance in the community.

It is important that course content be constantly evaluated to determine whether or not the participants are receiving relevant information. Shortcomings will never be pinpointed unless an evaluation is periodically conducted.

Implementation

A. Agencies Involved:
All police training programs.

B. Administrative Actions:
All police training programs must immediately implement this standard to insure the quality of instruction, knowledge of performance, and constant evaluation of provided training.

Police Standard 15.3

Inservice Training

Every police agency should, by 1978, provide for annual and routine training to maintain effective performance throughout every sworn employee's career.

1. Every police agency should provide 40 hours of formal inservice training annually to sworn police employees up to and including captain or its equivalent. This training should be designed to maintain, update, and improve necessary knowledge and skills. Where practicable and beneficial, employees should receive training with persons employed in other parts of the criminal justice system, local government, and private business when there is a common interest and need.

2. Every police agency should recognize that formal training cannot satisfy all training needs and should provide for decentralized training.

3. Every police agency should insure that the information presented during annual routine training is included, in part, in promotion examinations and that satisfactory completion of training programs is recorded in the police employee's personnel folder in order to encourage active participation in these training programs.

Commentary

The police profession is a dynamic one. New constitutional rulings affecting the police relationship with the community and its members are constantly being given; departmental policy changes, new technology is introduced, and communities demand change. For these reasons, it is important that officers receive relevant inservice training on an annual basis.

Beyond the yearly formal training, a police agency should provide to its employees audio-visual equipment compatible with training materials available to the police department, home study materials, and periodic 1-day on duty training programs directed at specific needs of the police employees.

Supervisory personnel should be given training to provide or strengthen the skills required for the supervision of personnel.

Implementation

A. Agencies Involved:
All police agencies.

B. Legislation:
This could be accomplished by regulation by the South Dakota Law Enforcement Officer's Training & Standards Commission.

C. Administrative Actions:
All police agencies should initiate steps to provide inservice training to its officers.

D. Funding:
All police agencies should make budgetary allowance for either the direct inservice training of its officers or to pay expenses associated with special training courses offered within or outside of the State.

Police Standard 15.4

Instruction Quality Control

Every police training academy and criminal justice training center should develop immediately quality control measures to insure that training performance objectives are met. Every training program should insure that the instructors, presentation methods, and training materials are the best available.

1. Every police training academy should present all training programs with the greatest emphasis on student-oriented instruction methods to increase trainee receptivity and participation. Training sessions of 1-hour's duration or longer should include at least one of the following:

a. Active student involvement in training through instructional techniques such as role playing, situation simulation, group discussions, reading and research projects, and utilization of individual trainee response systems; passive student training such as the lecture presentation should be minimized;

b. The use of audiovisual aids add to realism and impact to training presentations;

c. Preconditioning materials, such as correspondence courses and assigned readings, made available prior to formal training sessions; and

d. Where appropriate, computer assistance in the delivery of instruction material.

2. Every police training academy should restrict formal classroom training to the number of students feasible and practical for the course offered.

3. Every police training academy and every police agency should, by 1978, insure that all its instructors are certified by the State by requiring:

a. Certification for specific training subjects based on work experience and educational and professional credentials;

b. Periodic renewal of certification based in part on the evaluation of the police training academy and the police agency.

4. Every police training academy should distribute instructional assignments efficiently and continually update all training materials. These measures should include:

a. Periodic monitoring of the presentations of all police

training instructors to assist them in evaluating the effectiveness of their methods and the value of their materials;

b. Rotation of police training instructors through operational assignments or periodic assignment to field observation tours of duty;

c. Use of outside instructors whenever their expertise and presentation methods would be beneficial to the training objective;

d. Continual assessment of the workload of every police training instructor; and

e. Administrative flexibility to insure efficient use of the training academy staff during periods of fluctuation in trainee enrollment.

5. Every police agency and police training academy should review all training materials at least annually to determine their current value and to alter or replace them where necessary.

Commentary

It has been long recognized in the field of education that if students are allowed to participate in the classroom they will learn more. Participatory training rather than a straight lecture format is now being utilized by many police training programs, including the FBI. Such methods as role playing and situation simulation may be used. Student response systems, allowing students to respond to specific questions are also effective.

All those individuals who teach within a training program should meet certain criteria established to insure that the individual has a firm grasp of the subject matter.

All training materials must also be constantly evaluated to confirm their relevance and to determine whether or not they are consistent with present knowledge, opinion, and situation. If they are not; they should not be used until they are revised.

Implementation

A. Agencies Involved:
All police training programs.

B. Administrative Actions:
Police training programs must decide to constantly and regularly evaluate their programs and staff and to update or replace them where appropriate.

CHAPTER SIXTEEN

DEVELOPMENT, PROMOTION AND ADVANCEMENT

Police Standard 16.1

Formal Personnel Development Activities

Every police agency should immediately implement formal programs of personnel development. Such programs should be designed to further the employee's professional growth and increase his/her capacity for their present or future role within the agency.

1. Every agency should consider allowing all sworn personnel to participate voluntarily in at least 40 hours of formal personnel development activity annually, while on duty, and at full pay. Such activity may include:

a. Forty hours of in-house or out-of-house classroom training directed toward the development of personal, vocational, conceptual, and managerial skills;

b. Internship of at least 40 hours with another police, criminal justice, government, or private organization that can contribute significantly to the professional development of the intern;

c. The assumption of the position, responsibility, and authority of an immediate superior for a minimum of 40 hours when such assignment would contribute significantly to the professional development of the subordinate;

d. Employee participation in administrative and operational research and reporting that would not ordinarily be the responsibility of that employee but would contribute significantly to the employee's professional development;

e. Provision of leaves of absence with pay to allow the achievement of academic objectives that contribute significantly to the employee's professional growth and capacity for current and future assignments;

f. Employee service as a member of or an adviser to management committees and boards on which the employee would not normally serve, such as fleet safety boards, when such service would contribute significantly to the development of an employee's awareness and understanding of management philosophy and insight.

g. Every police agency with specialized units for detective, vice, traffic, staff, and other functions should develop a method whereby personnel can have some exposure to the various agency units.

2. Every agency should encourage personnel to pursue development on their own time, as well as on agency time by attending college courses and seminars and through suggested reading.

3. Every police agency should fulfill its responsibility to develop personnel by seeking adequate funding for personnel development activities. In so doing, the police agency should consider the availability of financial assistance outside the normal budgetary process.

Commentary

Personnel development is extremely important for agencies in South Dakota. Personnel should be encouraged to take part in learning experiences which will not only assist them in developing the skills necessary for their present position, but also to develop skills necessary for advanced positions within the agency.

Development should be voluntary. An agency can not force its individual members into personal development programs; the motivation must come from the individual. If an individual does possess the motivation, the agency should provide opportunities for individual learning and growth.

The Task Force offers in the standard several ways in which personnel development can be accomplished within the organization. The individual should also be encouraged to engage in self-development activities such as individual reading and college course participation. The agency should provide a list of suggested readings and appropriate college course offerings which it feels would be of benefit to its employees.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
All police chief executives must first recognize the need for personnel development. This recognition should take the form of the chief's own participation in college course work and training seminars. Policy should be established which encourages and allows officers to participate in personnel development activities.

C. Funding:
Funds will be required to pay for additional personnel to cover for personnel who are engaging in personnel development programs.

Police Standard 16.2

Administration of Promotion and Advancement

Every police chief executive, by assuming adminstrative control of the promotion and advancement system, should insure that only the best qualified personnel are promoted or advanced to positions of greater authority and responsibility in higher pay grades and ranks. Agencies that have not developed competent personnel to assume positions of higher authority should seek qualified personnel from outside the agency rather than promote or advance personnel who are not ready to assume positions of greater responsibility.

1. The police chief executive should oversee all phases of the agency's promotion and advancement system including the testing of personnel and the appointing of personnel to positions of greater responsibility. The police chief executive should make use of the services of a central personnel agency when that personnel agency is competent to develop and administer tests and is responsive to the needs of the police agency.

2. The police chief executive should consider recruiting personnel for lateral entry at any level from outside the agency when it is necessary to do so in order to obtain the services of an individual who is most qualified for a position or assignment.

Commentary

Promotion of personnel is one of the most crucial responsi-

bilities of a police chief executive. Promotion must be based on sound evidence; evidence which reveals who will perform best in the advanced position. This decision cannot rest solely on past performance or past evaluations. Such measures are often subjective and ladden with personal bias.

Agencies must first determine the observable traits, not personality traits or personal attributes, associated with good performance within the open position. This determination should involve all ranks within the police department. Once a list of behavior traits is developed, the agency should develop exercises which each candidate would perform to measure the behavior traits identified. The applicants should be judged by an impartial panel utilizing an established, standardized evaluation format. The participants should then be rated and the list presented to the police chief executive for final selection. Such a system should provide for the advancement of the best person and also provide those not selected with information relevant to areas where they need improvement.

The Task Force would recommend that police departments do away with time-in-grade promotion eligibilty requirements. Such requirements serve no useful purpose. If two individuals of equal abilities are qualified for advancement, time-in-grade should then be considered for the final determination as to who is to advance.

Any police chief executive who holds back qualified individuals because of a fear of personal rivalry for the position of police chief executive can only undermine the morale of the agency, causing it great harm, and should be removed from the position.

Police agencies with positions to fill or promotions to make which do not possess qualified individuals within its own ranks should consider either not promoting until agency personnel can be trained or opening the position to qualified personnel from outside the agency. The Task Force encourages the use of lateral entry to all positions within an agency. Lateral entry has met with great success in many departments.

Implementation

A. Agencies Involved:
All police agencies.

B. Legislation:

Legislation is needed to change civil service regulations to accommodate "lateral entry." Lateral entry allows persons with special skills and/or experience to enter an agency above the "bottom of the ladder" in pay and grade or rank.

C. Administrative Actions:

Police chief executives should establish policy which provides for lateral entry of personnel into the agency.

Police Standard 16.3

Personnel Records

Every police agency immediately should establish a central personnel information system to facilitate management decisionmaking in assignment, promotion, advancement, and the identification and selection of individuals for participation in personnel development programs.

1. The personnel information system should contain at least the following personnel information:

a. Personal history;
b. Education and training history;
c. Personnel performance evaluation history;
d. Law enforcement experience;
e. Assignment, promotion, and advancement history;
f. Commendation records;
g. Sustained personnel complaint history;
h. Medical history;
i. Occupational and skills profile;
j. Results of special tests; and
k. Photographs.

2. The personnel information system should be protected against unauthorized access; however, employees should have access to agency records concerning themselves, with the exception of background investigation data.

3. The system should be updated at least semiannually and, ideally, whenever a significant change in information occurs and

4. The system should be designed to facilitate statistical analysis of personnel resources and the identification of individuals with special skills, knowledge, or experience.

Commentary

Personnel management can be made more effective if agencies keep accurate, up-to-date personnel records. The Police Task Force offers the above standard for agencies to follow in this regard. It should be pointed out that much of the information identified in this standard should already be available to agencies because such information is required for certification by the South Dakota Law Enforcement Officer's Standards and Training Commission.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:

Where applicable and necessary, such changes or decisions should be made to bring all agencies into compliance with this standard.

CHAPTER SEVENTEEN

EMPLOYEE RELATIONS

Police Standard 17.1

The Police Executive and Employee Relations

All police chief executives should immediately acknowledge their responsibility to maintain effective employee relations and should develop policies and procedures to fulfill this responsibility.

1. Every police chief executive should actively participate in seeking reasonable personnel benefits for all police employees.

2. Every police chief executive should provide an internal two-way communication network to facilitate the effective exchange of information within the agency and to provide an information feedback device.

3. All police chief executives should develop methods to obtain advisory information from police employees — who have daily contact with operational problems — to assist them in reaching decisions on personnel and operational matters.

4. Every police chief executive should provide a grievance procedure for all police employees.

5. Recognizing that police employees have a right, subject to certain limitations, to engage in political and other activities protected by the first amendment, every police agency should promulgate written policy that acknowledges this right and specifies proper and improper employee conduct in these activities.

6. Every police chief executive should acknowledge the right of police employees to join or not join employee organizations that represent their employment interests, and should give appropriate recognition to these employee organizations.

Commentary

The following steps can be taken to ward off labor management problems:

1. Open lines of communication, and
2. Police chief executives should take a sincere interest in the desires of their personnel. (Bolinger, 1974:39)

If police personnel, especially line personnel, feel that their needs and problems are being given a fair and sincere review by the police chief executive and the governing body, police militancy expressed through labor organizations will not be as large a problem to management as it could be.

Often reasonable personal benefits that police chief executives should have secured for their personnel have been gained through organized police employee activities.

Police chief executives should take advantage of the knowledge of police problems and needs possessed by the patrol officer. The police administrator should provide a two-way communications network within the agency. Employee suggestions should be an important element in the decision making process.

Every police agency should have a written grievance procedure. The procedure should not by its nature inhibit the airing of grievances. The best systems appear to be those which are bilateral whereby an employee can take a grievance up the chain of command or directly to an internal board.

It must be recognized that employees do have the right to organize, but also that individual officers have the right not to join an employee organization.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
All police chief executives should open their lines of communication with all agency employees as well as employee organizations.

Police Standard 17.2

Collective Negotiation Process

South Dakota should retain legislation which allows police employees to engage in collective negotiations in arriving at terms and conditions of employment that maintains police service effectiveness and insures equitable representation for both parties.

1. Legislation enacted by South Dakota to provide for collective negotiations between police agencies and public employees should give equal protection for both parties and should include:

a. Provisions for local jurisdictions to enact specific rules for the collective negotiation process;

b. Procedures to prevent either party from circumventing the collective negotiation process;

c. Provisions for police agency retention of certain unrestricted management rights to insure proper direction and control in delivering police services;

d. Provisions to prohibit police employees from participating in any concerted work stoppage or job action; and

e. Procedures that require adherence to the collective negotiation by all parties.

2. All police chief executives should insure that they or their personally designated representatives are present during all collective negotiations involving the police agency, and that they are allowed to protect the interests of the community, the police agency, and all police employees.

3. Every police agency should insure that all police employees receive training necessary to maintain effective management-employee relations. This training should include:

a. Sufficient information to provide all employees with a general knowledge of the management-employee relations process;

b. Specific instructions to persons who represent the police agency in the collective negotiation process; and

c. Specific instructions to enable all supervisory police employees to perform their duties under any collective negotiation agreement.

4. Every police chief executive should encourage employee organizations to provide training to enable their representatives to represent members in the negotiation process adequately.

5. Every police chief executive should establish administrative procedures to facilitate the police agency's operation under collective negotiation agreement.

6. The State should take steps toward the end that the State Constitution be amended to allow for "binding arbitration" to resolve labor-management impasse situations.

Commentary

At the present time, South Dakota does have legislation establishing the framework for collective negotiation by public employees.

Police administrators should be represented at the negotiating table. The police chief executive may want to appoint one or more subordinates to the negotiating team. The police chief may not want to become personally involved, because of the animosity it may cause. If the size of the agency does not allow this, then the chief should sit on the board as an advisor or expert witness. He or she should, however, never assume the role of negotiator.

Once the contract is reached, it is the responsibility of the police chief executive to establish guidelines and programs to carry out the provisions of the contract. This procedure will reduce the number of grievances which stem from misunderstanding.

It must be recognized that it is not enough for police employees to have the power of collective negotiation. After the long process of negotiation, management can reject any and all provisions reached at the negotiating table. Without the right of work stoppage, police employees have little recourse to such a happening. Binding arbitration as an impasse procedure is necessary if negotiations are to take place on an equal level. Without binding arbitration, police employees are always at a disadvantage and the potential for further animosity exists.

Implementation

A. Agencies Involved:
All police agencies.
B. Legislation:
There should be passed a joint resolution calling for a constitutional amendment to allow for binding arbitration for police employees.

Police Standard 17.3

Work Stoppages and Job Actions

All police chief executives should immediately prepare their agency to react effectively to neutralize any concerted work stoppage or job action by police employees. Any such concerted police employee action should be prohibited by law.

1. South Dakota, by 1978, should enact legislation that specifically prohibits police employees from participating in any concerted work stoppage or job action. Local legislation should be enacted immediately if State prohibitive legislation does not currently exist.

2. Every police agency should establish formal written policy prohibiting police employees from engaging in any concerted work stoppage or job action.

3. Every police agency should develop a plan to maintain emergency police service in the event of a concerted employee work stoppage.

4. Every police chief executive should consider the initiation of internal disciplinary action, including dismissal, against police employees who participate in a concerted job action or work stoppage. Among the many disciplinary alternatives available to the chief executive are actions against:

a. All participating employees for violating prohibitive legislation and policy;

b. Individual employees when their individual conduct warrants special action;

c. Only those employees who encouraged, instigated, or led the activity; and

d. None of the participating employees; however, criminal or civil action may be sought for violations of legislative prohibitions.

5. The Constitution of the State of South Dakota should be changed to allow arbitration (binding) by public service employees, providing the following have been met:

a. In the event that no agreement could be reached by either party through collective bargaining processes.

b. If the binding arbitration process is initiated, the party initiating such process must pay all costs of such process.

c. If the parties can not reach a mutual agreement, the neutral party's facts and recommendations will be accepted as final by both labor and management.

Commentary

South Dakota statute prohibits strikes and, depending upon interpretation, concerted work stoppages by public employees. Such legislation must be worded so that such actions as the "blue flu", speedups, slowdowns or other such concerted work stoppages are prohibited.

If we do not allow police to strike we must find a substitute. Some feel (Bowers, 1974:32) that legislated arbitration most closely approximates the strike. There are three primary purposes for the strike. First, it can give a powerful impetus to concession and compromise, the heart of collective bargaining. Secondly, the threat to strike creates a sense of urgency which propels the parties to solutions through negotiation and thirdly, it poses a direct cost of disagreement on both parties. Binding arbitration fills these purposes.

Implementation

A. Agencies Involved:
All police agencies.
B. Legislation:
Legislation barring strikes and concerted work stoppages by police should be enacted. Legislation specifying illegal work stoppages is desired. If police are given the ability to utilize binding arbitration, strict legislation is needed to provide that they do not also engage in strikes or work stoppages.

Police Recommendation 17.1

Police Employee Organizations

Every police employee organization should immediately formalize written policies, rules, and procedures that will protect the rights of all members and insure that they can remain responsible to their oath of office.

1. Every police employee organization should place in writing the scope of its activities to inform all members of their organization's programs and their representative's activities.

2. Every police employee organization should adhere to rules and procedures designed to insure internal democracy and fiscal integrity... These rules and procedures should include:

a. Provisions to protect members in their relations with the police employee organization;

b. Standards and safeguards for periodic elections;

c. Identification of the responsibilities of the police employee organization officers;

d. Provisions for maintenance of accounting and fiscal controls, including regular financial reports;

e. Provisions for disclosure of financial reports and other appropriate documents to members, regulating agencies, and the public; and

f. Acknowledgement of responsibility to the governmental entity legally charged with regulation of such employee organizations.

Commentary

This recommendation is offered to all police employee organizations presently operative and those of the future. The recommendation is offered in an effort to insure both internal democracy and fiscal integrity.

The Task Force does not feel that the intent of this recommendation should be in the form of a standard.

CHAPTER EIGHTEEN

INTERNAL DISCIPLINE

Police Standard 18.1

Foundation for Internal Discipline

Every police agency immediately should formalize policies, procedures, and rules in written form for the administration of internal discipline. The internal discipline system should be based on essential fairness, but not bound by formal procedures or proceedings such as are used in criminal trials.

1. Every police agency immediately should establish formal written procedures for the administration of internal discipline and an appropriate summary of those procedures should be made public.

2. The chief executive of every police agency should have ultimate responsibility for the administration of internal discipline.

3. Every employee at the time of employment should be given written rules for conduct and appearance. They should be stated in brief, understandable language.

In addition to other rules that may be drafted with assistance from employee participants, one prohibiting a general classification of misconduct, traditionally known as "conduct unbecoming an officer," should be included. This rule should prohibit conduct that may tend to reflect unfavorably upon the employee or the agency.

4. The policies, procedures, and rules governing employee conduct and the administration of discipline should be strengthened by incorporating them in training programs and promotional examinations, and by encouraging employee participation in the disciplinary system.

Commentary

Written rules of conduct form the foundation of any discipline system. These rules of conduct should be written in concise and short understandable form. The rules should also be reasonable and enforceable. Discipline is difficult to administer in an equal manner if there are no ground rules. Even if administred equitably, it is open to suspicion if not guided by rules of conduct.

The rules should not be formulated and then forgotten. They should be constantly reviewed and changed to meet changing times and to overcome problems of interpretation or application which might arise. Rules of conduct should be drafted with the assistance of the city or state's attorney or other legal assistance to insure their compatibility with existing civil and administrative law. This should be done to protect the individual rights of agency personnel.

Employee input should be solicited when drafting rules of conduct. Participation by the employees will not insure acceptance and observance, but certainly will enhance it.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
All police chief executives should establish guidelines for employee conduct. These guidelines should be communicated to each new employee and updated and revised regularly.

Police Standard 18.2

Complaint Reception Procedures

Every police agency immediately should implement procedures to facilitate the making of a complaint alleging employee misconduct, whether that complaint is initiated internally or externally.

1. The making of a complaint should not be accompanied by fear of reprisal or harassment. All persons making a complaint should receive verification that their complaint is being processed by the police agency.

2. All persons who file a complaint should be notified of its final disposition; personal discussion regarding this disposition should be encouraged.

Commentary

Every attempt should be made to make the reception of complaints, as well as, commendations as easy and free of intimidation to the public as is possible. Simple, straight forward receipt procedures as well as thorough investigation will help build confidence in the community that the police can police themselves.

To accomplish this, agencies should develop a form to be used for this purpose and make it known where one can obtain the form and to whom and where it can be submitted. Any policies which require a sworn statement as to the validity of the complaint or the signing of a statement which warns of the penalties for filing a false complaint should be eliminated.

The police agency should also make every effort to personally interview the complainant. This will provide the complainant with evidence that the complaint is being investigated and will also provide the agency with more information on which to investigate the complaint.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
Where necessary and applicable, appropriate decisions should be made to implement proper procedures for complaint reception within all police agencies. The procedures should be structured so as not to place undue hardship on complainants nor should they lead to the intimidation of complainants.

Police Standard 18.3

Investigative Responsibility

The chief executive of every police agency immediately should insure that the investigation of all complaints from the public, and all allegations of criminal conduct and serious internal misconduct, are conducted.

Police agencies should obtain the assistance of prosecuting agencies during investigations of criminal allegations and

other cases where the police chief executive concludes that the public interest would best be served by such participation.

Commentary

Police chief executives should recognize their responsibilities for the investigation of complaints of misconduct and criminal conduct of agency employees. In most instances in South Dakota any investigation can be undertaken directly by the police chief executive, but if it is not, it should be performed by a person who reports directly to the police chief executive. Such a procedure adds needed support to the investigator and enhances the level of cooperation received.

Minor internal acts of misconduct should be investigated by line supervisors. The line supervisor to whom the accused reports should investigate. The chief executive should monitor all disciplinary actions taken by line supervisors to insure that complaints are handled in a fair and consistent manner.

Implementation

A. Agencies Involved:
All police agencies.
Governmental chief executives.
Prosecutors.

Police Standard 18.4

Investigation Procedures

Every police agency immediately should insure that internal discipline complaint investigations are performed with the greatest possible skill.

1. Every police agency should establish formal procedures for investigating minor internal misconduct allegations. These procedures should be designed to insure swift, fair, and efficient correction of minor disciplinary problems.

2. Every investigator of internal discipline complaints should conduct investigations in a manner that best reveals the facts while preserving the dignity of all persons and maintaining the confidential nature of the investigation.

3. All internal discipline investigations should be concluded 30 days from the date the complaint is made unless an extension is granted by the chief executive of the agency. The complainant and the accused employee should be notified of any delay.

Commentary

Investigations of complaints against police officers of a non-corruption nature (both internal and external) can most easily and efficiently be done by line supervisors. Investigations of corruption should be conducted by a special unit or commission, depending on the resources of the agency. Burpo (1972: 18) provides the following analysis of an officer's rights during a disciplinary investigation.

1. An officer must answer all questions and submit to a polygraph examination pertaining to an internal investigation. In the instance where an officer is being questioned in an internal investigation pertaining to official actions he/she may be threatened with disciplinary action for refusal to answer and may be dismissed even if the officer invokes the right against self-incrimination if he/she so refuses to answer questions related to his/her official actions. This rule was established in **Gardner v. Broderick.** It should be noted that any statement obtained under these circumstnces could not be used in a criminal action.

In what is known as the Roux decision the Supreme Court upheld the dismissal of an officer from the New Orleans Police Department after his refusal to obey a direct order to take a polygraph examination. He was dismissed on the grounds of **insubordination** for his refusing to obey a direct order. In other cases the court has reversed the dismissal of officers who were fired for failing to cooperate with an investigation by refusing to participate in a polygraph test. As you can see, the distinguishing factor is the dismissal for insubordination by refusing a direct order (upheld by the court) and dismissal for refusal to cooperate in an investigation (overturned by the court).

2. Questioning must be limited to circumstances surrounding the employee's violation of rules of conduct. If the questioning goes beyond the officer's actions related to internal discipline, he/she should be advised of his/her Miranda rights. If the administrator has reason to believe that a criminal prosecution is possible, the officer should be advised of his/her rights under Miranda. If he/she is not, the officer's statements can not be used in criminal proceedings, even-though they still could be used in disciplinary proceedings.

An officer may be dismissed only for not answering questions related directly and narrowly to the performance of official duties.

3. An employee does not have the right to counsel during an interrogation. Again this is limited. This is only true when the officer is being questioned in regard to an internal disciplinary matter. If the interrogation is conducted with the possibility of a criminal proceeding being initiated, the officer has the right to counsel during interrogation.

4. Questioning must be completed within a reasonable time. It is only fair that the officer in question be questioned at reasonable hours of the day, unless time is of the utmost importance and that any interrogation last a reasonable length of time with adequate time allowed the employee for personal necessities, meals and telephone calls.

5. An officer may be disciplined to the maximum extent for refusing to answer questions or submit to a polygraph. This issue was addressed under number 1 above.

Suspension without pay is an extreme measure if invoked during an investigation. If it is invoked and the charge against the officer is not sustained, the officer should be entitled to back pay.

The complainant should be apprised of the outcome of the investigation.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:

All police chief executives should immediately commit themselves to the immediate and thorough investigation of all complaints. A uniform procedure should be established for the investigation of both minor and major offenses.

Police Standard 18.5

Adjudication of Complaints

Every police agency immediately should insure that provisions are established to allow the police chief executive ultimate authority in the adjudication of internal discipline complaints, subject only to appeal through the courts or established civil service bodies, and review by responsible legal and governmental entities.

1. A complaint disposition should be classified as sustained, not sustained, exonerated, unfounded, or misconduct not based on the original complaint.

2. Adjudication and — if warranted — disciplinary action should be based partially on recommendations of the involved employee's immediate supervisor.

3. An administrative factfinding trial board should be available to all police agencies to assist in the adjudication phase. It should be activated when necessary in the interests of the police agency, the public, or the accused employee, and should be available at the direction of the chief executive or upon the request of any employee who is to be penalized in any manner that exceeds verbal or written reprimand. The chief executive of the agency should review the recommendations of the trial board and decide on the penalty.

4. Police employees should be allowed to appeal a chief executive's decision. The police agency should not provide the resources or funds for appeal.

5. The chief executive of every police agency should establish written policy on the retention of internal discipline complaint investigation reports. Only the reports of sustained and —if appealed — upheld investigations should become a part of the accused employee's personnel folder. All disciplinary investigations should be kept confidential.

6. Administrative adjudication of internal discipline complaints involving a violation of law should neither depend on nor curtail criminal prosecution. Regardless of the administrative adjudication, every police agency should refer all complaints that involve violations of law to the prosecuting agency for the decision to prosecute criminally. Police employees should not be treated differently from other members of the community in cases involving violations of law.

Commentary

The officer's immediate supervisor should always be consulted prior to disciplinary action. The supervisor is in the best position to judge the effect of the disciplinary action upon the officer.

The formal factfinding trial board should be used only in cases in which if the charge is sustained the officer could be dismissed or demoted. Trial boards are cumbersome and time consuming. As a substitute, agencies may try to use a hearing officer (an officer is chosen to hear the facts, make a finding and prescribe a penalty). Another procedure is to establish a review board made up of the officer's peers or the use of a peer group and the officer's supervisor to review the case and counsel the individual. Even though these methods are less formal, the dignity and rights of the individual must be respected.

The officer should be provided the opportunity at his/her expense to retain counsel, should have access to all pertinent records and information and logistical support, and should also be able to utilize the services of other members of the department.

It is recommended that if there is an appeal, that it be appealed to the person to whom the police chief executive reports and not to a civil service commission or other body, if possible. It is the chief executive's (mayor, city manager, county commissioner) responsibility to insure that the agency runs smoothly and properly, therefore, he/she should receive the appeal.

Implementation

A. Agencies Involved:
All police agencies.
Governmental chief executives.
Prosecutors.

Police Standard 18.6

Positive Prevention of Police Misconduct

The chief executive of every police agency immediately should seek and develop programs and techniques that will minimize the potential for employee misconduct. The chief executive should insure that there is a general atmosphere that rewards self-discipline within the police agency.

1. Every police chief executive should implement, where possible, positive programs and techniques to prevent employee misconduct and encourage self-discipline. These may include:

a. Analysis of the causes of employee misconduct through special interviews with employees involved in misconduct incidents and study of the performance records of selected employees;

b. General training in the avoidance of misconduct incidents for all employees and special training for employees experiencing special problems;

c. Referral to psychologists, psychiatrists, clergy, and other professionals whose expertise may be valuable; and

d. Application of peer group influence.

Commentary

According to More (1975), for too long police agencies have used negatively oriented measures to combat police misconduct; the issuance of penalties. Agencies know those situations which cause misconduct and corruption and must design programs and institute policies and procedures which prevent misconduct and protect the integrity of the police profession.

Some positive measures to lessen misconduct are:

1. Insulate the department and officers from external influences.

2. The administration must make it known that it will not stand for any actions by anyone which will harm the integrity of the agency.

3. Whenever a new program is introduced it should be assessed as to its potential for the inducement of misconduct. An example would be where, as was found in New York by the Warren Commission, police agencies are requested to inspect liquor establishments, restaurants, etc. to determine their compliance with city ordinance. A great deal of pay-off was being delivered to officers to overlook irregularities.

4. Better selection techniques can weed out applicants whose integrity is itself questionable.

5. Officers who work in vice should be rotated every 2 or 3 years. It is also recommended that those on promotion lists be used in vice until their promotion, because it is assumed that they will want to perform well to insure their promotion.

6. Police chief executives should eliminate from their responsibilities duties which require the handling of money, such as, collection of fines and parking meter revenues.

7. The contact officers have with drugs and narcotics lends itself to breeding a climate for police misconduct. Agencies must establish written policies and procedures as well as inspection systems to insure the proper handling, storage, and disposal of drugs and narcotics.

8. Agencies must establish and conduct effective inspection programs aimed at inspecting known conditions which produce misconduct.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
Prevention programs are more effective than are punitive programs. Police chief executives should develop programs to prevent misconduct by officers.

Police Recommendation 18.1
Study in Police Corruption

It is recommended that a national police supported organization such as the International Association of Chiefs of Po-Police be commissioned to study the conditions that have led to reduction or elimination of corruption in police agencies that have been successful in dealing with this problem. This research should not focus on police agencies where corruption is currently widespread.

CHAPTER NINETEEN

HEALTH CARE, PHYSICAL FITNESS, AND RETIREMENT

Police Standard 19.1

Entry-level Physical and Psychological Examinations

Every police agency should require all applicants as a condition of employment for police officer positions to have undergone thorough entry-level job-related physical and psychological examinations to insure detection of conditions that might prevent maximum performance under rigorous physical or mental stress.

1. Every agency, by 1978, should furnish, and require, as a condition of employment, that each applicant pass a thorough physical and psychological examination. This examination should:

a. Be designed to detect conditions that are likely to cause nonjob-related illnesses, inefficiency, unnecessary industrial accidents, and premature retirement;

b. Be conducted under the supervision of a licensed, competent physician; and

c. Include a psychological evaluation conducted under the supervision of a licensed, competent psychologist or psychiatrist.

2. Every police agency should attempt to conserve resources by processing applicants in a cost effective sequence. Written tests should be given prior to background investigations and psychological or physical examinations.

Commentary

There are few professions in today's society which involve as much physical and emotional stress as that of the police officer. The officer's ability to react in a positive manner can mean the difference between life and death. For this reason, a police officer must be in top physical and mental shape at the time of employment. This fitness should not be considered only at the time of initial employment, but must continually be measured.

Psychological tests can not determine in every instance who will make a good police officer, but they can help eliminate persons who are severely unfit. If an agency does provide for a psychological examination, it should be performed by an experienced, trained professional (psychologist) who understands police work. This understanding may have to be furnished by the police agency itself. The psychologist can, at the least, determine those who can cope rationally with violence, verbal abuse, resentment and emergencies; minimums required of a good police officer. Such traits are not easily determined by lay individuals, therefore, it is imperative that police agencies retain the assistance of a professional.

Implementation

A. Agencies Involved:
All police agencies. Here again, a central testing facility as discussed in Standard 12.4 could assist in the broad scale implementation of this standard.

B. Legislation:
Refer to Standard 12.4.

C. Administrative Actions:
Refer to Standard 12.4.

D. Funding:
Refer to Standard 12.4.

Police Standard 19.2

Continuing Physical Fitness

Every police agency should establish physical fitness standards and programs that will insure every officer's physical fitness and satisfactory job performance throughout the officer's entire career.

1. Every agency should immediately establish realistic weight standards that take into account each officer's height, body build, and age.

2. Every agency should, by 1978, require for each officer a physical examination administered biannually, annually, or semiannually to determine the officer's level of physical fitness. The frequency of the examinations should increase with the officer's age. If the officer fails to meet the predetermined standards, a program should be prescribed to improve the officer's physical condition.

Commentary

Persons entering police agencies in South Dakota today are required to be examined by a physician and to be certified as mentally and physically able to perform as a police officer. Generally no further examination is required beyond this by most agencies in the State. The Task Force feel that agencies should require maintenance of reasonable height-weight standards by their personnel, which coincide with those used by the medical community and should evaluate each sworn officer's compliance on at least a semiannual basis.

Each agency should also require a physical examination on at least a biannual basis to determine the officer's physical condition. If negative physical conditions are detected early and officers are required to follow the treatment plan prescribed by the examining physician, the officer's length of active duty can many times be extended.

The agency can also assist its personnel in the maintenance of physical fitness by offering physical fitness programs and facilities. Programs developed by agencies need not be confined to the police building, in fact in cost communities in South Dakota, this would be impossible. The agency should work with the school system, YMCA or other existing facilities for the provision of physical fitness facilities. There are also programs which require no facilities for their implementation such as jogging and calisthentics, to name a few.

Agencies may also wish to investigate the possibility of using aerobic conditioning programs. Aerobic conditioning conditions the heart, lungs and circulatory system with short periods of physical exertion such as running or swimming. This form of activity builds endurance rather than strength and agility.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
All police chief executives should assess available physical fitness facilities and programs. Once the assessment is complete, a program for physical fitness should be established in the community. Standards should be set which account for age and officer duties. Officers should be periodically tested to determine whether or not they meet the established physical fitness standards.

C. Funding:
Where applicable and necessary, funds should be provided for physical examinations and fitness programs.

Police Standard 19.3

Health Insurance

Every police agency should, by 1982, make available a complete health care program for its officers and their immediate families to insure adequate health care at minimum cost to the agency and the employee.

1. Every police agency should establish a health care program that provides for the particular health care needs of its employees and their immediate families.

a. The health care program should attempt to provide at least (1) surgery and related services; (2) diagnostic services; (3) emergency medical care; (4) continuing medical care for pulmonary tuberculosis, mental disorders, drug addiction, alcoholism, and childbirth; (5) radiation, inhalation, and physical therapy; (6) ambulance service; (7) nursing care; (8) prescribed medication and medical appliances; (9) complete dental and vision care; (10) hospital room; and (11) income protection.

b. Every agency should pay all or a major portion of the cost of the health care program to insure that the expense to employees, if any, is as small as possible. The agency should establish controls to insure that the highest available quality and quantity of medical services are provided under its plan. These controls should include a system of record handling that facilitates swift, efficient provision of services and feedback of employee reaction to the program.

2. Every police agency should insure that officers or their beneficiaries are allowed to continue as members of the health care program after the officer's retirement, and that benefits and cost change under these circumstances are reasonable.

Commentary

The hazards associated with police work make it necessary for every sworn officer to possess health insurance coverage. Such insurance should be provided by the agency.

Local units of government are eligible to participate in the group health insurance plan held by the State, SDCL 3-12A-1 to 26. The present plan covers most of the areas of coverage listed in the standard. Presently, participation by local units of government is voluntary. The Task Force recommends that participation for law enforcement personnel be mandatory and that the local unit of government assume the cost of the employee's insurance coverage.

Implementation

A. Agencies Involved:
All police agencies.

B. Legislation:
Legislation should be enacted which makes participation in the State Health Insurance Program mandatory for local units of government for the coverage of police personnel.

C. Funding:
Funds would be required because the State system requires the employer to pay the full cost of the insurance for the employee.

Police Recommendation 19.1

Police Officer Retirement

It is the recommendation of the Police Task Force that municipal and county police officers be allowed to join the state retirement system by a majority vote of those officers employed at the time such vote is taken. Entrance into the retirement system would not be contingent upon full city/county employee participation, but should have the concurrence of the local governing board before entrance could take place.

Commentary

The State presently has an effective retirement system in terms of benefits and actuarial soundness to which police officers may belong. There are two problems related to police which the Police Task Force addresses in its recommendation. First, the retirement benefits are not extended to all law enforcement officers of the State. Entrance into the state retirement system is voluntary. The governing body of each local unit of government must decide whether or not its employees will be able to enter the system. If a local unit of government enters; all of its employees must be included in the system. Presently there are approximately 36 counties and 44 municipalities which participate in the state retirement system.

This recommendation calls for granting police officers employed by a county or city the ability to enter the retirement system as a separate unit, apart from the rest of the city or county employees. This entrance is to be accomplished upon a majority vote of the police officers employed at the time of the vote; contingent upon the approval of the governing board.

The Task Force feels this individual treatment as a class is justified because of the special nature of police work which calls for earlier retirement than other positions in local government. This distinction is recognized in the present State retirement system which places municipal police officers in a separate class; Class B and all other municipal employees are placed in Class A.

Although not a part of the recommendation, the Task Force wishes to address itself to what it sees as another problem. Presently only municipal police officers can enter the Class B system; deputy sheriffs are overlooked. The Task Force also feels that county police officers should be allowed to enter the Class B system.

Legislation is required to implement this recommendation.

CHAPTER TWENTY

PERSONAL EQUIPMENT

Police Standard 20.1

Police Uniforms

Every police chief executive should immediately develop and designate complete standard specifications for apparel and equipment to be worn by every agency employee when performing the duties of a uniformed police officer. To deter criminal activity, uniformed police officers should be highly visible, easily identifiable and readily distinguishable from other uniformed persons. All officers' appearance should reflect favorably on their agency and profession; however, to insure maximum efficiency, this should not be accomplished at the expense of physical comfort.

1. Every police chief executive should consider seasonal changes and climate when developing the agency's standard police uniform.

2. Every police chief executive should insure that the agency's police uniform identifies the wearer by name and agency, and makes the wearer plainly recognizable as a police officer. Such items should be visible at all times.

3. Every police executive should insure that the uniforms of agency employees other than police officers — such as civilian traffic control, parking control, and security officers — are, by color, design and items of identification, plainly distinguishable from those of police officers.

4. The State should enact legislation fixing the color and style of uniforms, badges, vehicles and identification worn or used by private patrol officers, security guards or any other service agency personnel whose uniforms may be mistaken for that of a sworn police officer to insure that they are readily distinguishable from police uniforms.

a. The legislation should prohibit anyone not defined as a law enforcement officer (SDCL 23-3-27) from using a star-shaped badge or vehicle decal.

5. Every police agency should conduct daily uniform inspections to insure that every officer's appearance conforms to agency specifications and reflects favorably on the agency and the law enforcement profession.

Commentary

The police uniform is worn so that the officer and the officer's authority are plainly visible. Every police officer, other than plain clothes, should be identified by his/her uniform. The officer should also be easily identified with both a name plate and a badge with a plainly visible number. This makes citizen identification easy when either a commendation or complaint is to be made.

The police uniform must be distinguishable from the uniform of every other service uniform in the community. A readily identifiable uniform is necessary so that there is no confusion as to whether or not the person is a sworn police officer capable of exercising the powers of a sworn officer.

Those individuals who carry badges should be prohibited from using star-shaped badges or shields. This would enable law enforcement agencies to adopt this form of badge and shield knowing that no other individual other than a sworn police officer could use this symbol for identification. Such an effort would reduce the likelihood of impersonation of a police officer by those who carry a badge or utilize vehicle emblems.

Implementation

A. Agencies Involved:
All police agencies.

B. Legislation:
Legislation should be enacted which describes the color and style of uniforms, badges, vehicle emblems and identification of private patrol officers, security guards or any other service agency personnel whose uniform may be mistaken for that of a sworn police officer.

C. Administrative Actions:
All police chief executives should immediately take the necessary steps to establish policy which stipulates the type, color and pieces of uniform to be worn by sworn personnel and unsworn personnel. They should insure that all agency civilian personnel at all times wear, in plain view, a name tag. Also, that all sworn personnel wear, in plain view, at all times both a name tag and a badge with an identifying number.

Police Standard 20.2

Firearms and Auxiliary Equipment

Every police chief executive should immediately specify the type of firearms, ammunition, and auxiliary equipment to be used by the agency's police officers. To enhance police efficiency, personal equipment items should be interchangeable among all officers of the agency. Once established, these specified standards should be maintained by frequent, periodic inspections and appropriate disciplinary action when agency regulations are violated.

1. Every police agency should establish written specifications for agency approved sidearms and ammunition to be carried by officers on uniformed duty, or plainclothes duty, or off duty. The specifications should include the type, caliber, barrel length, finish, and style of the sidearms, and the specific type of ammunition.

2. Every police agency should insure that the officers of every automobile patrol unit are equipped with a shotgun easily accessible to the officer.

3. Every police agency should designate all items of auxiliary equipment to be worn or carried by its uniformed officers. To insure intraagency uniformity, the approved type, size, weight, color, style, and other relevant variables of each auxiliary equipment item, along with the position on the uniform or belt where it is to be worn or carried, should be specified in writing.

4. Every police agency should initiate a program of frequent, regular equipment inspections to insure that personal equipment items conform to agency specifications and are maintained in a presentable and serviceable condition. To insure that each officer's weapon functions properly, firearm practice should be required for all officers at least monthly, and all firearms should be examined at regular intervals by a firearms instructor.

5. To insure shooting competency, every agency's policy

relative to firearms practice should require each officer to maintain a minimum qualifying score in the firearms practice course adopted by the agency.

a. To insure a training balance in this critical area, equal emphasis of instruction should also include the various legal and moral limitations as related to the use of firearms by police.

Commentary

All personnel in an agency should use the same type of weapon, ammunition, handcuffs and auxiliary equipment. The equipment used by a police agency should be standardized for several reasons. First, to reduce the purchase and maintenance costs; secondly, to reduce training time and cost; and thirdly, it facilitates field operation.

Interchangeability of ammunition and familiarity with a sidearm or shotgun is imperative in times of emergency. The reliability of ammunition is also critical. Only the factory loaded ammunition of a reputable firm should be allowed.

Because an officer's very life and the lives of innocent citizens may very well depend on the officer's ability with a firearm, the officer should be required to demonstrate a set firearms competency on a monthly basis. Also, all agency firearms and shotguns should be checked monthly to insure their reliability.

All employees who carry firearms must be trained in their use. This training should cover the operation of agency firearms and shotguns and develop necessary skills. This training should be accompanied by training in the legal and moral ramifications of the use of firearms by law enforcement officers.

Implementation

A. Agencies Involved:

All police agencies.

South Dakota Law Enforcement Officer's Training and Standards Commission.

B. Administrative Actions:

All police agencies should develop standards for weapon types, ammunition and condition. Regular training should also be initiated.

C. Funding:

Funds may be required to immediately replace odd or obsolete weapons. As presently useable weapons are replaced they should meet the set standards. Also, funds may be required to pay for instructor training, time, ammunition and other necessary range equipment items.

Police Standard 20.3

Agency Provision of Uniforms and Equipment

Every police agency should immediately acquire the funds necessary to provide and maintain a full uniform and equipment complement for every police officer. This will facilitate the agency's efforts to insure conformance to uniform and equipment standards.

1. Every police agency should determine the minimum uniform requirements for its police officers, including alternate items of apparel for warm, cold, and foul weather. The agency should furnish all required items at no cost to officers. Continuing conformity to uniform standards and appearance should be insured by regular replacement of uniforms or a uniform allowance.

2. Every police agency should furnish and replace at no cost to officers the sidearm, ammunition, and auxiliary personal equipment specified by the agency.

3. Where a uniform is not required such as in the Division of Criminal Investigation or detective division of a police agency, an allowance should be provided for the necessary replacement due to wear and tear on clothing.

Commentary

Police agencies and their legislative bodies must recognize the importance of the police uniform. If the agency purchases uniforms and equipment for their personnel, agency control over its use is enhanced. It should not be the responsibility of the officer to purchase and maintain a uniform and equipment. All pieces of the uniform and other equipment should be purchased and maintained by the agency.

If an agency provides an allowance for uniform purchase and maintenance, it must establish a mechanism which insures that the items to be purchased are purchased and in a timely fashion.

Employees required to wear street clothes should be provided replacement funds. The clothes they wear are as much a uniform as that of a line officer. Funds should be provided for replacement due to normal wear as well as for damages derived in the line of duty.

Implementation

A. Agencies Involved:

All police agencies.

B. Funding:

Funds will be required to allow for agency purchase of initial and replacement uniforms and equipment.

CHAPTER TWENTY-ONE

TRANSPORTATION

Police Standard 21.1

Transportation Equipment Acquisition and Maintenance

Every police agency should acquire and maintain police transportation equipment necessary to achieve agency objectives in a manner which is most cost-effective for the agency.

1. Every police agency acquiring ground vehicles should determine whether the acquisition should be made by purchasing, leasing, or reimbursing for officer-owned vehicles. This determination should be based upon the following considerations:
   a. Maintenance requirements;
   b. Control problems;
   c. Financing; and
   d. Overall cost-effectiveness.
2. Every police agency acquiring aircraft should determine the most advantageous form of acquisition by considering the maintenance and service requirements, the availability of the equipment when it will be needed, pilot-training and insurance costs, the availability of auxiliary police equipment, and the cost per hour of:
   a. Purchasing by the agency;
   b. Leasing;
   c. Purchasing jointly with other agencies;
   d. Renting; and
   e. Acquiring surplus military aircraft.

Commentary

Control problems arise when an agency either reimburses its officers for the use of personal vehicles or when patrol vehicles are leased. It is difficult to keep track of actual mileage accrued due to "official" police business. Also the control of maintenance is difficult. If an agency leases a vehicle it is sometimes difficult to obtain vehicles which are most suited and equipped for police service. The leasing agency may wish to lease vehicles with high resale value as the main criteria and not those which are acceptable as police vehicles.

There is also a control problem faced by counties which purchase a patrol vehicle for the sheriff's department. The problem is determining what should be considered legitimate usage of the vehicle by the officer. The question of to what extent can an officer use the vehicle for business which is not directly related to law enforcement, is usually debated. If it is not settled, county purchase of patrol vehicles may not take place or problems may arise after the purchase.

It has been found that vehicles can be purchased or leased for less, if obtained during the period of January through March, which is the slack period for car dealers and leasing agencies.

Implementation

A. Agencies Involved:
   All police agencies.

Police Standard 21.2

Vehicle Safety

Every police agency should implement a vehicle safety program to insure the safety of its employees and the public, minimize unnecessary expenditure of public funds, and increase agency efficiency.

1. Every agency vehicle safety program should include:
   a. A driver training program for all employees who operate agency vehicles;
   b. Procedures for problem-driver detection and retraining;
   c. Procedures insuring employee inspection of agency vehicles prior to use; and
   d. A maintenance program which will minimize the hazard of malfunctioning equipment.
2. Every agency vehicle safety program should emphasize the personal involvement of employees in meeting the objectives of the program through:
   a. Peer group involvement in the classification of employee accidents;
   b. Recognition for safe driving; and
   c. An education program with emphasis on the personal benefits to be derived from safe driving.

Commentary

All new employees should be provided with basic vehicle safety training which should include defensive driving techniques and basic vehicle maintenance.

Patrol vehicles should be inspected prior to each duty shift. The vehicle should be checked for worn tires, excessive play in the brakes and steering and to determine if all equipment is working properly. If problems are found, they should be attended to immediately. Patrol vehicles should also undergo thorough inspection by a trained mechanic on a regular basis. This will insure that the vehicle is maintained in safe working order and will also provide a longer service life for the vehicle.

Implementation

A. Agencies Involved:
   All police agencies.
   South Dakota Law Enforcement Officer's Training and Standards Commission.
B. Administrative Actions:
   The Law Enforcement Officer's Training and Standards Commission should include in its basic recruit training both a defensive driving and vehicle maintenance section. Police chief executives should develop policy which requires vehicle inspection prior to use.

CHAPTER TWENTY-TWO
COMMUNICATIONS

Police Standard 22.1
Police Use of the Telephone System

Every police agency should develop as a subsystem of its overall communications system a telephone communications component designed to reduce crime through rapid and accurate communication with the public. This design may require an upgraded physical plant and supportive equipment, and procedures to shorten the time of the internal message handling.

1. Every police agency should immediately implement a full-time telephone service sufficient to provide prompt answering of calls for service.

a. Emergency telephone calls should be answered within 30 seconds, and non-emergency telephone calls should be answered within 60 seconds.

b. Procedures should be adopted to control the quality of police response to telephonic requests for service and information.

2. Every police agency where practical should immediately install a sufficient number of emergency trunk lines, in addition to and separate from business trunk lines, to insure that an emergency caller will not receive a busy signal during normal periods of peak activity, excluding catastrophic or unusual occurrences.

3. Every police agency should immediately insure that any misdirected emergency telephone call for police, fire, or other emergency service is promptly accepted and that information obtained from such calls is immediately relayed to the appropriate public safety emergency agency.

4. Every police agency with a full-time telephone service should acquire and operate fail-safe recording equipment that will allow endless or continuous recording of all incoming complaint calls and instantaneous playback of those calls.

5. Every police agency with full-time telephone service should operate that service from facilities designed to be reasonably secure from physical attack and sabotage. This security should extend to overhead telephone trunk line dropwires running between aerial cables and the full-time telephone service facility.

6. Every police agency should, as soon as possible, obtain single universal emergency telephone service, and the cost of such service should be borne by the private telephone subscriber.

Commentary

The Task Force realizes that it is impossible at this time for all agencies in South Dakota to individually provide 24-hour telephone service for emergency communications with the public. Where an agency is not large enough to provide this service on its own it should make arrangements with the nearest 24 hour telephone service or join together with other nearby agencies to create such a service.

Police agencies should have the capability of recording incoming emergency telephone calls. This ability is necessary in situations where the caller hangs up and the person who has received the information is not certain as to what was said. The capability to replay the conversation could very well mean the difference of life and death. Such equipment can be obtained at a reasonable cost to the agency.

Every agency should review the security of its radio room. One of the simplest measures of insuring security, but one which is often overlooked, is to insure that the door to the radio room is always locked. This insures safety and also reduces the likelihood that the radio room will become the gathering place for agency employees and others. The security of the radio room should not be overlooked when an agency contemplates remodeling an existing facility or the construction of a new facility.

The radio room should provide easy communication with visitors and at the same time prohibit direct physical entrance into the area. If at all possible, public contact should be a function separate from the communications center, but it is recognized that most agencies in South Dakota cannot afford such a luxury.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
Agencies must decide what procedure is best, in terms of utility and economy, to insure 24 hour contact with their public. Once it is decided, every effort should be made to develop the service.

C. Funding:
Funds may need to be made available to provide radio room security and also in instances where 24-hour telephone service is not available to secure such services.

Police Standard 22.2
Command and Control Operations

Every police agency should acknowledge that the speed with which it can communicate with field units is critical; that it affects the success of agency efforts to preserve life and property; and that it increases the potential for immediate apprehension of criminal suspects. Therefore, a rapid and accurate communications capability should be developed.

1. Every police agency should immediately install a 24-hour two-way radio capability providing continuous communication between a communications center and field units. Agencies too small to maintain a full-time communications center should immediately arrange for that service to be provided by the nearest full-time communications center of a neighboring public safety emergency agency or a public safety emergency agency operated by the next highest political subdivision in the State.

2. Every police chief executive should immediately insure that delay time — the elapsed time between receipt of a complaint emergency call and the time of message radio transmission — in the case of an emergency call does not exceed 2 minutes, and in the case of a nonemergency call, does not exceed 6 minutes. By 1978, communications center delay time in cases of emergency calls should not exceed 1 minute and in cases of nonemergency calls should not exceed 4 minutes.

3. Every agency should provide or have access to fail-safe recording equipment which will allow continuous recording of every radio transmission and recording equipment designed to allow instantaneous playback of field unit radio transmissions.

4. Every police agency should immediately seek action by the appropriate legislative or regulatory body to regulate private agencies that provide central-station alarm service. Appropriate steps should be taken to minimize field-unit response to the location of any alarm not caused by a criminal attack.

5. Every police agency having a full-time communications center should operate from facilities designed to be reasonably secure from physical attack and sabotage.

Commentary

Radio communication with field units is the life blood of any police department. The time it takes to provide field units with wanted or emergency information can often times mean the difference of whether or not the perpetrator of a crime is apprehended. It has been found that as the response time (time it takes a police agency to respond to a crime) increases the likelihood of an an arrest decreases.

Agencies which cannot provide 24-hour contact with their field units should make arrangements with the nearest 24-hour radio center to insure this capability. There are many examples of such arrangements now operating in the State. There is no excuse for further neglect of such a vital service being provided to field units.

The use of burglar alarm systems has increased drastically in recent years. Such systems have a great potential for crime prevention and criminal apprehension, but they also cause a great problem for police due to the high rates of false alarms. This rate has been estimated at between 85 and 95 percent of all alarms. This places an undue burden on the police and also has the potential of creating a dangerous situation for the police if they start to take the alarms too lightly and become lax when investigating activated alarms.

Legislation should be enacted which regulates alarm equipment, installation and use.

Protective alarm systems can have a positive effect on crime reduction, but manufacturers and retailers must work to improve their product and to educate their subscribers as to proper maintenance and use of alarm equipment. If they can not, government regulation may be necessary to insure a tolerable level of false alarms.

Implementation

A. Agencies Involved:
All police agencies.

B. Legislation:
The State should develop legislation which regulates alarm system equipment, installation and usage.

C. Funding:
Funds will be required to obtain personnel and equipment to meet this standard by individual or collective action.

Police Standard 22.3

Radio Communications

Every police agency should immediately insure that its radio communications system makes the most efficient use of its radio frequency.

1. South Dakota should continue its common statewide police radio frequencies for use by State and local law enforcement agencies during periods of local disaster or other emergencies requiring interagency coordination.

2. Every agency having a base station capabile of two-way operation on a common statewide police radio frequency should continue such operations.

3. Every agency should equip every on-duty uniformed officer with a portable radio transceiver capable of providing adequate two-way communications and capable of being carried with reasonable comfort on the person.

Commentary

At the present time, most agencies in South Dakota maintain radio contact with the state radio system. The state radio system is generally adequate. The only problem seen to date is the fact that due to heavy usage it is sometimes difficult to obtain clear airways for message transmission or receipt and it is also difficult to obtain access to state radio centers due to overloaded dispatchers. The Task Force feels that there should be more dispatchers on duty at some of the busier radio centers so that long waiting periods can be avoided.

The Task Force feels that every police officer should maintain continuous radio contact with a 24-hour communications center. It is not enough to have a radio in every patrol car. Once officers leave the patrol vehicle, without a portable radio, they are alone and vulnerable. Every officer should have available a portable radio of sufficient wattage to permit communication under all conditions with the nearest 24-hour communications center.

Implementation

A. Agencies Involved:
All police agencies.
Attorney General.

B. Funding:
Funds will have to be provided to insure that each on-duty officer is supplied with a portable radio.

CHAPTER TWENTY-THREE
INFORMATION SYSTEMS

Police Standard 23.1
Police Reporting

Every police agency should establish procedures that will insure simple and efficient reporting of criminal activity, assist in criminal investigations, and provide complete information to other components of the criminal justice system.

1. Every police agency should immediately establish policy setting forth the circumstances which require an officer to complete a report, and should provide printed forms for crime, arrest, and other reports. Such forms should have enough appropriately headed fill-in boxes and companion instructions to assist the officer in obtaining and reporting all necessary information.

a. There should be a forms control procedure which subjects every departmental form to initial approval and periodic review to determine if the form's use is appropriate and the information called for is necessary.

b. Field reports should be as simple as possible to complete and their design should permit systematic collection of summary and management data.

2. Every police agency should insure that, when it contacts or arrests an individual named in want or warrant information generated by any criminal justice agency, it notifies that agency of the contact or arrest. To insure that the right person is arrested, police agencies should provide sufficient identifying data. This data should include, at least, the offender's

a. Name;
b. Residence address;
c. Sex;
d. Color of hair and eyes;
e. Height and weight; and
f. Date of birth.

3. South Dakota should, by 1978, require every police agency to report to the Division of Criminal Investigation information necessary for:

a. The identification of persons known to have been armed, considered dangerous, or known to have resisted arrest;

b. The identification of unrecovered stolen vehicles;

c. The identification of vehicles wanted in connection with the investigation of felonies or serious misdemeanors;

d. The identification of unrecovered stolen Vehicle Identification Number (VIN) plates and serially identified engines and transmissions;

e. Identification of serially numbered stolen or lost weapons; and

g. The identification of serially numbered stolen property items.

Commentary

It has been recognized in South Dakota that the record systems of local police agencies are wholly inadequate. There is presently an attempt under way to strengthen local reporting through the effort to establish a statewide criminal justice data base. This project is being undertaken by the Statistical Analysis Center (SAC) within the Criminal Justice Studies Program at the University of South Dakota. SAC has just completed a survey of the existing police information system in the state. The SAC will next develop an information network and associated reporting forms and eventually implement the usage of the network and forms and also provide a data analysis function for state and local agencies. The Division of Criminal Investigation would remain as a central receiving and distributing point of original information and criminal histories. The Attorney General is now implementing a uniform crime reporting system for police agencies.

In many cases warrant information does not contain sufficient identifying information to make them useful to agencies which do not possess the original information. Sufficient identifying information must be provided in the warrant to insure the inadvertant release of wanted persons.

Implementation

A. Agencies Involved:
All police agencies.
Attorney General.
Statistical Analysis Center.

B. Administrative Actions:
Police chief executives must develop police reporting systems for their agencies. Once a uniform system is developed, it should be adopted as a minimum level of information collection.

C. Funding:
Where necessary, funds will have to be provided to develop and maintain an adequate police reporting system in South Dakota. Funds may be required for forms development, forms purchase and education directed toward form completion, dissemination and filing.

Police Standard 23.2
Basic Police Records

Every police agency should immediately establish a records system that collects crime data and records operational activities so crime conditions and the effects of agency operations can be systematically evaluated.

1. Every police agency should develop and maintain a "reportable incident file" based on agency needs, that contains documentation on all crimes; essential noncriminal incidents such as missing persons, lost and found property, suicides, and accidental deaths; and, where appropriate, traffic incidents.

2. South Dakota should require every police agency within the State to contribute to, and maintain access in, a summary dossier file maintained by a designated agency. Summary dossier files should contain an FBI fingerprint card, State and Federal individual record sheets, and accurate and up-to-date arrest disposition record, photographs, booking forms, arrest reports, and requests from other agencies for notification of arrest.

Commentary

Accurate police records are extremely important to depart-

ments of any size. Records are important to determine the extent and nature of crime in the community, traffic enforcement and accident prevention, policy, deployment and various other administrative matters.

Police record systems should meet the following: (1) record systems should be complete; (2) information should be easily accessible on a 24-hour basis; and (3) uniformity should exist across the system.

Summary dossier files are necessary to provide for accurate identification of individuals, their past criminal histories and present status. To be effective, all agencies must contribute accurate and complete information to a central system. The information should be available to officers in the field for identification of suspects and so that they may accurately assess potentially dangerous situations.

Implementation

A. Agencies Involved:
All police agencies.

B. Administrative Actions:
Police agencies should participate fully in a statewide system summary dossier filing system and develop a reportable incident file on an individual basis.

Police Standard 23.3

Data Retrieval

South Dakota should establish a cost-effective, compatible information system to collect, store, and retrieve information. The use of such a system should be directed toward crime reduction without sacrificing local autonomy.

1. Every police agency should have the capability to retrieve statewide criminal information and provide it to field personnel within 3 minutes of the time requested for non-computerized systems and within 30 seconds for computerized systems. This capability should at least include information on:

a. Individuals who are the subject of an arrest warrant for a felony or serious misdemeanor;

b. Individuals known to have been armed, considered dangerous, or known to have resisted arrest;

c. Unrecovered stolen vehicles;

d. Vehicles wanted in connection with the investigation of felonies or serious misdemeanors;

e. Unrecovered stolen Vehicle Information Number plates and serially identified engines and transmissions;

f. Unrecovered stolen or missing license plates;

g. Serially identified stolen or lost weapons; and

h. Serially numbered stolen property items.

2. Every police agency using, or planning to use, a computer-based information system should take immediate steps to insure that the primary objective of such a system is rapid response to the information needs of field units. Agencies developing or operating a computer-based information system should immediately identify critical information groups and assign priorities to them according to the requirements of the system user. Critical information groups should include at least:

a. Information on wanted persons;

b. Abstract data on criminal convictions, parole status, penitentiary releases, and vital criminal record information;

c. Information that foreworns an officer of persons known to have been armed, and other potential dangers; and

d. Information on stolen property and vehicles.

3. Every agency developing or operating a computer-based information system should immediately establish advisory user groups consisting of field police, police managers, computer technicians, and hardware engineers. User groups should be charged with the responsibility for system implementation and operating strategies.

Commentary

As with Standard 23.2, this standard is necessary to provide field units with necessary information to insure their safety and the apprehension of wanted individuals.

At the present time, South Dakota does have a centralized information system under the direction of the Attorney General. This system does provide agencies with the information enumerated within this standard. This system should be continuously upgraded to insure that all agencies can retrieve necessary information within the established time limits.

The Task Force recommends the establishment of an advisory user group to identify major problem areas in the information system so as to provide lead time to develop programs or procedures to avert or lessen problems. A user group can also identify user requirements and also help develop new programs to strengthen the statewide information system.

Implementation

A. Agencies Involved:
All police agencies.
Attorney General.

Police Standard 23.4

Police Telecommunications

Every agency should coordinate its information system with those of other local, regional, State, and Federal law enforcement agencies to facilitate the exchange of information.

Every police agency should develop and maintain immediate access to existing local, State, and Federal law enforcement telecommunications networks.

Commentary

Generally most police agencies in South Dakota do have access to the state telecommunications network either through radio contact with State Radio Communications or an agency with a teletype receiver. All but one or two counties in South Dakota now have the ability to receive direct teletype messages on the state network. Smaller agencies may take advantage of this service by developing working agreements with the counties. This may be accomplished as simply as paying a small fee to cover the cost of using multi-copy teletype paper so copies of all pertinent information can be received.

Implementation

A. Agencies Involved:
All police agencies.
Attorney General.

B. Adminstrative Actions:
All police agencies should either provide for direct telecommunications access through equipment purchase or rental or should gain this information through an existing agency which has the capability.

C. Funding:
Funds may be required to gain access to the state telecommunication system, but in most instances this cost would be minimal.

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CONTINUED

1 OF 4

courts

CHAPTER ONE

SCREENING

Courts Standard 1.1

Criteria for Screening

The need to halt formal or informal action concerning some idividuals who become involved in the criminal justice system should be openly recognized. This need may arise in a particular case because there is insufficient evidence to justify further proceedings or because — despite the availability of adequate evidence — further proceedings would not adequately further the interests of the criminal justice system.

An accused should be screened out of the criminal justice system if there is not a reasonable likelihood that the evidence admissible against the accused would be sufficient to obtain a conviction and sustain it on appeal. In screening on this basis, the prosecutor should consider the value of a conviction in reducing future offenses, as well as the probability of conviction and affirmance of that conviction on appeal.

The prosecutor should not be required to institute criminal proceedings or recommend arrest warrants in every case where there is a violation of the law. Prosecutors should be allowed the use of their broad discretionary powers in refusing prosecution, notwithstanding that there is sufficient evidence to support a conviction. The exercise of this discretionary power should be governed by criteria which would insure the uniformity of its application.

An accused should be screened out of the criminal justice system when the benefits to be derived from prosecution or diversion would be minimal. Among the factors to be considered in making this determination are the following:

1. Any doubt as to the accused's guilt;
2. The impact of further proceedings upon the accused and those close to the accused, especially the likelihood and seriousness of financial hardship or family life disruption;
3. The value of further proceedings in preventing future offenses by other persons, considering the extent to which subjecting the accused to further proceedings could be expected to have an impact upon others who might commit such offenses, as well as the seriousness of those offenses;
4. The value of further proceedings in preventing future offenses by the accused, in light of the accused's commitment to criminal activity, which he or she might reasonably be expected to continue; the possibility that further proceedings might have a tendency to create or reinforce commitment on the part of the accused to criminal activity as a way of life; and the likelihood that programs available as diversion or sentencing alternatives may reduce the likelihood of future criminal activity;
5. The value of further proceedings in fostering the community's sense of security and confidence in the criminal justice system;
6. The direct cost of prosecution, in terms of prosecutorial time, court time, and similar factors;
7. Any improper motives of the complainant;
8. Prolonged nonenforcement of the statute on which the charge is based;
9. The likelihood of prosecution and conviction of the accused by another jurisdiction;
10. Any assistance rendered by the accused in apprehension or conviction of other offenders, in the prevention of offenses by others, in the reduction of the impact of offenses committed by the accused or others upon the victims, and any other socially beneficial activity engaged in by the accused that might be encouraged in others by not prosecuting the accused;
11. The extent of harm caused by the offense;
12. The reluctance of the victim to testify; and
13. The disproportion of the authorized punishment in relation to the particular offense or the offender.

Commentary

In the context of this standard, screening is very narrowly defined as, "the discretionary decision to stop, prior to trial or plea, all formal proceedings against a person who has become involved in the criminal justice system." (National Advisory Commission, 1973:17). Screening would be applied in cases involving both adults and juveniles. This standard and Standard 1.2 focus primarily upon the screening discretion of the prosecutor. Howeved, it is recognized that police also perform a screening function through discretionary decisions to refrain from taking persons into custody. The need for police to formulate guidelines for screening is treated more thoroughly in the next standard.

This standard recognizes the appropriateness of screening in some cases. Observers agree that unless the criminal justice system disposed of many of its cases without trial, that system would not only slow down, it would stop. Limited national statistics indicate that approximately one-half of the persons arrested are dismissed by police, prosecutors or magistrates. (National District Attorney's Association:20).

The administrative handling of cases is desirable for a number of reasons. In most cases a prosecutor will not be inclined to prosecute when the available evidence is insufficient to support a conviction. Even when sufficient evidence is available, a prosecutor should have the discretion to screen an offender out of the system if the benefits to be derived from prosecution are minimal. The factors to be considered in making this determination are set forth in the standard. These factors are specified in order to provide some uniformity to the prosecutor's discretion and to prevent abuse of the system. Naturally, each case must be evaluated on its merits. These factors have been set forth merely as guidelines in considering the appropriateness of screening an individual case. At the same time, it is recognized that the administrative flexibility of the criminal justice system is particularly important in providing mechanisms which permit the accused to be screened out of that system.

Screening in this context is officially endorsed by a series of policy-making organizations, including the President's Commission on Law Enforcement and the Administration of Justice (1967), the National District Attorneys Association, and the National Institute of Law Enforcement and Criminal Justice (Merrill, et al., 1973). Both the American Bar Association (1970) and the National Advisory Commission (1973) hold the view that the decision to charge is primarily a prosecution function which should be governed by written criteria and standards established by the prosecutor. The A.B.A. (1970: 84) notes that a prosecutor's acquittal rate will indicate the effectiveness of this screening procedure.

The American Law Institute (1966:144) recommends that screening be undertaken prior to the filing of a complaint.

Among the reasons cited, screening after filing may result in charges that would not have been made had prior screening been possible. One must consider the unnecessary stigma to the individual who has been charged as well as the prosecutor's "understandable administrative bias to abide by a decision once made." Screening may prevent difficulties that arise when a charge is made in haste and upon incomplete information.

Because results are important, the futility of an improperly screened case is not simply a waste of the prosecutor's time but a burden on the whole criminal justice system. In its support of a screening process the National District Attorneys Association (1973:145) notes that proper screening would dispose of cases that are not appropriate for the criminal justice system. A screening procedure would also permit early identification of possible diversions. The end result would be a "pure trial docket which could then be addressed in a qualitative manner, whereas the emphasis today is on quantity."

Implementation

A. Agencies Involved:
Prosecutors.

B. Administrative Actions:

Compliance with this standard is the immediate responsibility of each prosecutor's office within the State. Implementation depends upon the administrative decision to include these standards within policies set by each prosecutor's office. Implementation may be expedited by encouragement from the Attorney General's Office, the State's Attorneys Association and the courts.

Courts Standard 1.2

Procedure for Screening

Police, in consultation with the prosecutor, should develop guidelines for taking of persons into custody. Those guidelines should embody the factors set out in Standard 1.1. A criminal proceeding should not be commenced, except traffic or motor vehicle violations, unless an order, in writing, recommending a complaint is filed by the prosecutor with the appropriate judicial officer.

No arrest warrant should be issued by any judicial officer, except for warrants which are requested for traffic or motor vehicle violations, until a complaint approved or signed by the prosecutor, is filed by the prosecutor with that judicial officer. Where feasible, the decision whether to screen a case should be made before approval is granted for the filing of a complaint or the issuance of an arrest warrant. Once the decision has been made to pursue formal proceedings, further consideration should be given to screening an accused as further information concerning the accused and the case becomes available. Final responsibility for making a screening decision should be placed specifically upon an experienced member of the prosecutor's staff.

The prosecutor's office should formulate written guidelines to be applied in screening that embody those factors set out in Standard 1.1. Where possible, such guidelines, as well as the guidelines promulgated by the police, should be more detailed. The guidelines should identify as specifically as possible those factors that will be considered in identifying cases in which the accused will not be taken into custody or in which formal proceedings will not be pursued. They should reflect local conditions and attitudes, and should be readily available to the public as well as to those charged with offenses and to their lawyers. They should be subjected to periodic reevaluation by the police and by the prosecutor.

When a defendant is screened after being taken into custody, a written statement of the prosecutor's reasons should be prepared and kept on file in the prosecutor's office and should be reviewed periodically by the prosecutor to assure that the written guidelines are being followed.

The decision to continue formal proceedings should be a discretionary one on the part of the prosecutor and should not be subject to judicial review, except to the extent that pretrial procedures provide for judicial determination of the sufficiency of evidence to subject a defendant to trial. Alleged failure of the prosecutor to adhere to stated guidelines or general principles of screening should not be the basis for an attack upon a criminal charge or conviction.

If the prosecutor screens a defendant, the police or the private complainant should have recourse to the court. If the court determines that the decision not to prosecute constituted an abuse of discretion, it should order the prosecutor to pursue formal proceedings.

Commentary

Standard 1.2 recognizes that the initial screening decision is a police decision, since the decision to take a person into custody rests with the police. In order to provide reasonable consistency in the screening process, screening criteria should be established at the police as well as at the prosecution level and set forth in written form. Because screening by police may be less rigorous than screening by prosecutors, or because police may be reluctant to screen in a case involving a more serious offense, guidelines governing police screening should be developed in consultation with the prosecutor. This cooperation can do much to insure screening uniformity between these two agencies.

Generally, except in cases involving traffic violations, the Task Force is of the opinion that no arrest warrant should be issued or complaint filed until the prosecutor has reviewed the case to determine the appropriateness of an arrest or charge or, alternately, the desirability of screening. This procedure is designed to avoid unnecessary use of the resources of the criminal justice system. The Task Force recognizes that an early screening step will be most feasible when the issuance of an arrest warrant is the culmination of an investigation. It is recognized that in emergency situations, in arrest situations involving a misdemeanor committed in the presence of the officer, and in an arrest of a felony upon probable cause, the officer may be unable to obtain the prosecutor's prior approval. However, unless an arrest upon sufficient evidence will be impossible without immediate action by the police officer, the Task Force advocates a procedure in which the approval of the prosecutor is obtained before an arrest warrant is issued.

Ultimately, the prosecutor or an experienced member of his/her staff should make the decision whether or not to screen. A screening decision should continue to be an option as further information on the case becomes available.

The standard advocates the formulation of specific guidelines to be used by prosecutors and police in making screening decisions. Although the factors set out in Standard 1.1 should be embodied in these guidelines, police agencies and prosecutors may wish to make these more specific. To avoid abuse of the system, discretion on the part of police and prosecutors must embody elements of consistency and control. At the same time, in order to insure the justness of the system, administrative flexibility must be maintained.

In identifying factors and guidelines to be followed in making screening decisions, police and prosecutors should consider local conditions and attitudes. All guidelines should be made available to the public, the accused and their lawyers. Screening practices should be reviewed periodically to insure their adequacy and consistency. As part of this checking system, the reasons for making a screening decision in every case should be written and kept on file in the prosecutor's office.

Throughout the history of American jurisprudence the charging of offenders has been an executive act and primary legal function of the prosecutor. The case law of the United States has consistently recognized this principle, which is founded on the constitutional concept of "separation of powers" between the executive, judicial and legislative branches of government. On this basis the court generally should not have the power to review the prosecutor's charging decision, except to the extent that a pretrial hearing is provided to determine the sufficiency of the evidence for the purpose of bringing charges. The standard further provides that the alleged failure of a prosecutor to follow screening guidelines should not be the basis for an attack on a criminal charge or conviction. However, if the complainant or police disagree with the prosecutor's decision to screen, there should be formal access to the court. It is hoped that this latter provision will discourage **ex parte** hearings between police or complainants and the court and encourage a hearing in which the prosecutor's decision to screen can be openly examined and explained.

Implementation

A. Agencies Involved:
   Police.
   Prosecutors.
   Courts.

B. Administrative Actions:

For implementation purposes local police and prosecutors should cooperate in efforts to develop and promulgate written guidelines for screening that embody the recommendations set forth in Standard 1.1.

Police agencies would be responsible for establishing policies to insure that all complaints are first reviewed by the prosecutor's office.

A court rule would be necessary to prevent the issuance of arrest warrants, except those involving traffic or motor vehicle violations, unless the complaint is approved and filed by the prosecutor. Court rule or legislation may be required to provide formal recourse to the court when the police or a complainant is dissatisfied with the prosecutor's decision to screen. It is the court's responsibility to discourage **ex parte** hearings on this subject.

The use of screening procedures as outlined in the standard is the administrative responsibility of the prosecutor's office. These procedures should be included in written office policy. The prosecutor's office has the responsibility to regularly review office practices to insure that screening criteria are being followed.

CHAPTER TWO

DIVERSION

Courts Standard 2.1

General Criteria for Diversion

In appropriate cases offenders should be diverted into non-criminal programs before formal trial or conviction.

Such diversion is appropriate where there is a substantial likelihood that conviction could be obtained and the benefits to society from channeling an offender into an available non-criminal diversion program outweigh any harm done to society by abandoning criminal prosecution. Among the factors that should be considered favorable to diversion are:

1. The relative youth of the offender;

2. The willingness of the victim to have no conviction sought;

3. Any likelihood that the offender suffers from a mental illness or psychological abnormality which was related to the crime and for which treatment is available;

4. Any likelihood that the crime was significantly related to any other condition or situation such as unemployment or family problems that would be subject to change by participation in a diversion program;

5. Any likelihood that prosecution toward conviction may cause undue harm to the defendant or exacerbate the social problems that led to the defendant's criminal acts; and

6. The fact that services to meet the offender's needs and problems are unavailable within the criminal justice system or may be provided more effectively outside the system.

Among the factors that should be considered unfavorable to diversion are:

1. Any history of the use of physical violence toward others;

2. Involvement with syndicated crime;

3. A history of anti-social conduct indicating that such conduct has become an ingrained part of the defendant's life style and would be particularly resistant to change; and

4. Any special need to pursue criminal prosecution as a means of discouraging others from committing similar offenses.

Another factor to be considered in evaluating the cost to society is that the limited contact a diverted offender has with the criminal justice system may have the desired deterrent effect.

Commentary

Diversion refers to "halting or suspending before conviction formal criminal proceedings against a person on the condition or assumption that he will do something in return." (National Advisory Commission, 1973:27).

The decision to institute a diversion alternative is usually within the realm of the prosecutor's discretion, though the court may become involved after the onset of a court proceeding. Diversion employs an element of coercion, the threat of eventual prosecution and possible conviction, to encourage the accused to participate instead in some program or activity which will lead to a socially acceptable behavior change. Diversion is generally predicated on a belief that in a particular case further penetration into the criminal justice system will benefit neither the system nor the accused and that some alternative means of handling the offender may be appropriate. An agreement by the accused to participate in a drug rehabilitation program in lieu of prosecution would be one example of diversion. Diversion in the context of this standard refers to cases involving both adults and juveniles.

Various criminal justice policy-making organizations have offered their support of the diversion concept. The National District Attorneys Association (1974:5) is one of the most vocal proponents of diversion. In one of a series of reports and recommendations on the subject the N.D.A.A. contends that:

> . . . It is no longer sufficient for prosecutors to merely make the initial 'charge-no-charge' decision and do nothing more where they decide not to charge a particular offender. The public demands and is entitled to much more than this. If crime is to be reduced, prosecutors in their own right and through total community service involvement with uncharged offenders must assume greater responsibility here through the implementation of positive and constructive alternative procedures to the standard and dismally ineffective criminal justice system routine.

In many cases the nature of the offense, the nature of the offender and community attitudes do indicate that full prosecution of a case is necessary and desirable if the safety and security of the community and the ends of justice and order are to be preserved. However, in many other cases the ends of law enforcement do not require or justify punishment or the attachment of a criminal status. The President's Commission on Law Enforcement and the Administration of Justice (1967:4) notes that the flexibility and informality of the powers open to prosecutors and others in the criminal justice system make certain procedures "more readily adaptable to efforts to individualize the treatment of offenders than the relatively rigid procedures that now typify trial, conviction and sentence." Further, the discretionary authority of prosecutors allows them to give greater attention to a disposition which more appropriately fits the needs of those whose cases they consider. Pressures on the prosecutor to insist on a disposition that fits the popular conception of punishment are less before conviction than they are once the offender has been formally and publicly found guilty.

This standard advocates diversion as a legitimate part of the administrative flexibility of the criminal justice system. Further, certain criteria for determining the appropriateness of a diversion alternative are set out in the standard. These are self-explanatory. Naturally, such criteria are offered as broad guidelines which are conditioned by a recognition that the appropriateness of a diversion alternative will vary with the circumstances of each particular case and according to the types of programs available.

Implementation

A. Agencies Involved:
   Prosecutors.
   Courts.

B. Administrative Actions:

Some states and the Federal government have provided for diversion through enabling legislation. Others have done so through rules of the court. There are no provisions within

the South Dakota Compiled Laws which specifically address the issue of diversion. It would seem that legislation would not be required for the implementation of this standard, but would rather constitute an administrative decision on the part of the prosecutor. It is hoped that, in addition, the courts, the South Dakota Bar Association and the South Dakota State's Attorneys Association would encourage appropriate use of diversion alternatives when they are available.

Courts Standard 2.2

Procedure for Diversion Programs

The appropriate authority should make the decision to divert as soon as adequate information can be obtained.

Guidelines for making diversion decisions should be established and made public. Where it is contemplated that the diversion decision will be made by police officers or similar individuals, the guidelines should be promulgated by the police or other agency concerned after consultation with the prosecutor and after giving all suggestions due consideration. Where the diversion decision is to be made by the prosecutor's office, the guidelines should be promulgated by that office.

When a defendant is diverted in a manner both involving and not involving a diversion agreement between the defendant and the prosecution, a written statement of the fact of, and reason for, the diversion should be made and retained. When a defendant who comes under a category of offenders for whom diversion regularly is considered is not diverted, a written statement of the reasons should be retained.

Where the diversion program involves significant deprivation of an offender's liberty, diversion should be permitted only under a court-approved diversion agreement providing for suspension of criminal proceedings on the condition that the defendant participate in the diversion program. Procedures should be developed for the formulation of such agreements and their approval by the court.

Once formal charges against a defendant have been filed, through issuance of an indictment, information or arraignment, the prosecutor and the court should take equal responsibility in the decision to divert. Procedures should be developed and promulgated for this purpose. These procedures should contain, but not be limited to, the following features:

1. Emphasis should be placed on the offender's right to be represented by counsel during negotiations for diversion and entry and approval of the agreement.

2. Special attention should be given to a preservation of the fundamental constitutional rights of the accused. Care should be taken to insure that diversion procedures do not discriminate on the basis of race, religion, wealth or sex.

3. In cases in which diversion participation may exceed limits prescribed by the constitutional right to a speedy trial and the statute of limitations, the accused should be requested to waive these rights.

4. In programs in which diversion participation is predicated on the requirement of a guilty plea, the defendant may be requested to waive the constitutional right against self-incrimination. However, this requirement should be discouraged in favor of one of the following:

a. No requirement of a plea of guilty;

b. A deferred plea, where at the time of diversion, the entry of a plea is continued until after the defendant's term in the program, at which time a plea will be entered only if the defendant is unsuccessful;

c. A conditional plea of guilty, where the defendant enters a plea of guilty, but may withdraw it if he/she is unsuccessful in the program;

d. Requiring a potential participant to list his/her defenses and witnesses, which may not be deviated from in the event prosecution is resumed;

e. Stipulated testimony prior to diversion;

f. An informal and extra court acknowledgement of responsibility for the offense (a "moral plea of guilty" or assumption of responsibility) which, however, could not be used for prosecution purposes; or

g. Deferred acceptance of a guilty plea.

5. An agreement that provides for a substantial period of institutionalization should not be approved unless the court specifically finds that the defendant is subject to nonvoluntary detention in the institution under noncriminal statutory authorizations for such institutionalization.

6. The diversion agreement should contain a full statement of those things expected of the defendant and the reason for diverting the defendant.

7. The court should approve an offered agreement only if it would be approved under the applicable criteria if it were a negotiated plea of guilty.

8. Serious or repeat offenders should not be excluded from diversion alternatives until consideration has been made of the merits of the individual case.

9. The making of restitution should not be used as a prerequisite to consideration for participation in a diversion program.

10. In order to preserve the voluntary nature of participation in a diversion program, a diversion agreement should be undertaken apart from the bail hearing.

11. Upon successful expiration of the agreement, the court should dismiss the prosecution and no future prosecution based on the conduct underlying the initial charge should be permitted.

12. For the duration of the agreement, the prosecutor should have the discretionary authority to determine whether the offender is performing his/her duties adequately under the agreement and, if he/she determines that the offender is not, to reinstate the prosecution.

13. Failure in a diversion program should not automatically result in pretrial detention but should be judged on the merits of the individual case.

14. Unsuccessful termination in a diversion program should be preceded by a hearing under an independent examiner.

When a diversion decision is made by the prosecutor's office, the staff member making it should specify in writing the basis for the decision, whether or not the defendant is diverted. These statements, as well as those made in cases not requiring a formal agreement for diversion, should be collected and subjected to periodic review by the prosecutor's office to insure that diversion programs are operating as intended.

The decision by the prosecutor not to divert a particular defendant should not be subject to judicial review.

Commentary

Standard 2.2 is prompted by the need to provide for consistency and visibility in the process of making diversion de-

cisions. Most important is the need to prevent this administrative decision-making from being haphazard, arbitrary or unjust. The rights of those who may participate in diversion programs should be protected, not only out of fairness, but because many of these rights are protected by law.

The standard advocates a degree of court responsibility in the decision to divert, both after formal charges have been filed and in situations involving a significant deprivation of liberty. However, the actual approval of the court should only be required in the latter instance. A routine requirement for the court to approve a diversion decision once charges have been filed would pose an unwarranted restriction on the prosecutor's diversion discretion. In this instance, after the filing of charges, the court and prosecutor should share responsibility in making the diversion decision.

Diversion discretion is recognized as being necessary and desirable. Yet, discretionary decisions are sometimes made in haste or under other circumstances that make unwise decisions likely. To compound the problem, the exercise of this discretion is rarely subject to review.

Accordingly, Standard 2.2 advocates that police and prosecutors adhere to certain guidelines when they make diversion decisions. These safeguards are recognized and supported by the American Bar Association (1970), the National Advisory Commission (1973) and others in the law and criminal justice professions. According to the ABA the charging decision is "the heart of the prosecution function" and every effort should be made to see that it is discharged uniformily and fairly. These procedures should give due consideration to the issues addressed in sections 1 through 15 of the standard. In order to maintain a check on the consistency of adherence to these guidelines, the reasons for approving diversion or for denying diversion to a person normally eligible should be retained in each case. The provisions of this standard are important because they bear directly on the rights of the accused and the ultimate validity of the diversion process.

The final portion of the standard, indicating that a decision not to divert should not be subject to judicial review, is consistent with the generally accepted view of the prosecutor's charging discretion as well as the constitutional concept of "separation of powers" between the executive and judicial branches.

Implementation

A. Agencies Involved:
Police.
Prosecutors.
Courts.

B. Legislation:

Legislation could be enacted to enable prosecutors to utilize diversion alternatives and to outline procedures for resuming a prosecution upon the accused's failure to satisfy a diversion agreement. Legislation, if enacted, should be devoted to procedures only and should avoid limiting the proper discretion of the prosecutor. However, the implementation of diversion procedures through the administrative actions of police, prosecutors and courts would be more flexible and therefore preferable.

C. Administrative Actions:

Local prosecutors have a key responsibility to develop diversion procedures and to insure that they are being followed by prosecution staff. Police agencies have a responsibility to work with prosecutors in developing diversion procedures for police officers. In developing these procedures careful consideration should be given to the factors outlined in this standard. The courts and the State's Attorneys Association should support the appropriate use of diversion and the implementation of diversion guidelines.

Screening, as previously defined, should not be used in lieu of diversion if to do so would return an offender to the community without the help that is needed. In recognition of this fact prosecutors (state's attorneys) should discontinue the prevalent use of "D.A.'s" or informal probation (unsupervised) when a diversion alternative would be more appropriate.

Prosecutor and court support of appropriate diversion programs will aid in the implementation of this standard.

Courts Standard 2.3

Availability of Diversion Alternatives

The State of South Dakota and/or its political subdivisions should initiate, implement and support programs and resources which may be used as alternatives to initial or continued processing into the criminal justice system. These diversion alternatives should be made available in, though not limited to, the following areas:

a. juvenile;
b. mental health;
c. drug programs;
d. restitution;
e. family counseling; and
f. alcoholism rehabilitation and facilities.

1. Criminal justice agencies and officials should seek, examine and encourage diversion alternatives that may be used in lieu of continued processing into the criminal justice system.

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

3. Agencies operating diversion programs should maintain current and complete listings of various resource dispositions available to diversion decision makers.

Commentary

This standard is written in recognition of the fact that South Dakota painfully lacks adequate diversion resources and programs. Those alternatives listed under (a) through (f) in the standard are areas in which state's attorneys have indicated programs should be available (1975 survey). Clearly the criminal justice system of South Dakota cannot take advantage of the diversion process unless adequate programs are made available as alternatives to further prosecution.

Implementation

A. Funding:

Legislation is involved indirectly in this standard to the extent that state funds may be required for implementation. Direct funding may come from the departments and agencies

that would be responsible for initiating diversion programs, for example, the Division of Corrections within the Department of Social Services. Private and civic organizations and religious groups may also be involved in establishing needed diversion programs. Prosecutors, police and courts have also been known to initiate diversion programs. Possible funding sources include the State, LEAA and local and national civic and private foundations and organizations.

CHAPTER THREE

THE NEGOTIATED PLEA

Courts Standard 3.1

Pleading by Defendant: Alternatives

Defendants may plead not guilty or guilty. A plea of guilty should be received only from defendants themselves in open court, except when the defendant is a corporation, in which case the plea may be entered by counsel or a corporate officer.

Commentary

A plea of **nolo contendere** is omitted from the instant standard along with accompanying subsection (b) which reads:

b. A defendant may plead **nolo contendere** only with the consent of the court. Such plea should be accepted by the court only after due consideration of the views of the parties and the interests of the public in the effective administration of justice.

While most juridictions allow a plea of **nolo contendere,** such a plea is contrary to South Dakota Law (SDCL 23-35-16, 1967) and is therefore absent from those standards where it would normally have been included.

Additionally, pleas of not guilty by reason of mental illness (SDCL 23-27-1) and double jeopardy (SDCL 22-5-8) should be included in the commentary but not in the standard. To include a plea of not guilty by reason of mental illness would involve altering the relevant statute (SDCL 22-37-3) which provides for notification by written notice. Problems occur when the defendant is simply incapable of addressing the judge in open court.

In accordance with SDCL 23-25-16, a plea of former judgment of conviction or acquital of the offense charged . . . "may be entertd . . . with or without a plea of not guilty," thereby suggesting it as a separate plea. No statutory conflict attaches, however, to either of the two pleas mentioned in the standard itself.

Implementation

A. Legislation:

The instant proposal conforms to present statutory language. See SDCL 23-35-16 (Kinds of Pleas Available); also SDCL 23-35-21 (Pleas of Guilty-Put in by Defendant Personnally).

Courts Standard 3.2

Pleading to Other Offenses

Upon entry of a plea of guilty or after a conviction on a plea of not guilty, the defendant's counsel may request permission for the defendant to enter a plea of guilty as to other crimes he/she has committed which are within the jurisdiction of coordinate courts of the State. Upon approval of the prosecuting attorney of the governmental unit in which these crimes are charged or could be charged, the defendant should be allowed to enter the plea. Entry of such a plea constitutes a waiver of the following:

1. Venue, as to crime committed in other governmental units of the state; and

2. Formal charges as to offenses not yet charged.

Commentary

Where a defendant has committed several crimes in different jurisdictions of the state or committed crimes which cannot be joined for purposes of prosecution, he/she would be able to seek disposition of all crimes with a single plea. The defendant should not, however, be allowed to plead to offenses outside the jurisdiction of the particular court. The benefits that accrue to the defendant are (1) start with a "clean slate" when released from prison; (2) consideration for imposition of concurrent sentencing; and (3) avoid the risk of interstate detainer.

SDCL 23-32-6 (Joinder of Charges and Defendants) allows for an information of indictment to include two or more charges, but restricts this to offenses of the same class. The instant standard would include different offenses committed in different jurisdictions and allow these to be consolidated for purposes of pleading guilty.

The authority for this action should not be withheld arbitrarily from other prosecutors in other jurisdictions. Problems may occur when the serious offenses were committed in a neighboring county and a minor offense was committed where the defendant is presently being held. There may be justification for transferring the defendant to the jurisdiction of the more serious offense for prosecution.

A. Agencies Involved:
Courts.
Prosecutors.
Defense counsel.

B. Legislation:

In order to avoid ambiguities, such procedure should be enforced by statute. The Rules of Criminal Procedure would be the most likely target for such change.

C. Administrative Actions:

Such an arrangement may be worked out on an informal basis, however, the force of statutory authority seems to be more appropriate.

Courts Standard 3.3

Aid of Counsel: Time for Deliberation

A defendant should not be called upon to plead until he/she has had an opportunity to retain counsel or, if eligible for appointment of counsel, until counsel has been appointed or waived. A defendant should not be required to enter a plea if counsel makes a reasonable request for additional time to represent the defendant's interest.

A defendant without counsel should not be called upon to plead a serious offense until a reasonable time, set by rule or statute, following the date he/she is held to answer. When a defendant without counsel tenders a plea of guilty to a felony, the court should not accept the plea unless it is reaffirmed by the defendant after a reasonable time for deliberation, set by rule or statute, following the date the defendant received the advice from the court as required in Standard 3.4.

Commentary

Where defendants go to trial without having adequate time to prepare for such trial, they have in effect been denied "effective assistance of counsel." A defendant should not be called upon to plead until his/her counsel has had the opportunity to discuss the plea with the prosecution. The "additional time" in this standard refers to time needed for plea discussions. This also provides necessary time for investigation and client-counsel discussions, all, presumably, in the best interests of the defendant.

Subsection (b) speaks to the issue of "quick justice" wherein the defendant is brought into court immediately after arrest and pressured for a plea. Even if defendants effectively waive counsel, they should not be hurried through the process.

Implementation

A. Legislation:

Statutory authority exists in SDCL 23-35-11 (Right to Counsel at Arraignment). The time factor, if any, should probably be set by the court due to subjective interpretation that may be necessary. SDCL 23-35-14 (Time Allowed Defendant to Answer Arraignment) is also relevant to the instant standard.

Courts Standard 3.4

Defendant to Be Advised by Court

The court should not accept a plea of guilty from a defendant without first addressing the defendant personally and

1. Determining that he/she understands the nature of the charge;

2. Informing him/her that by entering a plea of guilty he/she waives the right to trial by jury;

3. Informing him/her of the privilege against self-incrimination;

4. Informing him/her of the right of confrontation of witnesses; and

5. Informing him/her:

a. Of the maximum possible sentence on the charge, including that possible from consecutive sentences;

b. Of the mandatory minimum sentence, if any, on the charge; and

c. When the offense charged is one for which a different or additional punishment is authorized by reason of the fact that the defendant has previously been convicted of an offense, that this fact may be established after his/her plea in the present action if he/she has been previously convicted, thereby subjecting him/her to such different or additional punishment.

Commentary

Items 3 and 4 have been included in the instant standard to apprize the defendant of additional rights thought necessary in light of the situation. Both are derived from **Boykin v. Alabama**, 395 U.S. 238 (1969). Subsection 5c speaks basically to the issue of the habitual offender statute which is, and will doubtless remain, on the books in South Dakota. SDCL 22-7.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:

The criteria herein enumerated are not set-out per se in statute; however, such safeguards are suggested in SDCL 23-35-19 (Plea of Guilty - Freedom of Action of Defendant - Receiving by Court). Whether or not the criteria must of necessity be specifically denoted may turn on the issue of to what extent, if any, defendants are presently allowed to plead without knowing what is set forth in Standard 3.4, 1-5 inclusively. Such questioning of the defendant on the part of the court can be enforced via a court ruling.

Courts Standard 3.5

Determining Voluntariness of Plea

The court should not accept a plea of guilty without first determining that the plea is voluntary. By inquiry of the prosecuting attorney and defense counsel, the court should determine whether the tendered plea is the result of prior plea discussions and a plea agreement, and, if it is, what agreement has been reached. If the prosecuting attorney has agreed to seek charge or sentence concessions which must be approved by the court, the court must advise the defendant personally that the recommendations of the prosecuting attorney are not binding on the court. The court should then address the defendant personally and determine whether any other promises or any force or threats were used to obtain the plea.

Commentary

The primary objective of the instant standard is to promote visibility of plea bargaining via in-court inquiry. Preventing unfair inducement by the prosecution is desirable; however, whether or not such inducements can be effectively prevented is questionable. There should, of course, be every attempt made to do so.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:

Statutory authority relevant to the instant standard may reside in SDCL 23-35-9 (see Standard 3.4 supra), thus perhaps obviating the need for further specification.

Courts Standard 3.6

Determining Accuracy of Plea

Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such a plea without making such inquiry as may satisfy it that there is a factual basis for the plea.

Commentary

Again, like Standard 3.5 supra, the primary goal is to pre-

vent unfair inducements that could lead to conviction of an innocent defendant.

Implementation

See standard 3.4; re: SDCL 23-35-19.

Courts Standard 3.7

Record of Proceedings

A record of the proceedings should be kept and that record shall be verbatim in the case of a felony. The record should include 1) the court's advice to the defendant (as required in Standard 3.4), 2) the inquiry into the voluntariness of the plea (as required in Standard 3.5), and 3) the inquiry as to the accuracy of the plea (as required in Standard 3.6).

Commentary

That a verbatim record of all proceedings (misdemeanor and perhaps even traffic offenses) would be prohibitively expensive, is plainly obvious. The courts should, of course, consider a request for a verbatim recording of proceedings from a defendant in other than felony cases. The court, however, would be allowed to refuse such a request without committing reversible error.

It is important to have a record of the inquiry as to the accuracy of the plea. Among other reasons, such an inquiry serves to satisfy the trial judge and may also prevent post-conviction appeal where the record was silent.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:

Statute: SDCL 15-15-1 (Objections, Rulings, Proceedings, and Remarks to be Noted by Court Reporter) seems to embody the intent of the instant standard. Davis v. Kressly, 80 S.D. 254 (1963) indicates that "reporters could and probably should be required to attend all sessions of the court and record all proceedings . . . in open court as a matter of course." (Emphasis added). Statutory authority would leave interpretation unnecessary and ensure a complete record.

C. Administrative Actions:

The courts should take the initiative in requiring attendance of a reporter at each proceeding.

D. Funding:

The financial burden will rest with the defendant unless otherwise determined by the court (i.e., in the case of defendant indigency), where a transcript is requested at some later date.

Courts Standard 3.8

Consideration of Plea in Final Disposition

It is proper 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 thereby be served. Among the considerations which are appropriate in determining this question are:

1. That the defendant by offering a plea has aided in ensuring the prompt and certain application of correctional measures to himself/herself;

2. That the defendant has acknowledged his/her guilt and shown a willingness to assume responsibility for his/her conduct.

3. That the concessions will make possible alternative correction measures which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant from the form of conviction.

4. That the defendant has made public trial unnecessary when there are good reasons for not having the case dealt with in a public trial;

5. That the defendant has given or offered cooperation when such cooperation has resulted or will result in the successful prosecution of other offenders engaged in equally serious or more serious criminal conduct; and

6. That the defendant by offering a plea has aided in avoiding delay (including delay due to crowded dockets) in the disposition of other cases and thereby has increased the probability of prompt and certain application of correctional measures to other offenders.

Commentary

There are two positions available under the present standard, the National Advisory Commission (1973) recommendation which provides that no concessions shall attach in response to a plea of guilty and the American Bar Association Standards (1968a) which express support for just such concessions.

It is believed that at least one (and frequently more) of the six considerations listed in 3.8 will be applicable to most defendants. Such defendants, as a class, will receive somewhat different treatment from those who stand trial and are convicted. There should not, in any case, be excessive sentences levied upon defendants who do stand trial. The defendant who elects trial should not be additionally penalized for putting the state to the trouble of proving his/her guilt rather than entering a plea of guilty.

Implementation

A. Agencies Involved:
Courts.
Prosecutors.

B. Legislation:

Statutory authority in the instant standard may be difficult to create. A court ruling would not be quite as unreasonable; however, such a decision must be left to the discretion of the judge. There are many difficulties attendant in legislating the exercise of discretion.

Courts Standard 3.9

Plea Withdrawal

A. The court shall allow the defendant to withdraw a plea of guilty whenever the defendant, upon a timely motion for withdrawal, proves that withdrawal is necessary to correct a manifest injustice.

1. A motion for withdrawal is timely if made with due diligence, considering the nature of the allegations therein, and is not necessarily barred because made subsequent to judgment or sentence.

2. Withdrawal is necessary to correct a manifest injustice whenever the defendant proves that:

a. He/she was denied the effective assistance of counsel guaranteed by constitution, statute, or rule;

b. The plea was not entered or ratified by the defendant or person authorized to act in his/her behalf;

c. The plea was involuntary, or was entered without knowledge of the charge or that the sentence actually imposed could be imposed;

d. He/she did not receive the charge or sentence concessions contemplated by the plea agreement and the prosecuting attorney failed to seek or not to oppose these concessions as promised in the plea agreement; or

e. He/she did not receive the charge or sentence concessions contemplated by the plea agreement concurred in by the court, and did not affirm that plea after being advised that the court no longer concurred and being called upon to either affirm or withdraw said plea.

3. The defendant may move for a withdrawal of the plea without alleging innocence of the charge to which the plea has been entered.

B. In the absence of a showing that withdrawal is necessary to correct a manifest injustice, the defendant may not withdraw a plea of guilty as a matter of right once the plea has been accepted by the court. Before sentence, the court in its discretion may allow the defendant to withdraw that plea for any fair and just reason unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea.

Commentary

The instant standard establishes guidance on the question of when a defendant may be allowed to withdraw a plea. Present statutory language indicates only that the court may allow withdrawal within a certain time or at its discretion. SDCL 23-35-22 (1967). This standard allows the defendant to withdraw his/her plea (2a & 2e) where the judge, for whatever reason, is unable to honor the original agreement for sentencing or charge concessions.

Implementation

A. Agencies Involved:
Courts.
Prosecutors.
Defense counsel.

B. Legislation:

While the reasons are not set forth by statute, SDCL 23-35-22 permits withdrawal of a plea of guilty and substitution therein of a plea of not guilty. Precedent indicates that such substitution is also a matter of judicial discretion. State v. Egon, 47 S.D. 1 (1923).

C. Administrative Actions:

While the instant standard sets forth various reasons for allowing withdrawal of a plea, the likelihood of their becoming mandatory is indeed negligible. Furthermore, sections 2a and 3 turn on statutory recognition of plea bargaining — a condition not yet in existence.

Courts Standard 3.10

Withdrawn Plea Not Admissible

A plea of guilty or record of proceedings at which defendant entered a plea of guilty which is not accepted or has been withdrawn should not be received against the defendant in any criminal proceedings.

Commentary

There is currently a split of authority on admitting a plea as evidence. Where the plea is considered evidence, some courts allow its admission into court; other courts hold that permitting withdrawal adjudicates the impropiety of its prior reception and forbids subsequent use thereof.

Under Harris v. New York, 401 U.S. 222 (1971) a confession obtained in volation can later be used to impeach a defendant's testimoy if he/she elects to testify at his/her own trial.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:

A revision of the Rules of Criminal Procedure would be necessary. Barring this, the same end may be accomplished by court ruling.

Courts Standard 3.11

Prohibited Prosecutorial Inducements to Enter a Plea of Guilty

No prosecutor should, in connection with plea negotiation, engage in, perform, or condone any of the following:

1. Charging or threatening to charge the defendant with offenses for which the admissible evidence available to the prosecutor is insufficient to support a guilty verdict.

2. Charging or threatening to charge the defendant with a crime not ordinarily charged in the jurisdiction for the conduct allegedly engaged in by him/her.

3. Threatening the defendant that if he/she pleads not guilty, the sentence may be more severe than that which ordinarily is imposed in the jurisdiction in similar cases than defendants who plead not guilty.

4. Failure to grant full disclosure before the disposition hearings of all exculpatory evidence material to guilt or punishment.

Commentary

This standard is designed to promote greater fairness in the negotiation process and reduce post-conviction litigation. Subparaghaphs 1 and 2 relate to overcharging, a practice common in many prosecutors' offices. Subparagraph 3 touches on oversentencing at least where the prosecution may threaten a greater sentence if the defendant refuses to plead guilty. Subparagraph 4 speaks to the issue of discovery by defense of the State's case. (e.g., Brady v. Maryland, 373 U.S. 83, 1963) Discovery is covered more specifically in Standard 4.9 infra.

Implementation

A. Agencies Involved:
State Bar Association.
Courts.

B. Legislation:

Such conditions as stated in the instant standard may be established by court ruling. Yet it should also be pointed out that grounds for disbarment may attach in the instant standard as per SDCL 16-19-2 (Grounds for Disbarment or Suspension of an Attorney).

Courts Standard 3.12

Propriety of Plea Discussions and Plea Agreements

1. In cases in which it appears that the interest of the public in the effective administration of criminal justice (as stated in Standard 3.8) would thereby be served, the prosecuting attorney may engage in plea discussions for the purpose of reaching a plea agreement. The prosecutor should engage in plea discussions to reach a plea agreement with the defendant only through defense counsel, except when the defendant is not eligible for or does not desire appointment of counsel and has not retained counsel.

2. The prosecuting attorney, in reaching a plea agreement. may agree to one or more of the following, as dictated by the circumstances of the individual case:

a. To make or not to oppose favorable recommendations as to the sentence which should be imposed if the defendant enters a plea of guilty;

b. To seek or not to oppose dismissal of other charges or potential charges against the defendant if defendant enters a plea of guilty.

3. Similarly situated defendants should be afforded equal plea agreement opportunities.

Commentary

There are presently two positions regarding the continued practice of plea bargaining. One embraces the practice as not only necessary, but perhaps desirable, when used within the confines of uniform standards of procedure. The other sees such regulations, albeit more stringent, as a means to an end, the elimination of plea bargaining completely. Relevant literature, as well as existing legal opinions, suggest that the former position is the stronger.

Implementation

A. Agencies Involved.
Courts.
Prosecutors.
Defense counsel.

B. Legislation:

In an effort to codify such proceedings, statutory force would appear to be appropriate. Such a law may also be somewhat difficult to draft.

C. Administrative Actions:

Granted, such procedures are utilized on an informal basis and there may be resistance to granting statutory force to plea bargaining. The burden in the instant standard will doubtless fall to the office of the prosecutor given its unique position in the criminal justice system.

Courts Standard 3.13

Relationship Between Defense Counsel and Client

A. Defense should conclude a plea agreement only with the consent of the defendant, and should ensure that the decision to enter a plea of guilty is ultimately made by the defendant.

B. To aid the defendant in reaching a decision, the defense counsel, after appropriate investigation, should advise the defendant of the alternatives available and of considerations deemed important by him or the defendant in reaching a decision.

Commentary

Because it is the defendant's future that hangs in the balance, there is no gainsaying the need for such a decision to be the defendant's own. Granted, the defendant's limited knowledge of court procedure may forestall a reasoned and intelligent response; however, such a decision should still be his/hers to make. The undeniably crucial role played by defense counsel in assisting in such deliberation must be continually underscored. Any such decision is only as good as the information upon which it is based.

Implementation

A. Agencies Involved:

Defense and prosecution or, more generally, the State Bar Association.

Courts Standard 3.14

Responsibilities of the Trial Judge

A. The trial judge should not participate in plea discussions.

B. If a tentative plea agreement has been reached which contemplates entry of a plea of guilty in the expectation that other charges before the court will be dismissed or that sentence concessions shall be granted, upon request of the parties the trial judge may permit disclosure to himself/herself of the tentative agreement and the reasons therefor in advance of the time for tender of the plea. The judge may then indicate to the prosecuting attorney and defense counsel whether the court will concur in the proposed disposition if the information in the presentence report is consistent with the representations made to the court. In all felony cases there shall be a verbatim record of all plea discussions with the judge at which the defendant shall be present. If the trial judge concurs, but later decides that the final disposition should not include the charge or sentence concessions contemplated by the plea agreement, he/she shall advise the defendant and call upon the defendant to either affirm or withdraw the plea of guilty.

C. When a plea of guilty is tendered or received as a result of a prior plea agreement, the trial judge should give the

agreement due consideration, but notwithstanding its existence the judge should reach an independent decision on whether to grant a charge or sentence concessions under th principles set forth in Standard 3.8.

Commentary

As reflected in the instant standard, there is relatively little support for extended judicial participation in plea bargaining. Presently, it is not uncommon for a trial judge to participate in such discussions and to promise or predict certain concessions in the event that a defendant pleads guilty. Such involvement can take place during pre-plea hearings or a pre-trial conference in the judge's chambers.

It is presently not in dispute that judicial participation is undesirable. To this end a number of reasons are proferred:

1. Judicial participation in a discussion can create an impression in the mind of the defendant that he/she would not receive a fair trial were he/she to go to trial before this judge.

2. Judicial participation in a discussion makes it difficult for a judge to determine objectively the voluntariness of the plea when it is offered.

3. Judicial participation to the extent of promising a certain sentence is inconsistent with the theory behind the use of presentence investigation reports; and

4. The risk of not going along with the disposition apparently desired by the judge may seem so great to the defendant that he/she will be induced to plead guilty even if innocent.

It should be pointed out that judicial involvement attaches after the plea discussion, when the parties have reached an agreement. Moreover the judge does not initiate the conference; he is privy only to the agreement after the fact. The amount of influence the judge may exert at the initial stages of such discussions precludes early participation.

Whether or not the records should contain judicial justification for imposing a harsher penalty than would have been received under the plea agreement is a matter open to debate.

Implementation

A. Agencies Involved:
Courts.

B. Administrative Actions:

The objection to statutory construction resides in the difficulty of legislatively restricting (or promoting) discretion. The judge, for the most part, will be in no different position than that already occupied.

CHAPTER FOUR

THE LITIGATED CASE

Courts Standard 4.1

Time Frame for Prompt Processing of Criminal Cases

The period from preliminary hearing to the beginning of trial in a felony prosecution generally should not be longer than sixty days. In a misdemeanor prosecution, the period from arrest to trial generally should be thirty days or less.

Commentary

At least one caveat should be advanced regarding this standard: Time limits can become problematic and thus worsen the system they were instituted to aid. The potential for abuse may be "built-in," so to speak, if various components of the criminal justice system have difficulty meeting such time limits.

Similarly, what penalty should attach for violation of time limit restrictions, who should decide when grounds for imposition of penalty are met, and are there valid reasons for exceeding any prescribed time limit?

Implementation

A. Agencies Involved:
Courts.
Prosecutors.
Defense counsel.

B. Administrative Actions:
Court ruling. Statutory construction might leave the time restraints too rigid and thus create as many problems as it might solve.

Courts Standard 4.2

Citation and Summons in Lieu of Arrest

Upon the apprehension, or following the charging, of a person for a misdemeanor, citation or summons may be used in lieu of taking a person into custody at the discretion of the officer. All law enforcement officers should be authorized to issue a citation in lieu of continued custody following a lawful arrest for such offenses. All judicial officers should be given authority to issue a citation in lieu of continued custody following a lawful arrest for such offenses. All judicial officers should be given authority to issue a summons rather than an arrest warrant in all cases alleging these offenses which a complaint, information or indictment is filed or returned against a person not already in custody.

Summons should be served upon the accused in the same manner as a civil summons.

1. Situations in which citation or summons is not appropriate. Use of citation or summons would not be appropriate under the following situations.

a. The behavior or past conduct of the accused indicates that release presents a danger to individuals or to the community.

b. The accused is under lawful arrest and fails to identify himself/herself satisfactorily;

c. The accused refuses to sign a citation;

d. The accused has no ties to the jurisdiction reasonably sufficient to assure appearance; or

e. The accused has previously failed to appear in response to a citation or summons.

2. Procedure for issuance and content of citation and summons. Whether issued by a law enforcement officer or a court the citation or summons should:

a. Inform the accused of the offense with which he/she is charged;

b. Specify the date, time, and the exact location of trials in misdemeanors;

c. Advise the accused of all rights applicable to his/her arrest and trial and of the consequences of failing to appear;

d. Explain the law concerning representation by and provision of counsel, and contain a form for advising the court (within three days after service of citation or summons) of the name of his/her counsel or the desire to have the court appoint an attorney to defend him/her; and

e. State that in misdemeanor cases all motions and the election of nonjury trial must be filed within seven days after the appointment of counsel with copies provided to the prosecutor.

Upon receipt of the notice that the accused desires counsel or if such notice is not filed, the court should take appropriate action to assure that counsel is provided within twenty-four hours after receipt of notice or within ninety-six hours after arrest.

Commentary

As opposed to a modified citation system, the recommendation is rather for ROR (Release on Own Recognizance) which, additionally, should not apply to felonies.

With the proposed standard there is a problem in which the burden is placed on the officer essentially to determine bondability. If the court has only a sketchy outline of the accused after time has been allowed to do a background study, the police officer has even less information on hand at the time of apprehension to determine whether to release or not. The logical result, where police desire to escape blame, is to "arrest when in doubt" and the criteria establishing doubt will indeed be vague. Consider also the problem of harassment of the officer by defense counsel where the decision was to arrest; the basis for the decision is complex and difficult, if not impossible, to explain.

Implementation

A. Agencies Involved:
Police.

B. Legislation:
The South Dakota State Patrol presently utilizes a form of citation (power of attorney) for traffic offenses; however, this is a matter of internal policy, not law. To avoid future legal complications (for police officers) such provisions should be expanded and set forth by statute.

Courts Standard 4.3

Limitation of Grand Jury Functions

Grand jury indictment should not be required in any criminal prosecution. If an existing requirement of indictment

cannot be removed immediately, provisions should be made for the waiver of indictment by the accused. Prosecutors should develop procedures that encourage and facilitate such waivers; if the grand jury indictment is issued in a particular case no preliminary hearing should be held in that case. In such cases the prosecutor should disclose to the defense all testimony before the grand jury directly relating to the charges contained in the indictment returned against the defendant.

The grand jury should remain available for investigation and charging in exceptional cases.

Commentary

The infrequency with which grand juries are impaneled in South Dakota corresponds very closely to the second paragraph of the above standard. Because excessive or inappropriate use of the grand jury does not exist in South Dakota, regulations for curtailing such abuse need not attach.

Implementation

A. Agencies Involved:
Courts.
B. Legislation:
Statute. Such limitations as herein prescribed would necessitate rewriting SDCL 23-29-1 (Grand Jury Defined). Additionally (see Constitution of South Dakota, Article VI, Section 10) a constitutional amendment would be necessary to exclude the grand jury from the criminal realm.

Courts Standard 4.4

Presentation Before a Judicial Officer Following Arrest

When a defendant has been arrested or a citation has not been issued, the defendant should be presented before a judicial officer within twelve hours of the arrest. At this appearance, the defendant should be advised orally and in writing of the charges and of his/her constitutional rights (including the right to bail and to assistance of counsel). If the defendant is entitled to publicly provided representation, arrangements should be commenced at this time. If it is determined that pretrial release is appropriate, the defendant should then be released.

At the initial appearance, the judicial officer should have the opportunity, upon showing of justification, to remand the defendant to police custody for custodial investigation. Such remands should be limited in duration and purpose, and care should be taken to preserve the defendant's rights during such custodial investigation.

Commentary

Due to the fact that the population in South Dakota is spread out and, therefore, travel distances are increased and expensive, twelve hours is proposed as a minimum. There will certainly be instances where more travel time is necessary and any guidelines promulgated should reflect same.

Some exception is taken to the reference to custodial investigations; however, this falls within the discretion of judicial authority on a showing of sufficient justification. The procedure could unfortunately become standardized, and thus granted on the basis of nothing more than an informal verbal request, a potential abuse that should not go unchecked.

Implementation

A. Agencies Involved:
Police.
Defense counsel.
Prosecutors.
B. Legislation:
Statutory language does not presently set forth time restrictions. SDCL 23-27-1 (Magistrate to Inform Defendant of the Charge and His Right to Counsel). Again, general problems of administration may attach where a time limit is created by statute rather than by court rule.

Courts Standard 4.5

Pretrial Release and Failure to Appear Following Pretrial Release

A. Adequate investigation of defendant's characteristics and circumstances should be undertaken to identify those defendants who can be released prior to trial solely on their own promise to appear for trial. Release on this basis should be made wherever appropriate. If a defendant cannot appropriately be released on this basis, consideration should be given to release under certain conditions, such as the deposit of a sum of money to be forfeited in the event of nonappearance, or assumption of an obligation to pay a certain sum of money in the event of nonappearance, or the agreement of third persons to maintain contact with the defendant and to assure his/her appearance.

B. Substantive law should deal severely with offenders who fail to appear for criminal proceedings. Programs for the apprehension and prosecution of such individuals should be established to implement this substantive law.

1. Substantive law concerning failure to appear. This substantive law regarding failure to appear after pretrial release should have the following features:

a. The felony of failing to appear should be defined as the failure to appear on the designated date by an individual who, after receipt of a citation or a summons to appear in court or after arrest, has been released from custody or has been permitted to continue at liberty upon the condition that he/she will appear subsequently in connection with the criminal action or proceeding, and who has had due notice of the date on which appearance is required.

b. It should be an affirmative defense to the felony of failing to appear that the defendant was prevented from appearing at the specified time and place by unavoidable circumstances beyond his/her control.

c. With the exception of capital cases, the penalty provided for the felony of failing to appear should be the same as the penalty for the substantive crime originally charged.

d. If the defendant fails to appear at any scheduled court appearance, the trial court should immediately issue a warrant for his/her arrest for the offense of failing to appear and immediately should notify the prosecutor.

Commentary

Despite objections to their continued use, bail-bond agencies will be retained for lack of suitable alternatives and an unwillingness to simply release defendants outright with little or no surety.

In reference to subsection 1c, there is some question as to whether or not a misdemeanor/felony combination is reasonable. For example, if the original crime is a misdemeanor (one year in jail), failure to show, then, is a felony with only a one-year punishment. There is no one-year felony classification under South Dakota law as of April 1977. The solution, therefore, might simply be to allow the court to decide what the felony punishment will be. At least with a felony classification, the individual can be extradited back to South Dakota, while a misdemeanor does not permit such action.

South Dakota has been the target of recent criticisms regarding leniency with convicted defendants who receive relatively mild sentences, a practice which may affect policies covering pretrial release. Should release be used stringently or liberally? On the one hand, without pretrial release jails will be filled rapidly to capacity. Conversely, too liberal a stand may result in the more frequent commission of crimes by released persons and the attendant publicity would surely force more stringent action by the courts.

Implementation

A. Agencies Involved:
Courts.
Prosecutors.

B. Administrative Actions:

The release procedure outlined in Section A is more or less in effect. Section B, however, would necessitate either creation of a new class of felony or leave such determination to the court. Some discretion must necessarily be exercised in deciding if a defendant has willfully failed to appear.

Courts Standard 4.6

Preliminary Hearing and Arraignment

If a preliminary hearing is held following arrest, it should be held within 15 days if the individual is in custody, or thirty days if the individual has been released. Evidence received at the preliminary hearing should be limited to that which is relevant to a determination that there is probable cause to believe that a crime was committed and that the defendant committed it.

Arraignment should be eliminated as a formal step in a criminal prosecution. The initial charging document, as amended at the preliminary hearing, should serve as the formal charging document for trial. If a defendant intends to waive his/her right to a preliminary hearing, he/she should file a notice to this effect at least twenty-four hours prior to the time set for the hearing.

Commentary

There is some question as to whether or not a preliminary hearing is a profitable step in trial proceedings. The hearing is used primarily as a device for discovery by the defense. Standard 4.9 recommends expanded discovery and may thereby solve this problem.

Arraignment serves no useful purpose because, as a practical matter, a defendant is usually quite aware of the nature of the charges and a plea can be entered without formal appearance. The intent of the instant standard is to streamline the judicial process, not in an effort to "railroad" the defendant but, rather, to allow additional time to deal with more substantial matters.

Implementation

A. Agencies Involved:
Courts.
Prosecutors.
Defense counsel.

B. Legislation:

Statute. The inclusion of a set time limit necessitates rewriting SDCL 23-27-1 or the use of a court ruling. The latter may be more easily obtained and, at the same time, more elastic to accommodate ever-present exceptions.

C. Administrative Actions:

Such time limits may be obtained on the basis of an informal agreement amongst the various parties (i.e., courts, prosecution, and defense counsel).

Courts Standard 4.7

Pretrial Discovery

The prosecution should disclose to the defendant all available evidence that will be used against him/her. Such disclosure should take place as soon as practical but no later than five days after arrest and in all cases before the preliminary hearing. The evidence disclosed should include, but not be limited to, the following:

1. The names and addresses of persons whom the prosecutor intends to call as witnesses at the trial;

2. Written, recorded, or oral statements made by witnesses whom the prosecutor intends to call at the trial, by the accused, or by any co-defendant;

3. Results of physical or mental examinations, scientific tests, or any analysis of physical evidence, and any reports or statements of experts relating to such examinations, tests, or analysis; and

4. Physical evidence belonging to the defendant or which the prosecutor intends to introduce at trial.

At least ten days prior to trial, the prosecutor shall provide the foregoing information to the defendant as it pertains to the trial unless such information shall have been provided.

The prosecutor should disclose, as soon as possible, any evidence within this description that becomes available after initial disclosure.

The prosecutor also should disclose any evidence or information that might reasonably be regarded as potentially valuable to the defense, even if such disclosure is not otherwise required.

The defendant should disclose any evidence defense counsel intends to introduce at trial. Intent to rely on an alibi or insanity defense should be indicated. Such disclosure should take place immediately following the resolution of pretrial motion or, in the event no such motions were filed, within twenty-days of the preliminary hearing, the waiver of the preliminary hearing, or apprehension or service of summons

following indictment or whichever form the initiation of prosecution has taken in this case. No disclosure need be made, however, of any statement of the defendant or of whether the defendant himself/herself will testify at the trial.

The trial court may authorize either side to withhold evidence sought if the other side establishes in an ex parte proceeding that substantial risk of physical harm to the witness or others would be created by the disclosure and that there is no feasible way to eliminate such risk.

Evidence, other than the defendant's testimony, that has not been disclosed to the opposing side may be excluded at trial unless the trial judge finds that the failure to disclose it was justifiable. The desire to maximize the tactical advantage of either the defendant or the prosecution should not be regarded as justification under any circumstances. Where appropriate, a person failing to disclose evidence that should be disclosed should be held in contempt of court.

Commentary

The instant standard reflects the intent to allow early disclosure as soon as practical. Presumably disclosure in less than five days is not entirely out of the question.

The following is a reproduction of the applicable Uniform Rules of Criminal Procedure (1974) which may be considered for implementation along with the relevant standard.

Rule 422. Notice by Prosecuting Attorney

A. Matters furnished automatically. On or before the time set by the court, or promptly upon discovering the matter, the prosecuting attorney shall furnish to the defendant:

1. A statement describing any testimony or other evidence intended to be used against the defendant which:

a. Was obtained as a result of a search and seizure, wiretapping, or any form of electronic or other eavesdropping;

b. Consists of or resulted from any confession, admission or statement made by the defendant; or

c. Relates to a lineup, showup, picture, or voice identification of the defendant.

d. And informing the defendant that is he/she contends that any of the evidence is subject to suppression under Rule 461, the defendant must move the court, by a specified time set by the court, to suppress the evidence;

2. A statement describing any confession, admission, or statement of a codefendant intended to be used at the trial;

3. A statement precisely describing any offense which the prosecuting attorney intends to show as part of the proof that the defendant committed the offense charged, if the defendant has not been prosecuted for the offense and the offense was allegedly committed at a time other than that of the offense charged; and

4. A statement describing any matter or information known to the prosecuting attorney which may not be known to the defendant and which tends to negate the defendant's guilt as to the offense charged or would tend to mitigate the punishment.

B. Matters furnished upon request. Upon the defendant's written request made after the time set by the court, the prosecuting attorney shall furnish to the defendant and file with the court:

1. A statement generally describing any book, paper, document, photograph, or tangible object intended to be used in evidence against the defendant and not described under subdivision A;

2. A statement setting forth the name, address, and occupation of each person intended to be called as a witness against the defendant and, so far as reasonably ascertainable by the prosecuting attorney, any record of criminal convictions of each person; and

3. A statement setting forth, so far as reasonably ascertainable by the prosecuting attorney, any record of criminal convictions of the defendant.

C. Sanctions for noncompliance. If the prosecuting attorney fails to comply with this Rule, the court on motion of the defendant or on its own motion shall grant appropriate relief, which may include one or more of the following: requiring the prosecuting attorney to comply, granting the defendant additional time or a continuance, relieving the defendant from making a disclosure required by Rule 423, prohibiting the prosecuting attorney from introducing specified evidence, and dismissing charges.

Rule 423 Disclosure by Defendant

A. Matters to be furnished. On or before the time set by the court, or promptly upon discovering the person or matter, the defendant shall furnish to the prosecuting attorney:

1. If the defendant intends to call as a witness any person other than himself/herself to show that he/she was not present at the time and place specified in the information (or indictment), a statement of that fact and of the name and address of the person; and

2. If the defendant intends to call as a witness any person other than himself/herself for testimony relating to any mental disease, mental defect, or other condition bearing upon his/her mental state at the time the offense was allegedy committed, a statement of that fact and of the name and address of the person.

A statement filed under this subdivision is not admissible in evidence at trial. Information obtained as a result of a statement filed under this subdivision is not admissible in evidence at trial except to refute the testimony of a witness whose identity this subdivision requires to be disclosed.

B. Access to documents and objects. Upon the prosecuting attorney's written request after the time set by the court, the defendant shall allow him/her access at any reasonable times and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made upon any book, paper, document, photograph, or tangible object which is within the defendant's possession or control and which:

1. The defendant intends to offer in evidence, except to the extent that it contains any communication of the defendant;

2. Is a report or statement as to a physical or mental examination or scientific test or experiment made in connection with the particular case prepared by and relating to the anticipated testimony of a person whom the defendant intends to call as a witness, or

3. Is a report on prospective jurors which relates to the case, but if parts of the report are only the opinions, theories, or conclusions of the defendant, defendant's lawyer, or that lawyer's legal staff, the defendant shall allow access to a copy of the report from which those parts have been excised in a manner showing that there has been excision.

If the defendant subsequently ascertains that he/she has possession or control of such a matter, he/she shall promptly so inform the prosecuting attorney. The fact that the de-

fendant, under this subdivision, has indicated an intent to offer a matter in evidence or to call a person as a witness is not admissible in evidence at trial. Information obtained as a result of disclosure under this subdivision is not admissible as evidence at trial except to refute the matter disclosed.

C. Sanctions for noncompliance. If the defendant fails to comply with this Rule, the court on motion of the prosecuting attorney or on its own motion shall grant appropriate relief, which may include one or more of the following: requiring the defendant to comply, granting the prosecuting attorney additional time for a continuance, and granting a mistrial.

Implementation

A. Agencies Involved:
Courts.
Prosecution.
Defense.

B. Legislation:
Statute. Change in South Dakota criminal procedure will be necessary. See generally SDCL 15-6-34 thru 15-6-37.

Courts Standard 4.8

Pretrial Motions and Conference

All pretrial motions should be filed within 15 days of the preliminary hearing, the waiver of the preliminary hearing, or apprehension or service of summons following indictment, whichever form the initiation of prosecution has taken in the case. A hearing should be held on such motions within 5 days of the filing of the motions. The court should rule on such motions within 72 hours of the close of the hearing.

At this hearing, the court should utilize a checklist to insure that all appropriate motions have been filed and all necessary issues raised. All issues raised should be resolved at this point; reserved ruling on motions should be avoided.

Failure to raise any issue concerning the admissibility of evidence or other matter appropriately raised before trial in accordance with this procedure should preclude a defendant from otherwise raising the issue, unless the defense establishes that the information essential to raising the issue was not reasonably available at the time when this procedure required that the issue be raised.

No case should proceed to trial until a pretrial conference has been held, unless the trial judge determines that such a conference would serve no useful purpose. If pretrial motions have been made, this conference should not be held until the issues raised by these motions have been resolved. At this conference, maximum effort should be made to narrow the issues to be litigated at the trial.

Where possible, this conference should be held immediately following and as a part of the motion hearing. In any event, it should be held within 5 days of the motion hearing.

Commentary

The basic thrust of this standard is that pretrial motions should be collected into one proceeding and presented to the judge at that time. Plans such as the Omnibus Hearing are vehicles to creating such streamlining in the court. For example, motions to set aside indictments or informations, to challenge pleadings, to challenge venue and jurisdiction, to attack impaneling of grand or petit juries, to reduce bail, to sever defendants or offenses, in addition to suppression of evidence, are all potentially vital to a defendant's case and are therefore obligated to be heard by the court. Moreover, if a separate hearing is held for each motion, the amount of time consumed would be (and frequently is) extraordinary.

As for pretrial conferences, the American Bar Association sets forth the following as matters that might be usefully considered at such a conference:

1. making stipulations as to facts about which there can be no dispute;
2. marking for identification various documents and other exhibits of the parties;
3. waivers of foundations as to such documents;
4. excision from admissible statements of material prejudicial to a co-defendant;
5. severance of defendants or offenses;
6. seating arrangements of defendants and counsel;
7. use of jurors and questionnaires;
8. conduct of **voir dire**;
9. number and use of peremptory challenges;
10. procedure on objections where there are multiple counsel.
11. order of presentation of evidence and arguments where there are multiple defendants;
12. order of cross-examination where there are multiple defendants; and
13. temporary absence of defense counsel during trial.

(American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Discovery and Procedure Before Trial, Standard 5.4 (a), Approved Draft, 1970).

Implementation

A. Agencies Involved:
Courts.
Prosecution.
Defense counsel.

B. Administrative Actions:
Court rule. Prosecution and defense should be compelled by the court to comply with the provisions of the above standard as regards time limits for filing pretrial motions. The rules of criminal procedure might be rewritten in line with the American Bar Association provisions cited above.

Courts Standard 4.9

Priority Case Scheduling

Immediately following the preliminary hearing, the return of an indictment, or the waiver of such proceedings, the prosecutor should advise the court administrator of those cases that are to be tried and that should be given priority in assigning cases for trial.

Cases should be given priority for trial where one or more of the following factors are present:

1. The defendant is in pretrial custody;

2. The defendant constitutes a significant threat of violent injury to others; or

3. The defendant is a public official.

In addition, the prosecutor should consider in setting priorities for trial the age of the case.

Commentary

In addition to the above cited criteria for putting cases in priority order, two others are frequently advanced: First, defendant is a recidivist and, second, defendant is a professional criminal. Without question, a considerable amount of controversy exists over exactly who fits into these categories and what should be done to those who do. A myriad of combinations of factors and questions derive from the two omitted criteria: Is one any more important than the other or those already listed? Is there some combination of all factors that render a case of highest priority? What shall constitute recidivism — aggregate number of offenses or the seriousness of those offenses? Are socio-economic factors to play a role in any determinations made? De we measure a professional criminal by gross activity or the monetary success of such activity? Finally, what good does it do when some variety of treatment or rehabilitation (presuming that such a process exists) is contemplated to know that the offender is a recidivist or professional criminal or both?

Implementation

A. Agencies Involved:
Courts.

B. Administrative Actions:
Court ruling. Court administrators should take cognizance of a defendant's present circumstances viz. conditions 1, 2 or 3 in the above standard and schedule cases accordingly.

Courts Standard 4.10

Continuances

Continuances should not be granted except upon verified and written motion and a showing of good cause.

Commentary

In courts where continuances are granted as a matter of routine, frequently with little or no valid justification (defense counsel indicates that after three or four weeks the case is not ready), something must be done to curb such abuses. Where court rule would be sufficient (and presumably enforced) statutory authority would be unnecessary. However, if the court is not able (or is not willing) to supervise attorneys to prevent such abuses, the Rules of Criminal Procedure should be amended to reflect the intent of the instant standard.

SDCL 15-11-4 (Postponement of Trial or Hearing) indicates only that a continuance shall be issued upon good cause shown. While it is frequently the case that the cause is justified (illness or death of counsel or parties), there are also instances where such cause is not adequate. The reverse side of the same coin must also be explored: At what point, if any, should the defendant's case be compromised in order to penalize unprepared counsel?

Implementation

A. Agencies Involved:
Courts.

B. Administrative Actions:
A court ruling or a change in the Rules of Criminal Procedure would be necessary.

Courts Standard 4.11

Jury Selection

Questioning of perspective jurors should be closely controlled by the trial judge. Examination should cover all matters relevant to their qualification to sit as jurors in the case on trial. Attorneys for the prosecution and defense should be permitted to submit questions to the judge.

The number of peremptory challenges should correspond to the size of the jury and should be limited in multiple defendant cases. The prosecution should be entitled to the number of challenges equal to the total number to which the defendants are entitled.

Commentary

The trial judge should not be solely responsible for conducting voir dire; however, he/she should be able to limit the proceeding. The tactic of asking an inordinate number of questions of individual jurors is extremenely wasteful of both court and juror time.

One solution might be to use a pre-tiral questionnaire administering the same questions to all prospective jurors simultaneously. Following an opportunity to review each questionnaire, defense and prosecution could ask questions relative to specific jurors in order to clarify material not covered on the questionnaire. A means should be implemented for reducing repetitive questioning.

Below is reproduced Rule 512 (b) of the Uniform Rules of Criminal Procedure (1974) on the topic of examination, which may be considered for adoption.

Rule 512 Selection of Jury

a. . . . .

b. Examination. The court shall cause the prospective jurors to be sworn or affirmed to answer truthfully the questions they will be asked during the selection process, identifying the parties and their lawyers, and briefly outline the nature of the case. The court may put to the prospective jurors appropriate questions regarding their qualifications to serve as jurors in the case, and shall permit questioning by the parties for the purposes of discovering bases for challenge for cause and enabling an intelligent exercise of peremptory challenges. The court, upon motion of a party or its own motion, may direct that any portion of the questioning of a prospective juror be conducted out of the presence of the other prospective jurors.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:
Statute relative to voir dire and peremptory challenges. The Rules of Criminal Procedure should be changed to reflect the intent of the above standard.

Courts Standard 4.12

Jury Size and Composition

Juries in felony prosecutions should be composed of twelve persons, unless the party stipulates to a jury of fewer, but at

least six, persons. Misdemeanors may be tried by a jury of not less than six persons.

Persons between 18 and 65 years of age should not be disqualified from jury service solely on the basis of age.

Commentary

To alter South Dakota's requirement of twelve persons on a jury would require a constitutional amendment (Article 6 Section 6)

The defendant might be allowed to stipulate to a jury of six in the case of a misdemeanor, although to what degree the court should influence such a decision is arguable. There is precendent for conviction by a jury of less than twelve in South Dakota, State v. Tiedeman, 207 N.W. 153 (1926).

The applicable American Bar Association (1968b: St. 1.1) standard dealing with jury composition and limiting availability of jury trials appears below:

1.1 Right to a jury trial. Defendants in all criminal cases should have the right to be tried by a jury of 12 whose verdict must be unanimous, except that where not barred by applicable constitutional provisions, the right to a jury trial may be limited in one or more of the following ways:

(a) by denial of jury trial to those charged with "petty offenses";

(b) by requiring trial without jury for lesser offenses, provided there is a right to appeal without unreasonable restrictions to a court in which a trial de novo by a jury may be had;

(c) by the use of juries of less than 12, without regard to the consent of the parties; or

(d) by permitting less than unanimous verdicts, without regard to the consent of the parties.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:
Constitutional amendment (revising Article 6, Section 6) or statutory construction by allowing defendant to stipulate to a jury of less than twelve.

C. Funding:
Expenses would certainly decrease when the number of jurors sitting in a jury trial were reduced by one-half.

Recommendation 4.1

Use of Video-Tape in Criminal Cases

The use of video-taped trials in criminal cases should be studied and pilot projects should be established and funded by federal, state, and local government agencies.

Commentary

Video-tape, if it is to be of any substantial use in the legal process, must be used as an aid. Technology must be incorporated into normal courtroom procedures and should probably replace only methods that result in duplication of effort, for example, depositions and court stenographers, to mention only two possibilities.

The utility of video-recording in any given instance should be governed by the user's appraisal of: 1) availability of reporters; 2) the nature of testimony and the case; 3) case schedule and backlog, and 4) costs. The following recur throughout the literature as probably the most favorite uses to which such a system may be put:

1. Recording of testimony of unavailable witnesses, noncontroversial expert witnesses, and substantially inconvenienced witnesses;

2. Recording of confessions, statements, lineups and constitutional rights notices;

3. Recording of proceedings such as the official record for criminal trials and the taking of pleas; and

4. Sharing with education institutions video-tapes of actual proceedings and recording educational video-tapes, e.g., model jury instructions for judges, model jury duty explanations for jurors, and model explanations of defendant rights and obligations for defendants and police.

Presently, video-taped procedures have been relegated to pretrial settings. Courts, hearing cases involving taping of confessions, lineups, scenes of the crime, and police actions, have ably upheld such use despite the opportunity for altering the finished product. The test is reliability. As long as the traditional constitutional and evidentiary standards of admissibility are met, there is nothing inherent in video-taping that shall compel exclusion from judicial proceedings.

An extensive cost/benfit analysis is likely to provide the only major obstacle (of an extra-legal nature) to allowing expanded use of video-taping in South Dakota. Generally, a study of feasibility is supported with attitudes, as well as economics, being its proper topics.

CHAPTER FIVE

SENTENCING

Courts Standard 5.1

The Court's Role in Sentencing

The trial judge should be required to impose a sentence that, within limits imposed by statute, determines the maximum period a defendant's liberty may be restricted. Within this maximum period, other agencies may be given the power to determine the manner and extent of interference with the offender's liberty. Continuing jurisdiction in the trial court over the offender during the sentence imposed is not inconsistent with this standard. Jury sentencing should be abolished in all situations.

Commentary

While the majority of the sentencing standards will be found in the section dealing with Corrections, this single standard offers a forum for the courts to indicate their stand on the issue.

There is little question that sentencing should reside within the judiciary. Granted, the parole board does exercise plenary powers to determine a defendant's sentence within limits (such limits being broad or narrow), and there is some question as to whether or not this too should be under the control of the courts. The vehicle for such control may be found in **modification hearings.** However the increased workload levied upon the courts may be detrimental to overall smooth judicial operations.

On the reverse side of the same coin, the argument can be made that, once sentenced, the court has little contact (therefore reduced information) on any given inmate and thus is not in the best possible position to judge the offender's suitability for release. A problem peculiar to South Dakota (and other largely rural states with circuit systems) revolves around transportation of the offender back to the sentencing court for a modification hearing, if such hearings were to be used. A cost-benefit analysis might reveal that parole boards are economically better situated to deal with release (as well as enhanced information regarding the inmate).

In terms of increased reliance on a parole board or equivalent mechanism, consideration might be directed to the California Adult Authority and indeterminate sentencing. Essentially, judges set the **minimum** only and the Adult Authority determines at what point in time the offender will be released. Careful scrutiny of this system should be undertaken before implementation of the same system in South Dakota. The new classification scheme recently passed by the South Dakota legislature, involving standardized categories of felony (class 1 thru class 6) and setting out the maximum sentences available for each class, would have to undergo substantial change to comply with the California arrangement.

By statute, South Dakota judges do retain control over sentenced offenders for one year. SDCL 23-57-8, (1967). Frequently, this power is utilized for "shock" treatment: an individual is sentenced for a given time (5 years) and after a short period of incarceration the judge can modify the sentence and grant parole. The efficacy of this treatment for reducing recidivism is yet to be substantiated by careful research.

In keeping with the current trend toward phasing out jury sentencing, reference toward phasing out jury sentencing, reference to this procedure is specifically spelled out in the final sentence of the instant standard.

Implementation

A. Agencies Involved:
   Courts.
B. Legislation:
   Sentencing has been newly redone under the new criminal code, effective April 1977.

CHAPTER SIX

REVIEW OF THE TRIAL COURT PROCEEDINGS

Courts Standard 6.1

Unified Review Proceedings

The Task Force advocates a single unified proceeding for the purpose of review.

Commentary

The commentary for the instant standard serves to highlight much that is both controversial and worthwhile regarding unified review (appeal) proceedings, and the essential position is one of support for a unified system. It should also be pointed out that South Dakota's present statutory scheme is largely in keeping with the spirit of the instant proposal.

The unified review procedure offers certain advantages, yet does not offer absolute finality so long as the petitioner presents meritorious claims. There are benefits to be derived by both the petitioner and the criminal justice system at large from use of such a system.

As the review process has developed in America, two noticeable defects appear: direct appellate review is constrained by rules that prohibit considerations outside the trial record and collateral review may be sought and awarded almost indefinitely.

It is upon the basis of a broad and comprehensive review, immediately available under the instant proposal, that subsequent petitions for relief can be forclosed, thus achieving some greater degree of finality than presently exists. Flexibility is, of course, essential (Standard 6.2), and exceptional circumstances must be provided for (Standard 6.3 and 6.4). However, the extent to which flexibility and exceptional circumstances are controlled is the same extent to which the system may prove to be helpful in reducing the volume of appeals.

First, a defendant may be deemed to have waived all claims not properly presented or presented at either the post-judgment hearing or according to the normal requirements for direct appeal, except when the defendant may be permitted to petition for relief in the sentencing court where he/she is able to present facts establishing legitimate justification for his/her failure to so preserve a claim. Second, once the defendant's claim has been presented to the highest appellate court within the system in which he/she was convicted (for South Dakota, this will have to be the State Supreme Court), the defendant is effectively barred from reasserting that claim before any other court within the same system. Of course, the defendant can present facts not previously known and can petition for relief on that basis. Lastly, if the defendant can demonstrate that the unitary review procedure offered him/her was somehow defective, he/she can still petition for relief by writ of habeas corpus.

Note also, that under unified review, collateral claims of state prisoners will become part of the record upon which a defendant could seek review in the United States Supreme Court. Review by that court, whether on appeal or by writ of certiorari, would preclude further review of those claims.

South Dakota's present statutory provisions for relief are as follow:

23-52-1. Right to institute proceeding to secure relief from conviction or sentence — Except at a time when direct appellate relief is available, any person who has been convicted of, or sentenced for, a crime and who claims:
1. That the conviction or the sentence was in violation of the Constitution of the United States or the constitution of this state;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts bearing upon the constitutionality of petitioner's detention or sentence, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole, or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy; may institute a proceeding under this chapter to secure relief. (SDCL 23-52-19).

Implementation

A. Agencies Involved:
Courts.
B. Legislation:
None. SDCL 23-52-1 is in substantial agreement. Due to the lack of higher court decisions (U.S. Supreme Court) regarding excessive but legal sentences, future statutory authority must stand mute for the time being.

Courts Standard 6.2

Flexible Review Procedures

Appeal should be a matter of right for a conviction for a class 1, 2 or 3 felony.

Where there is not an appeal as a matter of right, the State Supreme Court should review each case to determine if there are substantial issues which should be heard on appeal.

In a reviewing court functioning under flexible procedures, a criminal case should be ready for initial action within 30 days after imposition of sentence. Cases containing only insubstantial issues should be finally disposed of within 60 days of imposition of sentence. Cases presenting substantial issues should be finally disposed of within 120 days after imposition of the sentence.

Commentary

Reference to class 1, 2, and 3 felonies (appeal as a matter of right) reflects the recent change in South Dakota's criminal code. Although not scheduled to be in effect until April 1977, the categorical breakdown is as follows:

1. Class 1 felony: life imprisonment or a fine of $25,000, or both;

2. Class 2 felony: 25 years imprisonment or a fine of $25,000 or both;

3. Class 3 felony: 15 years imprisonment or a fine of $15,000 or both;

4. Class 4 felony: 10 years imprisonment or a fine of $10,000 or both;

5. Class 5 felony: 5 years imprisonment or a fine of $ 5,000 or both;

6. Class 6 felony: 2 years imprisonment or a fine of $ 2,000 or both.

The bulk of the argument centered upon the time limits imposed. Once notice of appeal has been taken, how can the remaining time limits be effectively enforced? What happens to the defendant who fails to file notice within 30 days? Can avenues of appeal be permanently foreclosed and can such action be considered constitutional?

Any determination of substantial as opposed to insubstantial issues is, of course, a matter of judicial discretion. Defendants still possess the Federal avenue of appeal where the state courts decide an appeal lacks substantial merit. An attempt to set forth issues of an insubstantial nature (or of a substantial nature) by statute would be both difficult and unwise.

Implementation

A. Agencies Involved:
Courts.

B. Legislation
None, SDCL 23-52-1 conforms well with the instant standard.

C. Administrative Actions:
In an effort to dispose of cases within the prescribed time limits, some kind of court administrative decision or ruling will be necessary. Statutory authority would be too inflexible (or unnecessary if it were flexible enough).

Courts Standard 6.3

Exceptional Circumstances Justifying Further Review

After a reviewing court has affirmed a trial court conviction and sentence, or after expiration of a fair opportunity for a defendant to obtain review with the aid of counsel, the conviction and the sentence generally should be final and not subject to further judicial review in any court, State or Federal. Further review should be available only in the following limited circumstances.

1. An appellate court determines that further review would serve the public interest in the development of legal doctrine or in the maintenance of uniformity in the application of decisional and statutory law;

2. The defendant asserts a claim of newly discovered evidence, which was not known to him and which could not have been discovered through the exercise of due diligence prior to conclusion of the unified review proceeding or the expiration of the time for seeking review, and which in light of all the evidence raises substantial doubt as to defendant's guilt; or

3. The defendant asserts a claim of constitutional violation which, if well founded, undermines the basis for or the integrity of the entire trial or review proceeding, or impairs the reliability of the factfinding process at the trial.

Challenges to state court convictions made in the Federal courts should be heard by the U.S. Court of Appeals.

Commentary

The scope of exceptional circumstances contained in the instant standard weakens to a large extent the concept of finality expounded upon in the commentary of Standard 6.1.

Further review should be made only on the decision of an appellate court, for example, the Supreme Court in South Dakota, and should not be offered as a matter of right (except in class 1, 2, and 3 felonies, as previously stated in Standard 6.2). The assumption here, of course, is that virtually everything justifying appeal will have been considered at one proceeding. However, there is some question as to how liberally the concept of finality will have to be interpreted to avoid a charge of unconstitutionality being leveled at the entire unified process. The various standards within this chapter that provide exceptions to the concept of finality are obviously a hedge against such a charge.

Again, the issue of judicial discretion tempers the harsh language of "finality" and offers escape for worthy defendants.

Implementation

A. Agencies Involved:
Courts.

Courts Standard 6.4

Further Review: Prior Adjudication, Prior Factual Determinations and Claims Not Asserted Previously

After initial review or when a defendant seeks further review in either a State or Federal court, claiming a constitutional violation in the exceptional circumstances described in subparagraph 3 of Standard 6.3:

1. The court should not adjudicate the claim if it has been adjudicated previously on the merits by any court of competent jurisdiction within that judicial system;

2. Determinations of basic or historcal facts previously made by either a trial or reviewing court, evidenced by written findings, should be conclusive, unless the defendant shows that there was a constitutional violation that undermined the integrity of the fact-finding process;

3. The court should not adjudicate on the merits of the claim if in the trial court or the review proceeding it was not adjudicated because it was expressly disclaimed by the defendant or his/her lawyer, or it was not asserted at any point, or it was not asserted within accordance with valid governing rules of procedure, unless the defendant establishes a justifiable basis for not regarding his/her prior actions related to the claim as foreclosing for the review.

Except where the violation was blatant (e.g., absence of counsel at crucial junctures in the proceedings), other, more subtle violations may be difficult to prove — although not perhaps less important.

Commentary

First, it must be advanced that where possible, courts are usually competent to distinguish frivolous and non-frivolous appeals and, to this end, discharge them without review at their discretion. Where the court has no alternative (no discretion to refuse review) this standard will perhaps be helpful. See, for example, SDCL 23-51-5 (1967).

Given South Dakota's two-tiered court system (excluding magistrate courts), unless the litigant returns to the circuit court on appeal, he/she has no alternative except the State Supreme Court. The instant standard would foreclose review within the state after one review. Therefore, unless appellant went directly to the Supreme Court following conviction, he/she would not be able to do so after the initial appeal (if that initial appeal took place in the circuit court). Any litigant, of course, has access to the Federal writ of **habeas corpus** proceedings. Foreclosure of this right is simply unconstitutional.

Essentially, where the record is complete on the historical issues of the case, provided that such procedures were not constitutionally defective (i.e., absence of defendant's attorney), these same basic or historical facts should not be reconsidered by the reviewing court. Simple adherence to the doctrine of **res judicata**, as presently formulated, sets the limits, beyond which one invites potential charges of unconstitutionality.

As with other standards in the present chapter, the rationale is largely economic; by limiting the number of times an appeal may be had at a state level, conservation of judicial resources becomes possible.

Subsection 3. This section, like its predecessors, attempts to close the loopholes created by Standard 6.3 in order to insure finality as early in the appeal process as possible. Because the doctrine of **res judicata** is partly an objective process, state courts might simply advance an appeal to the federal level. If review is denied at the federal level, then the state courts are blameless in the eyes of the defendant. However, should appeals be routinely denied at the state level, a **habeas corpus** proceeding reaching Federal Court may visit unpleasant consequences upon the lower court.

The only justification for advancing one's case to the federal level, according to the instant standard, is to demonstrate a constitutional violation that undermined the integrity of the fact-finding process at the trial level.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:
The instant standard is flexible enough to be translated into statutory authority without causing substantial harm to the defendant. Changes in procedures that may be promulgated at the Federal level cannot be anticipated and should therefore be considered when drafting of such legislation is contemplated at the State level.

Courts Standard 6.5

Stating Reasons for Decisions and Limiting Publication of Opinions

A reviewing court should always state its reasons for its decision in a criminal case.

As to insubstantial issues, the statement of reasons should be brief and designed only to inform the defendant of what contentions the court considered and why, by citation to authority or otherwise, it rejected them.

Commentary

There are an estimated three million cases that presently comprise American case law and twenty thousand new cases are reported each year. The "mountain" of authority that exists makes sorting through it difficult for even the largest of law firms. Smaller offices are simply at a loss to utilize, in any manageable fashion, the mass of existing material. There are at least three alternatives:

1. Selective reporting; write opinions, publish only some.
2. Selective opinion-writing: write opinions on some cases, publish all cases written.
3. Write and report all cases.

The California legislature introduced the first alternative (the third is rapidly becoming unworkable in many jurisdictions) in the form of Rule 967, "Publication of Court Opinion". All state supreme court opinions are published; appellate court opinions are published if they involve new or important issues of law, a change in an established principal of law, or a matter of public interest. A majority of judges is necessary to effect publication of district courts of appeal opinions. Since 1964, most California appellate court opinions have been unreported.

One of the most damaging criticisms of Rule 967 is that it contains no guidance regarding the precendent value of unreported cases. If written but unreported cases have no precedent value it is likely that cases involving similar issues will reappear in court. Can the court refuse a petition for appeal where the petitioner is not only unaware but unable to obtain and read the applicable case law? This approach may unfortunately overburden the appellate courts, thus disrupting even the unified review procedure.

By comparison, South Dakota courts are not on the verge of being overwhelmed by case law in the same fashion as California or other more populous states. There may be some merit in beginning to develop a means of keeping the volume of complete cases reported at a minimum. A comparison problem attaches that the establishment of standards in South Dakota will not solve: the volume of case law published by the federal courts that is binding on the States and the volume of other States' case law that may have applicability in a given situation in South Dakota. It should be hastily added that South Dakota is in no way threatened by massive amounts of written opinions, yet.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:
If such limitation were going to be attempted, a rule similar to California's Rule 967 might be utilized.

Recommendation 6.1

Transcript Preparation

It is recommended that major efforts be made toward de-

veloping means of producing trial transcripts speedily. Funds should be provided to insure that a transcript of the evidence, or at least the necessary portions, is available within 30 days.

Commentary

The above recommendation urges that methods be sought to provide transcripts not only rapidly but inexpensively by whatever methods are currently available. Granted, the solution should not be extended to complete computerization of such services. One reason being the prohibitive cost.

A study should ultimately be undertaken (supported by the courts, for example) to experiment with different methods that might perhaps reduce both costs and time.

CHAPTER SEVEN
THE JUDICIARY

Courts Standard 7.1
Judicial Selection

The selection of judges should be based on merit qualifications for judicial office. A selection process should aggressively seek out the best potential judicial candidates through the participation of the bench, the organized bar, law schools and the lay public.

Judges should be selected by the South Dakota Commission on Judicial Qualifications. Representatives from the judiciary, the general public, and the legal profession should organize into a 7-member commission for the purpose of nominating a slate of qualified candidates eligible to fill judicial vacancies. The Governor should fill vacancies from this list.

Lawyer members of the commission appointed by the president of the state bar should not be eligible for consideration for judicial vacancies until the expiration of their terms on the commission and those of the other members serving with them.

For the appointment procedure to function efficiently, the Commission staff should maintain an updated list of qualified potential nominees from which the Commission should draw names to be submitted to the Governor. The Commission should select a minimum of three persons to fill a judicial vacancy on the court, unless the Commission is convinced that there are not three qualified nominees.

Commentary

The South Dakota Courts Task Force on Criminal Justice Standards and Goals recognizes that the quality of the State's courts is closely related to the quality of its judicial personnel. A most crucial factor in determining the quality of judges is the method of judicial selection.

The thrust of this standard proposes that the South Dakota Commission on Judicial Qualifications as established under SDCL 16-1A-2 (1976) act as a nominating commission for the purpose of recommending a slate of at least three nominees to the Governor for judicial appointment in the event of a judicial vacancy. The Commission would have the responsibility to seek the best potential candidates to place before the Governor. The Governor would fill vacancies from the list of candidates submitted by the Commission.

The Courts Task Force recognizes the need for input from the lay public as well as from groups who are in the best position to judge the qualifications of potential candidates. Under present statute (SDCL 16-1A-2, 1976) two lay citizens who are not of the same political party are appointed by the Governor to serve on the Commission. Two circuit judges, who are the judicial appointees to the Commission, are in a position to assess the qualifications of potential candidates in terms of the requirements for judicial office. Finally, the three bar members of the Commission, no more than two of whom may be of the same political party, and who are appointed by the president of the State bar, are in a position to assess their collegues on the basis of their integrity and professional skills. The non-political character of the Commission is designed to diminish the effect of political considerations in the judicial selection process.

According to the standard, lawyer members appointed to the Commission by the president of the State bar would be unable to seek appointment to judicial office until after the expiration of their terms and those of the Commission members serving with them. This requirement is designed to eliminate possible conflicts of interest in the nominating process. Lawyer members who anticipated seeking judicial appointment should decline appointment to the Commission if a conflict is foreseen. The currently established term of office for a Commission member is four years. SDCL 16-1A-2 (1976).

It is expected that the Commission will carry on an exhaustive effort to identfy potential candidates for the bench. Names of qualified nominees should be sought in all segments of the bar, government, social agencies, business and private organizations.

The Commission is presently empowered to employ personnel for assistance in accomplishing its tasks. SDCL 16-1A-8 (1976). The National Advisory Commission (1973:145) suggests that the Commission staff do preliminary screening work to eliminate those candidates who are clearly unqualified or who lack interest. Candidates could be asked to fill out detailed questionnaires for the purpose of assessing their backgrounds and qualifications for these positions. A security check in cooperation with the FBI, the DCI, and the bar should be conducted for each candidate. The staff would then submit a report on the results of this investigation to the Commission on Judicial Qualifications.

When more than one vacancy must be filled, the Commission may either submit separate slates of candidates to the Governor or submit a longer list. If fewer than three names are submitted for a vacancy the Commission should certify that no other qualified persons are available.

This standard describes what is commonly referred to as a "merit plan" for the selection of the judiciary. It embodies certain characteristics of the "Missouri Plan" of gubernatorial appointment of judges from lists submitted by a judicial nominating commission. The "Missouri Plan" was developed by the ABA and the American Judicature Society and was first implemented in Missouri in 1940. Today, some form of merit selection plan is endorsed by virtually all national organizations that have conducted studies on alternative forms of judicial selection. The current trend is for an increasing number of states to consider and adopt this plan in some form.

Implementation

A. Agencies Involved:
   Commission on Judicial Qualifications.
   Supreme Court.
   Governor.
   State Bar Association.

B. Legislation:

Implementation of this standard would affect SDCL Title 16, Chapter 1A (1975) regarding the creation and powers of the Commission on Judicial Qualifications and SDCL Title 12, Chapter 9 (1976) regarding judicial nominations and elections. Implementation could affect Article V, Sections 7 and 9 of the Constitution of the State of South Dakota. Article V, Section 7 gives the Governor plenary power to make judicial appointments. Article V, Section 9 empowers the legislature

to designate the powers of the Commission on Judicial Qualifications. SDCL 16-1A (1976) could be amended by the legislature to enable the Commission on Judicial Qualifications to nominate judicial candidates under the plan outlined in this standard. A statute of this type would not be binding on the Governor because of the Governor's plenary power to make appointments. The Governor could utilize the Commission on a voluntary basis. An amendment to Article V, Section 7 of the Constitution of the State of South Dakota would be necessary to require the Governor to appoint judges from the list of nominees submitted by the Commission.

C. Administrative Actions:

Because the Supreme Court is empowered to establish rules for the Commission on Judicial Qualifications, these rules would have to be changed or supplemented by the Supreme Court to accomodate the judicial nominating role of the Commission.

D. Funding:

Additional funding would not be necessary since the Commission on Judicial Qualifications is presently funded through the Supreme Court budget.

Courts Standard 7.2

Judicial Tenure

A mandatory retirement age of 65 years should be set for all judges, subject to a provision enabling judges over that age to sit thereafter at the discretion of the Commission on Judicial Qualifications for limited periods of time.

Commentary

It is the belief of the Task Force that age 65 constitutes a reasonable age for mandatory retirement, since the likelihood of disablement increases with age. The demands of the bench and the complexities of the law require that a judge be in the best of health. Some judges have expressed the opinion that the present retirement age of 70 is too long a time to require a judge to sit before retirement.

However, for those judges who are willing and able to sit after age 65, there is a provision which enables a judge to do so for a limited period of time at the discretion of the Commission on Judicial Qualifications. The National Advisory Commission (1973:150) specifically recommends that a mandatory retirement age of 65 be established. The Model Judicial Article drafted by the Department of Justice supports the concept of the statutory establishment of a mandatory retirement age provided it does not fall below age 65.

Implementation

A. Agencies Involved:
Commission on Judicial Qualifications.
Courts.

B. Legislation:

Changes should be made in SDCL 16-1-4.1 (1976) and SDCL 16-1-31 (1976) which establish a mandatory retirement age of 70 for Supreme Court justices and Circuit Court judges respectively. According to Standard 7.2 this change would set the mandatory retirement age at 65. Regarding continued service after the age of retirement, SDCL 16-1-5 (1976) would have to be changed to empower the Commission on Judicial Qualifications to authorize the seating of retired justices or judges. This power presently rests with the Chief Justice of the Supreme Court. Similar changes should also be made in SDCL 16-16-32 (1976) and 16-12-10.1 (1976).

C. Administrative Actions:

Either the Supreme Court or, preferably, the Commission on Judicial Qualifications is advised to develop guidelines to determine appropriate situations requiring a judge to continue sitting on the bench for a limited period of time after retirement.

Courts Standard 7.3

Judicial Compensation

Judges should be compensated at a rate that adequately reflects their judicial responsibilities. The salaries and retirement benefits of the Federal judiciary should serve as a model for the State. Where appropriate, salaries and benefits should be increased during a judge's term of office.

Commentary

Unless judicial compensation is adequate, attracting and retaining the most competent and best qualified judicial personnel will become increasingly difficult. Many qualified attorneys are unwilling to leave their practices for judgeships because of the tremendous economic sacrifices involved. In a recent survey of South Dakota Circuit Court Judges, 86% of the judges who responded answered "no" when asked if judicial compensation is presently adequate. (22 out of 37 responded).

Judicial salaries and benefits should be designed to attract the most highly qualified personnel, while reflecting a recognition of the demands and skills involved in judicial office. The Federal government has recognized the need to compensate judges in a way that will maintain high standards. The Courts Task Force concurs with the National Advisory Commission (1973:152) in recommending that South Dakota use the salaries and benefits of the Federal judiciary in establishing compensation for its own judges.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:

Adjustments in salaries are dependent upon legislative action and should be reflected in the State statutes. See SDCL 16-1-3 (1976) and 16-6-5 (1976). Provisions of Title 3 regarding retirement benefits for judges may need to be adjusted. Increases in judicial salaries during terms of office would also depend upon legislative action.

C. Funding:

Salary requirements should be reflected in the Supreme Court budget and submitted to the South Dakota State Legislature. Salary and benefit increases are the financial responsibility of the State.

Courts Standard 7.4

Judicial Discipline and Removal

A judge should be subject to discipline or removal for permanent mental or physical disability seriously interfering with the performance of judicial duties, willful misconduct in office, willful and persistent failure to perform judicial duties, habitual intemperance, or conduct prejudicial to the administration of justice.

The Commission on Judicial Qualifications should handle matters of judicial discipline and removal. This commission is to be composed of judges elected by the judicial conference, lawyers elected by the bar, and at least two lay persons, of different political persuasions, appointed by the Governor. Whatever the size of the commission, no more than one third should be members of the judiciary. The commission should be empowered to investigate charges bearing on a judge's competence to continue on the bench and should be empowered to make recommendations to the State Supreme Court regarding their actions.

Commentary

Under the 1975 reorganization of the State's court system the South Dakota Legislature enacted legislation which fully satisfies the provisions of this standard.

Implementation

This standard has been implemented under SDCL 16-1A (1976).

Courts Standard 7.5

Judicial Education

The State of South Dakota should create and maintain a comprehensive program of continuing judicial education. Planning for this program should recognize the extent of commitment of judge time, both as faculty and as participants for such programs, that will be necessary. Funds necessary to prepare, administer, and conduct the programs and funds to permit judges to attend appropriate national and regional educational programs should be provided. The State's program should have the following features:

1. All new trial judges, within three years of assuming judicial office, should attend both local and national orientation programs as well as one of the national judicial education programs. The presiding judge in cooperation with the Supreme Court administrator should provide an orientation program for any new judge. This program should be held at the latest immediately after a new judge takes office.

2. The State should provide for judicial attendance at specialized subject matter programs and an annual state seminar for trial and appellate judges and magistrates.

3. The failure of any judge, without good cause, to pursue educational programs as prescribed in this standard should be considered as grounds for discipline or removal.

4. The State should prepare and maintain a statewide bench manual in procedural laws with forms, samples, rule requirements, and other information that a judge should have readily available. This should include sentencing alternatives and information concerning correctional programs and institutions.

5. The State should publish periodically information of interest to persons involved in the administration of justice. This should include articles of interest to judges, references to new literature in the judicial and correctional fields, and citations of important appellate and trial court decisions.

Commentary

As part of its effort to upgrade the criminal justice system in this State and improve its delivery of services, the South Dakota State Crime Commission has set the training and education of criminal justice personnel, including judicial personnel, as one of its chief planning priorities. Judges of the highest calibre must be persons who are willing to begin their terms on the bench in a spirit of learning and continue their educations throughout their judicial careers. The demands, complexities and changes in the law require that a judge approach judicial office in this spirit.

The judicial function is a specialized task apart from law school and legal practice. In recognition of this fact the English system has created special courses to prepare individuals to become judges. Such is not the case in the United States, however. The President's Commission on Law Enforcement and the Administration of Justice (1967:68) summarizes the problem:

> The American Trial Judge receives no formal training or apprenticeship in the judicial function. He generally assumes the bench with no knowledge of the art of judging other than perhaps some experience as a trial lawyer, an experience which rarely includes criminal practice.

Indeed, in a 1975 survey of South Dakota Circuit Court judges, 44% of judges responding (23 out of 37 responded) indicated that only one-fourth or less of their previous law experience had included criminal practice.

The standard specifies that new trial judges should attend local and national orientation programs within three years of assuming judicial office. The intention of the Courts Task Force at this time would be that South Dakota judges attend national orientation programs, with the excepion that newly selected and elected judges should participate in orientation programs immediately after assuming office, these programs to be established by the presiding judge of each circuit in cooperation with the Supreme Court administrator. The Task Force favors a local orientation program which would include visits to all institutions and facilities in which individuals may be incarcerated. The National Advisory Commission (1973:157) recommends that each state develop its own orientation program, such as the Wisconsin Judicial College, a one-week program for new trial judges. California has created the California College of Trial Judges to satisfy the training needs of judges, particularly those newly appointed. Colorado has done the same with its Colorado Institute for Newly Elected Trial Judges. Only 25% of South Dakota judges who responded to the 1975 survey (22 out of 37 responded) indicated that they had participated in any type of orientation program prior to or within three months of taking office. In addition 52% (23 out of 37 responded) reported that they had not

participated in even one judicial training conference or seminar within the previous year.

Several institutions and organizations have made judicial programs available, including the Institute of Judicial Administration, the American Academy of Judicial Education, the National College of the State Judiciary, and the National Council of Juvenile Court Judges. These seminars give judges the opportunity to examine important issues in criminal justice, changes in the law, and ideas and programs from other parts of the country. Furthermore, such programs supply much needed refresher and graduate courses, enabling judges to keep abreast of constantly changing issues in criminal justice and the law.

The standard advocates a requirement that judges participate in judicial education programs at the risk of discipline or removal for nonattendance without good cause. This standard underscores the importance the Courts Task Force has placed on initial and ongoing judicial education.

The creation and maintenance of a state-wide bench manual is another must for South Dakota. While some circuits have created such a manual, others have not. Nor is the content of the manual in each circuit the same, preventing uniformity throughout the State. It is recommended that the presiding judges of each circuit in cooperation with the Supreme Court administrator undertake the development and maintenance of such a manual.

Finally, in order to aid in the dissemination of information among criminal justice personnel and provide articles and references pertinent to the judicial field, it is recommended that the State periodically publish a newsletter containing these materials.

Implementation

A. Agencies Involved:
Supreme Court.
Supreme Court Administrator.
Presiding Judges.

B. Administrative Actions:

The Supreme Court administrator and the presiding judges are responsible for developing local orientation programs for newly elected judges. The presiding judges of each circuit in conjunction with the Supreme Court administrator are also directly responsible for the development and maintenance of a statewide bench manual.

The Supreme Court should amend the rules of the Commission on Judicial Qualifications, which outline grounds for inquiry regarding a judge, to include a provision that a judge's failure to pursue educational programs is also grounds for inquiry. See SDCL Appendix to Chapter 16-1A (1976). The Supreme Court should take action to include a judge's failure to pursue educational programs without good cause as grounds for discipline or removal.

C. Funding:

Educational funding and funding for the development of a statewide bench manual is the responsibility of the Legislature through the Supreme Court budget. LEAA funding could also be sought for these purposes.

CHAPTER EIGHT

THE LOWER COURTS

Courts Standard 8.1

Unification of the State Court System

State courts are to be organized into a unified judicial system financed by the State of South Dakota and administered through a statewide court administrator under the supervision of the Chief Justice of the State Supreme Court.

All trial courts should be unified into a single trial court with general criminal as well as civil jurisdiction. Criminal jurisdiction now in courts of limited jurisdiction should be placed in these unified trial courts of general jurisdiction, with the exception of certain traffic violations. The State Supreme Court should promulgate rules for the conduct of minor as well as major criminal prosecutions.

All judicial functions, except the issuance of search and arrest warrants, the fixing of bonds and recognizance and the acceptance of guilty pleas in cases involving petty offenses and Class 2 misdemeanors, should be performed by full-time judges. All judges should possess law degrees, be members of the bar and otherwise satisfy the qualifications of judicial personnel promulgated in Article V, Section 6 of the Constitution of the State of South Dakota.

A transcription or other record of the pretrial court proceedings and the trial should be kept in all criminal cases.

Commentary

Through recent amendments and changes in the law (SDCL 16-A, 1976) the State of South Dakota has created its Unified Judicial System. South Dakota is in compliance with Standard 8.1 in that under this system the circuit courts are administered by a statewide Supreme Court administrator who is in turn under the supervision of the Chief Justice of the Supreme Court. Yet, the magistrates who serve in South Dakota's courts of limited jurisdiction are primarily under the supervision of the presiding judges in their respective circuits. This situation has resulted in some lack of uniformity and control, even though the presiding judges are themselves under the supervision of the Supreme Court. Because of the newness of the system, some problems are to be expected, especially until rules of procedure are clearly defined, until magistrates become more familiar with the new system and until a uniform bench manual is completed. However, closer general supervision by the Supreme Court administrator is recommended to avoid the situation of neglect which has been the downfall of lower court systems in the past.

The National Advisory Commission (1973:161) has noted that problems with lower courts arise from their position as the "stepchild of the judicial system," which is characterized by inadequate facilities, resources and quality of personnel. South Dakota has perpetuated these same problems through its use of lay and part-time magistrates. This situation reflects some misunderstanding of the impact of the lower courts on the entire court system. Despite the fact that many youthful and first-time offenders are brought before magistrates' courts, the role of these courts in deterrence and prevention has not been considered. We forget that the magistrate's competency and the conduct of the court may form lasting impressions on defendants and shape their overall perceptions of the criminal justice system.

Magistrates are permitted to handle some criminal matters in South Dakota despite the fact that the overwhelming majority of magistrates in the State do not possess law degrees. The Courts Task Force has recognized that the immediate availability of a magistrate may be necessary in some cases and preferable to a situation in which access to a judicial officer would involve traveling a considerable distance. However, it is the consensus of the Task Force that all judicial functions should be handled by full-time judges, with the exception of the issuance of search and arrest warrants, the fixing of bonds and recognizance and the acceptance of guilty pleas in cases involving petty offenses and Class 2 misdemeanors.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:
Legislation which grants to magistrates powers beyond those specified in the standard would require repeal. See, for example, SDCL 16-12A (1976).

C. Administrative Actions:
The Supreme Court may wish to consider some action which increases the Supreme Court administrator's responsibilities for courts of limited jurisdiction.

D. Funding:
Additional judgeships may or may not be needed as the result of implemetation. Additional judgeships would call for more monies as well as changes in the law. See, for example SDCL 16-12A-3.1 (1976). It is conceivable that few, if any, additional judgeships would be needed if Standards 4.2 and 8.2 were implemented and the resources and workload of the courts were appropriately reallocated.

Courts Standard 8.2

Disposition of Petty Offenses and Class 2 Misdemeanors

Insofar as is consistent with the requirements of due process, minor traffic offenses should be disposed of by the imposition of a fine only. Serious traffic offenses should include but should not be limited to: driving while intoxicated, reckless driving, driving while a license is suspended or revoked, homicide by motor vehicle, and eluding police officers in a motor vehicle. Procedures for the disposition of petty offenses and Class 2 misdemeanors should include the following:

1. Violators should be permitted to enter pleas by mail, except that the arresting officer should have the discretion to require a court appearance under the following circumstances: (a) when the violation charged involves an accident or injury; (b) when the arresting officer believes that the defendant did not have in force a valid driver's license; and, (c) when the arresting officer believes the violation was hazardous or aggravated because of highway conditions, visibility, traffic, repetition or other circumstances.

2. A court trial, if desired by the alleged infractor, should be held.

Consideration should be given, in light of experience with traffic matters, to similar treatment of certain nontraffic matters such as public drunkenness.

Commentary

The majority of cases handled by magistrates' courts involve simple fact situations related to traffic violations. Most of these cases involve a plea of guilty and the payment of a fine. However, under present South Dakota law many traffic violations are considered misdemeanors punishable by up to 30 days in jail and/or up to a $100.00 fine. Standard 8.2 would take these minor violations out of the realm of the criminal offense. Implementation of the standard would be more practical than radical, since sentences for minor traffic violations are routinely suspended. Presiding judges are presently authorized to provide for the payment of fines by mail. SDCL 16-1-21 (7) (8) (1976). Circumstances under which the State's presiding judges require a court appearance are reflected in this standard. The standard recognizes the seriousness of certain other traffic offenses and the need to handle these more formally.

The standard offers the minor traffic violator the option of a court trial, with the understanding that all the requirements of due process will be provided. A court trial refers to a trial before a judge but does not involve a jury.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:
In order to implement this standard various traffic laws under Title 32 of South Dakota Compiled Laws would require rewriting, thus making certain traffic violations which are misdemeanors and presently punishable by a fine and/or imprisonment punishable by a fine only.

CHAPTER NINE

COURT ADMINISTRATION

Courts Standard 9.1

State Court Administration

An office of State court administrator should be established. The State court administrator should be selected by the Chief Justice of the State Supreme Court and should be subject to removal by the same authority. The performance of the State court administrator should be evaluated periodically by performance standards adopted by the State Supreme Court.

The State court administrator should, subject to the control of the State Supreme Court, recommend policies for the administration of the State's courts. He/she should also recommend and implement guidelines for the execution of these policies, and for monitoring and reporting their execution. Specifically, the State court administrator should recommend and the Chief Justice should establish policies and guidelines dealing with the following:

1. Budgets. A budget for the operation of the entire court system should be prepared by the Chief Justice with the assistance of the State court administrator. This budget should be submitted by the Chief Justice directly to the State Legislature.

2. Personnel Policies. The State court administrator should recommend and the Chief Justice should establish uniform personnel policies and procedures governing recruitment, hiring, removal, compensation, and training of all non-judicial employees of the courts.

3. Information Compilation and Dissemination. The State court administrator should develop a statewide information system. This system should include both statistics and narrative regarding the operation of the entire State court system. At least yearly, the State court administrator should issue an official report to the public and the legislature containing information regarding the operation of the courts.

4. Control of Fiscal Operations. The State court administrator should be responsible for policies and guidelines relating to accounting and auditing, as well as procurement and disbursement for the entire statewide court system.

5. Liaison Duties. The State court administrator should maintain liaison with government and private organizations, labor and management, and should handle statewide public relations.

6. Continual Evaluation and Recommendations. The State court administrator should continually evaluate the effectiveness of the court system and recommend needed changes.

7. Assignment of Judges. The State court administrator, under the direction of the Chief Justice, should assign judges on a statewide basis when required.

If the State court administrator has not already attended a court administration training institute or program, he/she should do so as soon as possible after assuming the duties of the position.

Commentary

The State of South Dakota is in general compliance with the standard. The State employs a State court administrator who serves at the pleasure of the Chief Justice of the Supreme Court. This position is authorized under Article V, Section 2 of the Constitution of the State of South Dakota, which empowers the Supreme Court to "appoint such court personnel as it deems necessary to serve at its pleasure."

Under the section dealing with budgets, the Courts Task Force has recommended that the Supreme Court submit its budget directly to the legislature rather than first submitting it to the executive branch as has been done in the past few years. This procedure complies with policies set by the Constitution of the State of South Dakota and is consistent with a traditional separation of powers among the judicial, executive and legislative branches of government. Budget information and advice could still be sought from the executive branch.

Because court management and administration are specialized functions, the standard urges that the State court administrator complete a relevant course of training either prior to or as soon as possible after assuming the administrator's position. A number of universities have instituted degree programs in court management and/or administration. The Institute for Court Management in Denver, Colorado regularly sponsors training programs of this type.

Implementation

A. Agencies Involved:
   Supreme Court.
   Supreme Court Administrator.
B. Administrative Actions:

The Supreme Court administrator has the ultimate responsibility for the satisfaction of the duties and requirements of this standard. As overseer of the administrator's office, the Chief Justice should insure that these standards are being met. Particular attention should be given to sections 3, 5, and 6 of the standard, since these duties are vulnerable to neglect and may not now be receiving the special attention they require.

Courts Standard 9.2

Presiding Judges and Administrative Policies of the Trial Court

Local administrative policy for the operation of each trial court should be set out, within guidelines established by the State Supreme Court, by the judge or judges making up that court. Each trial court consisting of more than one judge should meet, on a regular schedule with an agenda, to consider and resolve problems facing the court and to set policy for the operation of the court.

Ultimate local administrative judicial authority in each trial jurisdiction should be vested in a presiding judge. The presiding judge should be selected on the basis of administrative ability rather than seniority. However, as many administrative duties as possible should be assigned to a local circuit court administrative officer.

The functions of the presiding judge should be consistent with the statewide guidelines and should include the following:

1. Personnel Matters. Within the uniform statewide guidelines established by the State Supreme Court, the presiding

judge should have control over recruitment, removal, compensation, and training of nonjudicial employees of the court.

2. Trial court case assignment. Cases should be assigned under the supervision of the presiding judge. The presiding judge should apportion the business of the court among the trial judges as equally as possible and should reassign cases as convenience or necessity requires. In addition, the presiding judge should require that a judge to whom a case is assigned accept that case unless he/she is disqualified or the interests of justice require that the case not be heard by that judge. The presiding judge also should require that when a judge has finished or continued a matter that the judge immediately notify the presiding judge's administrative officer of that fact.

3. Judge Assignments. The presiding judge should prepare an orderly plan for judicial vacations, attendance at educational programs and similar matters. The plan should be approved by the judges of the court and should be consistent with the statewide guidelines. The presiding judge also should require any judge who intends to be absent from the court one-half day or more to notify the presiding judge well in advance of the contemplated absence. The presiding judge should have the power to assign judges to the various branches within the trial court.

4. Information Compilation. The presiding judge should have the responsibility for development and coordination of statistical and management information schemes.

5. Fiscal Matters. The presiding judge should have the responsibility for accounts as well as procurement and disbursing. The presiding judge also should prepare the court's proposed annual budget.

6. Court Policy Decisions. The presiding judge should appoint the standing and special committees of judges of the court necessary for the proper performance of the duties of the court. The presiding judge also should call meetings of all the judges as needed, and designate one of the other judges as acting presiding judge in cases involving absence or inability to act.

7. Rulemaking and Enforcement. The presiding judge should, with the assistance of appropriate committees, propose, compile and publish local rules for the conduct of the court's business. These rules should include such matters as the times for convening regular sessions of the court and should be submitted to the judges for their approval. The presiding judge should have authority to enforce these rules.

8. Liaison and Public Relations. The presiding judge should have responsibility for liaison with other court systems and other governmental and civic agencies. The presiding judges should represent the court in business, administrative, or public relations matters. When appropriate, the presiding judge should meet with (or designate other judges to meet with) committees of the bench, bar, and news media to review problems and promote understanding.

9. Improvement in the Functioning of the Court. The presiding judge should continually evaluate the effectiveness of the court in administering justice. The presiding judge should recommend changes in the organization, juridiction, operation, or procedures of the court when it is believed these would increase the effectiveness of the court.

Commentary

In 1975 the State of South Dakota joined the ranks of states that have undertaken major court reorganizations designed to improve caseflow, shorten delays and reduce court costs. Through the Unified Judicial System South Dakota reorganized its courts into nine judicial circuits, each served by a number of courts and judges and administered by a presiding judge appointed by the Chief Justice of the Supreme Court.

Reorganization has considerably changed the administrative activity of the courts. Because each judicial circuit encompasses judicial functions and an organization far greater than those of the district county and municipal courts previously, the need for administrative coordination has increased. The theme of centralized coordination, particularly in terms of policy and administration, is emphasized in Standard 9.2.

According to the standard, ultimate local administrative policy should be vested in the presiding judges of the circuits. SDCL 16-2-21 (1976) is in compliance with this standard. Because administrative ability is not necessarily a function of judicial experience, the standard emphasizes that presiding judges should be selected on the basis of administrative ability rather than seniority. The fact that the majority of the State's presiding judges have advocated special training for court administrators indicates their recognition that specialized skills are necessary to carry out the administrative duties of the courts.

The standard also points out the need for the judges of the circuit to meet regularly for the purpose of policy setting and problem resolution. One of the premises behind a Unified Judicial System is the need for this type of coordination. The National Advisory Commission (1973:181) views coordination in this way:

> A modern court is a company of equals operating under customs developed within the legal community over a period of several hundred years. Each judge is in many respects independent. But as a member of a larger organization, he is expected to relinquish some of his autonomy to the needs of the organization.

The standard outlines the specific functions of the presiding judge. In response to the need for statewide uniformity these functions should be consistent with guidelines established at the State level. See SDCL 16-2-21 (1976). These responsibilities are delegated to the presiding judge for a number of reasons. First, the presiding judge is in the best position to insure that procedures, such as the hiring, compensation and removal of judicial personnel, are applied uniformly across the circuit. Secondly, good principles of administaration require fixed responsibility in a central authority. This is true of any facet of court administration, though it is especially conspicuous in the handling of fiscal matters. The presiding judge, as a central authority, is in the best position to insure that the work of the judicial system is handled properly. He/she is the ultimate representative of the circuit and, therefore, must be assured some control in the operation of that cricuit. In matters that require an extensive degree of coordination and communication, trial court case assignment and judge assignments for example, one person must maintain supervisory authority and responsibility.

SDCL 16-1-21 (1976) does outline the "supervisory and administrative powers and duties" of the presiding judges of the State. Here is the basis for the implementation of Standard 9.2. At the same time the standard expressly advocates that presiding judges should delegate as many of these ad-

ministrative duties as possible to local circuit court administrative officers. This position will be discussed more thoroughly in the next standard. At the moment, it is enough to say that administrative duties will continue to infringe upon the judicial functions of the State's presiding judges until they are given some relief from the day-to-day administrative duties that presently consume large portions of their time.

Implementation

A. Agencies Involved:
Courts.
B. Administrative Actions:
Article V, Section 11 of the South Dakota Constitution empowers the Chief Justice to appoint a presiding judge for each circuit with such administrative authority as shall be prescribed in rules set out by the Supreme Court. Such authority is specifically vested in the presiding judges and outlined by Supreme Court rules included in SDCL 16-2-21 (1976). Thus no legislation is required for the implementation of these standards. The remainder of the standard, outlining the functions of the presiding judge and the use of a local administrative officer, are the primary responsibility of the presiding judges of each circuit through rules established by the Supreme Court.

Courts Standard 9.3

Circuit Court Administrative Officers

Each judicial circuit should have a full-time circuit court administrative officer appointed by the presiding judge.

The functions of circuit court administrative officers should include the following:

1. Implementation of the statewide court policies of the Unified Judicial System;

2. Assistance to the State court administrator in setting statewide policies;

3. Preparation and submission of the budget for the court or courts with which they are concerned;

4. Recruiting, hiring, training, evaluating, and monitoring personnel of the court or courts with which they are concerned;

5. Management of space, equipment and facilities of the court or courts with which they are concerned;

6. Dissemination of information concerning the court or courts with which they are concerned;

7. Procurement of supplies and services for the court or courts with which they are concerned;

8. Preparation of reports and services for the court or courts with which they are concerned;

9. Juror management; and

10. Study and improvement of caseflow, time standards and calendaring.

Circuit court administrative officers should discharge their functions within the guidelines set by the State Supreme Court.

Commentary

A prerequisite for obtaining long-term operational efficiency is the employment of competent management personnel at various levels of the court system. As has been established, administration demands a certain type of know-how and the obligation of large amounts of time. Presently on the circuit level, presiding judges must either take precious time away from judicial duties or neglect the court management aspects of their jobs. In addition, presiding judges are not given special training in court administration.

This standard intends that the services of a local circuit court administrative officer be retained in each judicial circuit. It is envisioned that administrative officers would work closely with the presiding judges, who would retain ultimate control and responsibility for administration in each circuit. The administrative officers would assume the daily management and administrative functions of the court. These should include but not be limited to the duties listed in this standard. These officers would be employed to devote their full time and particular expertise to those activities which are properly among the administrative and management responsibilities of the courts. The presiding judges would be free to devote the majority of their time to primary judicial responsibilities. The American Bar Association (1970) has also endorsed a structure of subordinate court executives in each judicial unit to handle duties which generally parallel those duties outlined above.

Implementation

A. Agencies Involved:
Courts.
B. Legislation:
Constitutional and legislative grounds for the appointment of circuit court administrative officers now exists under Article V, Section 2 of the Constitution of the State of South Dakota and SDCL 16-2-21 para. 3 (1976).
C. Administrative Actions:
The Supreme Court has the responsibility and prerogative to appoint administrative officers in each judicial circuit. The assignment of an administrative officer for the fulfillment of the duties outlined in these standards would be the responsibility of the presiding judges of each circuit.
D. Funding:
Funding for this purpose would be included in the Supreme Court budget and appropriated by the South Dakota Legislature.

Courts Standard 9.4

Caseflow Management

Ultimate responsibility for the management and movement of cases should rest with the judges of the trial court. In discharging this responsibility, the following steps should be taken:

1. Scheduling of cases should be delegated to circuit court administrators, and care should be taken that defense attorneys and prosecutors do not exercise an improper influence on scheduling;

2. Recordkeeping should be delegated to nonjudicial personnel;

3. Subject-in-process statistics, focusing upon the offender at each stage of the criminal process, should be developed to provide information concerning elapsed time between events in the flow of cases, recirculations (multiple actions concern-

ing the same defendant), and defendants released at various stages of the court process.

4. The flow of cases should be constantly monitored by the presiding judge, and the status of the court calendar should be reported to the presiding judge at least once each month.

5. The presiding judge should assign judges to areas of the court caseload that require special attention.

Commentary

Ultimately the movement of cases is the responsibility of each trial judge. In discussing ways to reduce backlog Judge Roger Waybright (1969:35) of Florida's Fourth Judicial District offers this advice:

> . . . The basic technique for reduction of delay is simple: a judge must adopt and apply the philosophy that every case assigned to him becomes his personal responsibility the moment it is filed.

A successful caseflow management scheme should have a supervising judge with the power and personnel to make workable administrative decisions and competent nonjudicial personnel able to assume and carry out responsibilities such as scheduling and record-keeping. According to Standard 9.4 the presiding judge would be expected to monitor caseflow through, at minimum, monthly reports on the status of the court calendar. The development of subject-in-process statistics focusing upon the offender at each stage of the criminal process would enable the presiding judge to spot such problems as time lapses in caseflow and multiple actions. However, the presiding judge must be in a position to attack these problems and apply solutions. When a backlog occurs in some portion of the caseload, the presiding judge should apply additional resources to alleviate the problem.

Thus far little caseflow monitoring has been done in South Dakota. Scheduling authorities are diffused. No one person is accountable. The above standard would help to preclude and alleviate problems related to caseflow management. As Senator Tydings (1966:47) has noted, "Control of the docket, the assignment of judges to cases, and the use of supporting personnel are all related elements of a total administrative picture . . . They (these decisions) are placed in the hands of a single judge having the power to enforce his administrative judgement." According to standard 9.4, the monitoring of caseflow would remain among the administrative responsibilities of the presiding judge.

Implementation

A. Agencies Involved:
Courts.

B. Administrative Actions:

The standard fixes ultimate responsibility for the movement and flow of cases with each circuit judge. That is, judges should be individually responsible for their own caseflow. Over and above this responsibility the presiding judges must assume general supervision and control of caseflow. This control would be part of the presiding judge's responsibility to supervise calendaring and court personnel as indicated in SDCL 16-2-21 (1976). Implementation relies upon the responsiveness of the judges of the circuit courts.

Courts Standard 9.5
Coordinating Councils

All segments of the criminal justice system should meet regularly to discuss related problems.

Commentary

The various agencies of the criminal justice system in South Dakota do maintain associations and coordinate efforts from time to time. However, informal and irregular meetings to exchange information, conciliate, or respond to crisis situations do not have the planning implications that are necessary for continuous coordination. The standard intends that criminal justice agencies meet on a regular basis to discuss problems and mutual concerns and develop solutions. No component of the criminal justice system can exist in a vacuum because of the effect its policy decisions may have on other components of the system. Because the criminal justice system is a working process composed of parts, these parts must work together to improve the functioning of the whole. Misunderstandings and resentments grow when agencies of the system are oblivious to the concerns of other agencies. This standard calls for the type of coordination and communication which is necessary for a true systems approach to criminal justice.

Implementation

A. Agencies Involved:
All criminal justice agencies.

B. Administrative Actions:

Implementation of this standard will depend upon the efforts of the courts and all agencies of the criminal justice system to coordinate and cooperate with one another. Judges and criminal justice administrators should take ultimate responsibility to insure that they and their personnel meet regularly for this purpose.

Courts Standard 9.6
Public Input into Court Administration

The presiding judge of each circuit should establish a method for public interchange between judicial and nonjudicial members of the court's staff and interested members of the criminal justice system and the community.

Commentary

The presiding judge should provide a means whereby members of the public and the criminal justice system can meet to exchange information. Some circuits have tried a public hearing approach. The National Advisory Commission (1973: 191) advocates a regular forum composed of members of the lay public as well as court personnel and members of the

defense and prosecution. Members might be drawn from colleges and universities, churches, and civic and minority groups. The standard does not limit itself to any one method of implementation. The intention is rather to foster an exchange with the public, to increase responsiveness to the public and to make the court available to questions, suggestions and public concern. Other members of the criminal justice community should be encouraged to attend and participate in these exchanges of information with the public.

Implementation

A. Agencies Involved:
Courts.

B. Administrative Actions:

Implementation of this standard is the primary responsibility of the presiding judges of each circuit. The cooperation of the criminal justice community, the public and judicial and nonjudicial court personnel should be encouraged.

CHAPTER TEN

COURT-COMMUNITY RELATIONS

Courts Standard 10.1

Courthouse Physical Facilities

Adequate physical facilities should be provided for court processing of criminal defendants. These facilities include the courthouse structure itself, and such internal components as the courtroom and its adjuncts, and facilities and conveniences for witnesses, jurors, and attorneys. Facilities provided should conform to the following requirements:

1. The courthouse structure should be adequate in design and space in terms of the functions housed within and the population served. In areas served by a single judge, adequate facilities should be provided in an appropriate public place. In metropolitan areas where the civil and criminal litigation is substantial and is served by the same personnel, there should be one centrally located courthouse. All rooms in the courthouse should be properly lighted, heated, and air-conditioned.

2. The detention facility should be near the courthouse.

3. The courtroom should be designed to facilitate interchange among the participants in the proceedings. The floor plan and acoustics should enable the judge and the jury to see and hear the complete proceedings. A jury room, judges' chambers, staff room, and detention area should be convenient to each courtroom.

4. Each judge should have access to a library containing the following: the annotated laws of the State, the State code of criminal procedure, the municipal code, the United States code annotated, the State appellate reports, the U.S. Supreme Court reports, the Federal courts of appeals and district court reports, citators covering all reports and statutes in the library, digests for State and Federal cases, a legal reference work digesting law in general, a form book of approved jury instructions, legal treatises on evidence and criminal law, criminal law and U.S. Supreme Court reporters published weekly, looseleaf services related to criminal law, and if available, an index to the State appellate brief bank.

5. Provision should be made for witnesses waiting and assembly rooms. Separate rooms for prosecution and defense witnesses should be provided. The rooms should be large enough to accomodate the number of witnesses expected. They should be comfortably furnished and adequately lighted.

6. Juror privacy should be maintained.

7. A lawyer's workroom should be available in the courthouse for public and private lawyers. The room should be furnished with desks or tables. It should be located near a law library. There also should be rooms in the courthouse where defense attorneys can talk privately with their clients without compromising the security needed.

8. The physical facilities described in this standard should be clean and serviceable at all times.

Commentary

Only recently has the legal profession taken an interest in and set standards for courthouse facilities. In the past, when a courthouse was to be built, counties had little to guide them. While infinite attention was given to problems of judicial management and administration, little connection was seen between the courthouse physical unit and the administrative improvements that were sought.

However, observers are finding that the condition of the physical environment is directly related to the amount of business a judge can handle. The variety of business, juvenile, probate, and criminal, handled in the state's courts, the spatial needs and the activities of participants, judges, jurors, clerks, lawyers, witnesses, and the impact on the public are just some of the reasons why greater attention must be given to the design and maintenance of courthouse facilities. William S. Fort (1969:29), a pioneer in the area, has expressed his belief that, "a properly designed facility for the administration of justice could increase the effective work product of a judge by perhaps 20 percent."

Badly designed court facilities, where judges and jury cannot see or hear adequately, where lawyers are afforded no privacy to consult with clients, and where defense and prosecution witnesses must wait in the same areas, present an obstacle to the effective administration of justice. Each of these conditions exist in varying degrees within some South Dakota court facilities. In a 1975 survey of South Dakota circuit judges (22 out of 37 responded) a large proportion (42%) disagreed at least somewhat that court facilities are well-designed and well furnished. Some (29% of 21 responding) indicated dissatisfaction with the adequacy of lighting, heating and air-conditioning, while others (27.5% of 22 responding) expressed similar dissatisfaction on the question of space adequacy.

The provisions of Standard 10.1 are designed to alleviate some of the most obvious problems presently confronting court facilities in South Dakota. These provisions, advocating appropriate facilities for court participants and proper care and maintenance of the courthouse facilities, are basics to good court management. Other and more detailed standards are available in two excellent works on this subject, the American Courtroom, a book written by the American Bar Association and the American Institute of Architects Joint Committee on Design of Courtrooms and Court Facilities (Ann Arbor: Edward Brothers, 1973) and "Space Management and the Courts" (1973), a monograph published by the National Institute of Law Enforcement and Criminal Justice.

The Courts Task Force recommends that the provisions of this standard be incorporated into all new courthouse facilities and all courthouse renovation projects in the State. The Task Force recognizes that counties may consider implementation a hardship, calling for expensive rennovation or reconstruction. The Task Force encourages the counties to use existing facilities in an innovative fashion until renovation or reconstruction can be undertaken. For example, empty courtrooms or offices could be used as witness assembly rooms, consultation rooms or lawyers' workrooms. These changes would require minimal, if any, additional funding. Otherwise, emphasis should be on remodeling rather than new construction where practical.

Implementation

A. Agencies Involved:
Counties.
Courts.
Supreme Court administrator.

B. Administrative Actions:

Because the counties have ultimate responsibility to provide court facilities, the county commissions are primarily responsible for the implementation of these standards. In addition, circuit court personnel and the Supreme Court administrator should urge and support these changes and offer technical assistance.

C. Funding:

The county budget would be the source of funds for maintenance, repairs, renovation and reconstruction as needed.

Courts Standard 10.2

Court Information and Service Facilities

Facilities and procedures should be established to provide information concerning court processes to the public and to participants in the criminal justice system:

1. Information should be strategically placed at the courthouse entrance to direct defendants (and their friends and relatives), witnesses, jurors and spectators to their destinations.

2. Street signs should be posted on major highways and streets into and throughout a town giving directions to all court facilities.

3. The prosecutor and the court should establish procedures whereby witnesses requesting information relating to cases or court appearances in which they are involved may do so by telephone.

4. The judge should instruct each jury panel, prior to its members sitting in any case, concerning its responsibilities, its conduct and the proceedings of a criminal trial. Each juror should be given a handbook that restates these matters.

Commentary

Standard 10.2 is designed to facilitate access to the courts by both participants and the public. Although the public has the right to attend trials and hearings as spectators in most cases, citizens are discouraged from doing so when they are denied some conspicuous means of learning court schedules and hearing locations. Adverse perceptions of the criminal justice system arise when citizens are denied opportunities to gain accurate information and see the courts as they operate. In addition, courts cannot operate smoothly or on schedule when people wander in and out of the courtroom and witnesses and participants arrive late or not at all because of problems in obtaining location or scheduling information.

To alleviate these problems, simple means of providing location and scheduling information are outlined in these standards. The courts cannot but benefit if the public attitude is enlightened by access to the courts. Ease of access is one way in which courts can become available, responsive and better understood. Each circuit court and the respective counties should take action to facilitate access to the courts where necessary through the simple procedures outlined above.

The standard also endorses the routine use of jury instructions and handbooks for jurors. Many persons, when they serve as jurors, are seeing the court process for the first time. Many jurors do not understand the nature of the court process, their responsibilities within that process, or the total implications of the decisions they may make. No one should believe that an effective, just or fair court proceeding can take place if the participants do not understand the steps in that proceeding.

Pattern jury instructions and a juror handbook would help to alleviate these problems. The majority of state supreme courts, local judges or bar associations have taken the responsibility for developing pattern jury instructions. A number of states, California, for example, have developed juror handbooks. The fact that a majority of South Dakota judges (54% of those responding) do not routinely instruct their juries should prompt the South Dakota judicial system to implement this standard.

Implementation

A. Agencies Involved:

Counties.
Courts.
Prosecutors.
Supreme Court administrator.
State Bar Association.

B. Administrative Actions:

The counties are responsible for providing information, is indicated in the standard, designed to direct persons to their courthouse destinations. The circuit courts and State Bar Association could assist by encouraging the counties to act on this standard.

The prosecutors and courts are responsible for developing a system whereby persons can request hearing information by telephone. This system should be well publicized.

The presiding judges of the circuit courts in conjunction with all other circuit court judges are responsible for developing a set of pattern jury instructions and a juror handbook for the State's judicial system. The Supreme Court administrator's office should take responsibility for the printing and distribution of this material. All judges are responsible for the use of the jury instructions and handbook in their courts. The South Dakota State Bar Association would be an appropriate source of technical assistance and support.

C. Funding:

Funding for parts 1 and 2 of the standard should be provided by the counties, since these standards deal with court facilities. Monies for the development and publication of pattern jury instructions and a juror handbook would be the responsibility of the court system as an appropriation within the Supreme Court budget.

Courts Standard 10.3

Court Public Information and Education Programs

The court, the news media, the public, and the bar should have coordinate responsibility for informing and educating the public concerning the functioning of the courts. The court should pursue an active role in this process:

1. Each court should appoint a public information officer to provide liaison between courts and the news media. Where a court has a circuit court administrator, he/she should act as the public information officer or should designate someone in the office with the approval of the court to perform this function. The public information officer should:

a. Prepare releases, approved by the court, regarding case dispositions of public interest;

b. Prepare releases describing items of court operation and administration that may be of interest to the public;

c. Answer inquiries from the news media; and

d. Specify guidelines for media coverage of trials as approved by the courts.

2. The State Supreme Court should retain the services of a public information officer who is an experienced professional journalist and who can supply court news in usable form for the working press.

3. The court should take affirmative action to educate and inform the public of the function and activities of the court. This should include:

a. The issuance of periodic reports concerning the court's workload, accomplishments and changes in procedure;

b. The issuance of handbooks for court employees concerning their functions;

c. Preparation of educational pamphlets describing the functions of the court for the general public and for use in schools;

d. Preparation of handbooks for jurors explaining their function and pamphlets for defendants explaining their rights;

e. Organization of tours of the court; and

f. Personal participation by the judges and court personnel in community activities.

These functions should be performed by the court information officer, by the Supreme Court administrator's office, by associations of judges, or by individual judges.

4. The court should encourage citizen groups to inform themselves of the functions and activities of the courts and in turn share this information with other members of the public.

5. The court should work together with bar associations to educate the public regarding the law and the courts. The judiciary and the bar should cooperate by arranging joint and individual speaking programs and by preparing written materials for public dissemination.

Commentary

The courts, the bar association and the press may wonder who has the responsibility for educating the public about the courts. Yet, it may be more to the point to ask who does educate the public about the courts. The courts do receive publicity, but this is either in the form of routine court notices or coverage of the more controversial or sensational cases in the State. Neither types of press coverage afford the public a true understanding of the court process.

Sometimes the public receives little or no information about the courts. Most persons are never involved with the court system. The cases which are given press coverage are usually seen as isolated events and seldom connected with the system in which they operate. Some information may be gained through stories, television or movies. Unfortunately these are often idealized versions which form an inaccurate basis of comparison to the real world of the court system. Many people receive their impressions of the court system through "war stories" told by others. Yet these are usually isolated events told by persons who themselves have an unclear understanding of the system.

This failure to provide information to the public has damaged the reputation of the courts. This situation is most clearly evident during judicial elections. Since judges rarely receive publicity except at election time, many uninformed voters are unwilling to vote or do vote, but on the basis of issues other than performance in office. It is not unusual for a judge to lose an election because he or she made the right decision on a controversial issue at the wrong time. Sporadic coverage of the courts and judiciary fails to provide an honest overview of the duties and responsibilities of that office. An Alabama newspaper publisher (Martin, 1973:190) once commented, "The judiciary is the least understood of the three branches of government; yet it does the least to assist the media in truly understanding the function of the judicial process."

Standard 10.3 addresses itself to the need for public information and education programs about the courts. Because the courts do not operate in a vacuum, the standard calls for coordinate responsibility to be assumed by the courts, the bar association, the news media and the public itself. Specifically, each circuit should obtain the services of a public information officer who can provide liaison with the news media and insure accurate, well-rounded and regular coverage in the press. The standard also states that the Supreme Court should employ the services of a public information officer who is an experienced, professional journalist. Too often court press releases, because they are not written in journalistic style, must be revised and rewritten. Public information officers should have both an understanding of the court system and a feeling for the needs of the press. These persons would be in a position to insure that the concepts as well as substance of court decisions are covered, insure that the media is available to obtain all the facts, and assist in regulating media coverage in the courtroom — where the media may sit and set up equipment, how much space will be allotted, types of equipment that can be accomodated and the appropriate locations for interviews. Cooperation with the media can result in more accurate and less disruptive coverage of the court's activities.

The final three provisions of the standard point out activities that should form part of a program to educate citizens about the courts. The use of employee handbooks, information pamphlets, speaker programs and court tours are easily implemented methods for reaching a broad segment of people in an educational effort that can benefit both the public and the courts.

Implementation

A. Agencies Involved:
   Courts.
   Press.
   State Bar Association.

B. Administrative Actions:

Standard 10.3 specifically fixes responsibility for public education with the courts, the news media, the public and the bar. However, the primary recommendations of this standard are under the authority of the courts. Specifically, the courts should appoint public information officers to act as liaisons between the courts and the news media. This should be the responsibility of the presiding judges with the authorization of the Supreme Court. The Supreme Court also has the responsibility for appointing a public information officer at the

State level. The presiding judges at the circuit level and the Supreme Court at the State level should cooperate in establishing the duties of these officers. Specific recommendations on this subject are included in the standard. The presiding judges in conjunction with the court administrative officers and court public information officers should initiate the public education recommendations as outlined in points 3, 4 and 5.

C. Funding:

No additional personnel would be needed to fulfill this standard at the circuit level. (See Standard 9.3 regarding the funding of circuit court administrative officers.) Funding for the implementation of a public information officer at the State level should be provided through the Supreme Court budget.

Courts Standard 10.4

Representativeness of Court Personnel

Court personnel should be representative of the community served by the court. Special attention should be given to the recruitment of members of minority groups.

Commentary

If the courts are to retain the support of the community they must be representative of the communities they serve. Racial, ethnic or other groups may not see the court as a viable or legitimate public institution if they are denied the opportunity to take part in court operations. Opportunities for employment of their members may affect the way in which these groups perceive the fairness and equality of justice administered by the courts. In order to impart an image of equality and public service each South Dakota court should make a concentrated effort to draw its personnel from all representative segments of the community with special emphasis upon the recruitment of minority personnel.

Implementation

A. Agencies Involved:
Courts.
State court personnel officer.
Supreme Court administrator.

B. Administrative Actions:

Emphasis in this regard should be reflected in court hiring policies.

Courts Standard 10.5

Participation in Criminal Justice Planning

Judges and court personnel should participate in criminal justice planning activities as a means of disseminating information concerning the court system and of furthering the objective of coordination among agencies of the criminal justice system.

Commentary

Coordination among agencies of the criminal justice system is necessary if the entire criminal justice process is to operate at its most efficient level. The decisions and activities of the courts have a grave impact on other criminal justice components. The types of sentence imposed by the court may determine an offender's eligibility for a rehabilitation program, the period of time in which the offender must remain in the program and perhaps the offender's attitude toward this program. On the other hand, the effectiveness of correctional programs helps to determine whether or not an offender reappears in court. This is one of an infinite variety of interrelationships existing between the courts and other segments of the criminal justice system. Such interrelationships require cooperation and mutual input into programs and policy decisions. The policies of police departments, defense and prosecuting attorneys and corrections programs all affect the amount and type of caseload which a court must handle. The policies of the court do much to determine the future of that caseload.

Aside from the obvious goals of disseminating information and furthering coordination, the existence or absence of court participation in criminal justice planning does much to determine the image of the court in the eyes of other agencies of the criminal justice system. In expressing an opinion on this point the National Advisory Commission (1973:207) notes that nonparticipation can bring the courts into disrepute by suggesting to the public that the courts are not interested in or are unsympathetic toward the goals and programs of other criminal justice agencies.

Implementation

A. Agencies Involved:
Courts.

Courts Standard 10.6

Production of Witnesses

Prosecution and defense witnesses should be called only when their appearances are of value to the court. No more witnesses should be called than are necessary.

1. Witnesses Other Than Police Officers. Steps that should be taken to minimize the burden of testifying imposed upon witnesses other than police officers should include the following:

a. Prosecutors and defense counsel should carefully review formal requirements of law and practical necessity and require the attendance only of those witnesses whose testimony is required by law or would be of value in resolving issues to be litigated.

b. Procedures should be instituted to place certain witnesses on telephone alert. To insure that such a procedure will be capable of producing witnesses on short notice on the court date, citizen witnesses should be required as early as possible to identify whether and how they may be contacted by telephone on court business days and whether, if so contacted, they can appear at court within 2 hours of such notification. Witnesses who appear likely to respond to telephone notification should be identified by both the prosecution and the defense and placed on telephone alert. On the morning of each court date, the prosecutor and defense counsel should determine the status of cases on which witnesses are on alert and should notify promptly those witnesses whose presence will be required later in the day. Witnesses who unreasonably delay their arrival in court after

such notification should not be placed on telephone alert for subsequent appearances.

c. Upon the initiation of criminal proceedings or as soon thereafter as possible, the prosecutor and defense counsel should ask their witnesses which future dates would be particularly inconvenient for their appearance at court. The scheduling authority should be apprised of these dates and should, insofar as is possible, avoid scheduling court appearances requiring the witnesses' attendance on those dates.

2. Police Officers. Special efforts should be made to avoid having police officers spend unnecessary time making court appearances. Among the steps that should be taken are the following:

a. Upon production of the defendant before a magistrate, the arresting police officer should be excused from further appearances in the case unless the prosecutor requires the attendance of the police officer for any particular proceeding.

b. Police agencies should establish procedures whereby police officers may undertake their regular police duties and at the same time be available for prompt appearance at court when a notification that such appearance is necessary is communicated to police command. Whenever possible, this procedure should be used.

c. Routine custodial duties relating to the processing of a criminal case should be undertaken by a central officer to relieve the individual arresting officer of these duties. Electronic document transmission equipment should be used when feasible in place of police transportation of documents to court.

d. Police agencies should provide to the prosecuting attorney the dates on which each police officer cannot be available. Insofar as possible, scheduling should inconvenience the officer and the officer's department as little as possible.

Commentary

Witnesses are sometimes asked to appear in court without proper consideration for the necessity of this appearance. This is especially true when police officers are required to appear at initial hearings. Inadequate recognition has been given to the burden a witness must bear in terms of both time and money. Witnesses who must await a court appearance for a number of hours, particularly at South Dakota's four dollar a day compensation rate (SDCL 19-5-1, 1976), make a rather large sacrifice.

With the belief that every effort should be made to lessen this burden, the standard first recommends that lawyers review requirements of law and practical necessity to insure that only those witnesses whose appearances are absolutely necessary to the case be required to appear. If an appearance is required the prosecutor or defense attorney should ascertain which dates would be particularly inconvenient for the witness and should make efforts to avoid these dates if possible. Citizen witnesses should be placed on telephone alert to avoid long waits and unnecessary absences from home or work. This standard may be particularly relevant in South Dakota, where circuits cover large areas and necessitate considerable travel by witnesses in some instances. A telephone alert system would lessen the likelihood that a witness would travel a long distance only to find the hearing postponed or delayed.

Police officers are frequently required to spend on and off duty time in court. According to the National Advisory Commission Task Force on Courts (1973:209) recent studies show that tax dollars can be saved by eliminating unnecessary police appearances. In one New York City borough, police officers were no longer required to attend a defendant's initial appearance. This policy resulted in a savings over a period of four months of $205,224. The Philadelphia District Attorney stopped requiring police officers to appear before the grand jury. A police report was read instead. In 1969 this procedure saved the city $67,047. A telephone alert procedure was instituted in the District Attorneys' offices of Manhatten and Brooklyn, New York. Both police and citizen witnesses were placed on telephone alert. The savings to police alone was approximately $150,000.

Optimal scheduling methods should consider the availability and convenience of witnesses in scheduling court appearances. By insuring that witnesses are able to appear, the courts will eliminate some delay or postponements due to their nonappearance. Because the State's police departments must patrol large areas with a limited number of officers, rural communities would particularly benefit from a program that eliminates time wasted while an officer waits to testify in court.

Specifically the standard advocates a number of procedures to conserve time police officers must spend in court. First, after an officer presents a defendant before a magistrate, the officer should be excused unless his/her presence is absolutely necessary to the proceedings. Secondly, an officer who is scheduled to appear should be allowed to resume regular duties but at the same time be available for prompt appearance if that becomes necessary. This situation has been a particular problem for officers who work during a night shift but who must appear in court when it is in session during the day. This problem recently contributed to the implementation of a fine and bond system in South Dakota. Third, routine custodial duties relating to the court process should be made the responsibility of a single officer. This practice offers a number of advantages. Responsibility for the handling of evidence and property is fixed. The chain of evidence is more easily preserved when one rather than a number of officers are in charge. Also, testimony time is saved because there is no longer the necessity for a number of officers to establish a chain of evidence or make reports. Document transmission equipment should also be used where feasible, since this contributes to large savings of officer time. Finally, information concerning the availability of officer witnesses should be obtained by the prosecutor so court dates can be scheduled accordingly. Because so much officer time is spent in court, attempts should be made to inconvenience the officer and the police department as little as possible.

Implementation

A. Agencies Involved:
Prosecutors.
Police.
Courts.
Defense attorneys.

Courts Standard 10.7

Compensation of Witnesses

Police officer witnesses should be compensated for their attendance at criminal court proceedings at a rate equal to that at which they would be compensated were they performing other official duties at the time of the court appearance. Compensation should cover the actual time spent in the court process by the police officer. Citizen witnesses in criminal proceedings should receive compensation for court appearances at a minimum rate of twice the prevailing State minimum wage for each hour the witnesses spend in court. An officer of the court should certify the time spent by the witness in court between arrival and dismissal; payment should be made accordingly.

Witnesses should be paid for round trip travel between the court and the residence or business address, whichever is shorter, at the State mileage rate for each mile traveled to and from court.

Commentary

Presently in South Dakota, a witness appearing before the cirucit court receives four dollars per day. A witness appearing before the magistrate's court receives three dollars per day. SDCL 19-5-1 (1976). Aside from the inadequacy of this compensation, court officials are given no incentive to reduce the waiting time endured by witnesses, because witnesses are compensated by the day rather than by each hour spent at the courthouse. In addition, each witness receives fifteen cents per mile to travel one way to the courthouse. SDCL 19-5-1 (1976). Public officers, on the other hand, are presently not entitled to witness fees, though they are provided with travel expenses.

Standard 10.7 is an attempt to upgrade the adequacy of witness compensation. Police officers would receive compensation for appearances equal to the compensation received during performance of their regular duties. A policy of compensation by the hiring authority has been favorably considered, since court appearances are among the regular and necessary duties of a police officer. Citizen witnesses should receive compensation at a rate that is twice the hourly State minimum wage. An officer of the court should certify the exact time spent in court for compensation purposes. In addition, witnesses should receive compensation for round trip travel at the State mileage rate. This provision is consistent with policies and per diem provided by other State agencies.

Implementation

A. Legislation:

Implementation would require changes in SDCL 19-5-1 (1976) and SDCL 19-5-2 (1976) covering the compensation and mileage of citizen witnesses and public officers and employees as witnesses.

B. Funding:

Additional funding from the state would be required for compensation purposes. Funding for citizen witnesses would be provided through the state court budget. Funding for officers could be provided through police departmental budgets.

CHAPTER ELEVEN

THE PROSECUTION

Courts Standard 11.1

Professional Standards for the Chief Prosecuting Officer

The complexities and demands of the prosecution function require that the prosecutor be a full-time skilled professional appointed and retained on the basis of demonstrated ability and high personal integrity. The prosecutor should serve at an annual salary no less than that of a circuit judge.

in order to meet these standards, the jurisdiction of every prosecutor's office should be designed so that population, caseload and other relevant factors warrant at least one full-time prosecutor.

Commentary

The problems that characterize a part-time prosecutor system have been recognized by the courts, criminal justice agencies, local governments, the lay public and prosecutors themselves. Some hazards of the system in terms of law enforcement and the delivery of criminal justice services are as follows:

1. Part-time prosecutors may not have the necessary training and expertise to handle complex criminal matters, especially in light of frequent changes in criminal procedure and the law;

2. The part-time nature of the prosecutor's position makes that position vulnerable to conflict of interest situations. According to the President's Commission on Law Enforcement and the Administration of Justice (1967:73),

> The attorneys he deals with as a public officer may be the same ones with whom he is expected to maintain a less formal and more accomodating relationship as counsel to private clients. Similar problems may arise in the prosecutor's dealing with his private clients whose activities may come to his attention . . . ;

3. A system of part-time prosecutors is afflicted by a lack of coordination and lack of supervision on a statewide level;

4. Turnover is a problem when inexperienced attorneys are attracted to these positions for the experience and later move to more lucrative positions.

The policy of frequent election adds to turnover problems;

5. The quality of South Dakota's prosecution system suffers because prosecutors who are trained and proficient leave the system. Usually they are replaced by attorneys who are inexperienced in the prosecution field.

The Courts Task Force recognizes that a goal of the State of South Dakota is to eventually realize a system of full-time prosecutors. It is the consensus of the Task Force that such a system should be implemented on a pilot basis in certain counties that have shown interest in being part of this project.

Because civil work is inconsistent with the prosecutor function, the Task Force agrees that prosecutors should no longer be required to provide legal assistance to the counties in addition to their other duties. The Task Force recommends that counties retain counsel on an hourly basis, by contract or by whatever means they deem proper.

The Task Force feels that prosecuting attorneys should be appointed on a basis similar to that of the merit plan for judicial selection. The following portions of the Model Department of Justice Act of 1952 (Nedrud, 1961:103) provide guidelines for the implementation of this standard:

Section 2: Appointments, Qualifications.

A. There shall be appointed for each prosecutor district a person who shall be known as the District Attorney . . .

B. The nominees shall have been admitted to the practice of law in the state for at least five (5) years and shall have such other qualifications as are set by standards determined by the nominating board.

C. The District Attorney shall hold office during good behavior . . .

Keeping in mind that Standard 11.1 is directed toward the chief prosecuting officer's position, sections B and C above are designed to insure that experienced, career-oriented lawyers are attracted to these positions. Section B reflects the desire of the Courts Task Force to discourage new attorneys from using the chief prosecuting officer's position primarily for experience. However, assistant prosecutors have not been limited in this fashion. Assistant prosecutors could gain experience within the prosecutor system. A career prosecutor system would be an incentive for these assistants to remain within the prosecutor's office once they have gained experience.

The Courts Task Force has not outlined a specific plan of implementation. National and State studies have been done and a pilot project is recommended. As a point of information, the National District Attorneys Association offers a consultation service to assist both urban and rural juridictions in setting up feasible prosecutor programs.

Implementation

A. Legislation:

To implement a system of professional district prosecutors in South Dakota, the office of county state's attorney should be repealed in its entirety. See Title 7, Chapter 16 of the South Dakota Compiled Laws. SDCL 7-7-1.1 (1975), authorizing the election of state's attorneys, should be repealed also. Since the Task Force is of the opinion that county commissioners should provide for their own legal advice, SDCL 7-16-8 (1967), requiring state's attorneys to give advice and opinions to county officers upon request, should also be repealed and not reestablished in any other form. SDCL 7-16-9 (1976) should be amended to exclude that portion which requires prosecutors to defend the State and counties in civil matters. In addition it may be necessary to state that county officers should provide their own legal services regarding civil matters. As far as the implementation of a pilot project is concerned, there is presently authority to do so under the Joint Exercise of Government Powers Act. Based on the findings of this project, a new series of statutes concerning the implementation of a district attorney system could then be drafted and passed.

B. Funding:

Funding could come from a number of sources, from the state, from the counties, or from both. It is recommended

that a joint policy of funding be used similar to that used in the district county court funding formula.

Courts Standard 11.2

Professional Standards for Assistant Prosecutors

The primary basis for the selection and retention of assistant prosecutors should be demonstrated legal ability. Care should be taken to recruit lawyers from all segments of the population. The prosecutor should undertake programs, such as legal internships for law students, designed to attract able young lawyers to careers in prosecution.

The position of assistant prosecutor should be a full-time occupation, and assistant prosecutors should be prohibited from engaging in outside law practice. The starting salary for an assistant prosecutor should be no less than 50% of the salary paid to the chief prosecuting officer in that jurisdiction, and the prosecutor should have the authority to increase periodically the salaries for assistant prosecutors to a level that will encourage the retention of able and experienced prosecutors, subject to the approval of the legislature.

The caseload for each assistant prosecutor should be limited to permit the proper preparation of cases at every level of the criminal proceedings. Assistant prosecutors should be assigned cases sufficiently in advance of the court date in order to enable them to interview every prosecution witness and to conduct supplemental investigations when necessary.

The trial division of each prosecutor's office should have at least two attorneys for each trial judge conducting felony trials on a full-time basis or the equivalent of such a judge. Each office should also have a sufficient number of attorneys to perform the other functions of the office.

Commentary

Professional competence should be the primary basis for the selection of prosecuting attorneys and their staffs. An overriding goal of the system outlined in this standard is the employment of full-time career prosecutors who can combine natural legal ability with experience gained in office. By starting out with high quality personnel it is hoped that the office will maintain a continuum of experienced competent prosecutors. In an effort to stimulate interest in a prosecution career, prosecutors' offices should establish open internships for law students. To a limited extent a vehicle for this type of program is in existence through the University of South Dakota Law School's clinical program. Internships from other schools might also be investigated.

For the same reasons that the chief prosecuting officer should be prohibited from outside law practice, so should assistant prosecutors. Salaries should be such as to attract and retain qualified personnel. Salaries should adequately compensate assistant prosecutors for a full-time commitment to a prosecution career. Under this standard the starting salary for an assistant prosecutor would be at least 50% of the chief prosecuting officer's salary with provision for periodic pay increases. It was the feeling of the Task Force that salary increases should be provided to experienced prosecutors to counteract the inducements of private law practice. Members felt that professional prosecutors should receive higher salaries than salaried lawyers in private service. Salary increases could provide a substantial long-term savings by decreasing turnover and the need for a new training investment.

To insure the most effective job performance and to prevent assistant prosecutors from being overburdened, the number of cases assigned to each prosecutor should consider the need for adequate time for preparation and investigation. The standard specifically recommends that the trial division of each prosecutor's office have at least two attorneys for every judge in that jurisdiction who handles felony trials on a full-time basis. This factor may be difficult to measure but some systematic calculation should be made concerning the time each judge devotes to felony cases in order to assess prosecution personnel needs.

Implementation

A. Agencies Involved:
Prosecutors.

B. Legislation:
The implementation of this standard is tied to the implementation of Standard 12.1 The State is responsible for funding sufficient staff for each prosecutor's office according to the formula prescribed in this standard.

C. Administrative Actions:
Each chief prosecuting officer would be ultimately responsible for developing and implementing office policies in accordance with this standard.

Courts Standard 11.3

Supporting Staff and Facilities

The office of the prosecutor should have a supporting staff comparable to that of similar-size private law firms. Prosecutors whose offices serve metropolitan juridictions should appoint an office manager with the responsibility of program planning and budget management, procurement of equipment and supplies, and selection and supervision of non-legal personnel. Paraprofessionals should be utilized for law-related tasks that do not require prosecutorial experience and training. There should be adequate secretarial help for all staff attorneys. Special efforts should be made to recruit members of the supporting staff from all segments of the community served by the office.

The office of the prosecutor should have physical facilities comparable to those of similar-size private law firms. There should be at least one conference room and one lounge for staff attorneys, and a public waiting area separate from the offices of the staff.

The prosecutor and staff should have immediate access to a library sufficiently extensive to fulfill the research needs of the office. Staff attorneys should be supplied personal copies of books, such as the South Dakota Criminal Code, needed for their day-to-day duties.

The basic library available to a prosecutor's office should include at least the following:

South Dakota Compiled Laws Annotated (one set for each attorney),

South Dakota Reporter, or the Northwestern Reporter,

U.S. Supreme Court Reports (from 1960),

Dakota Digest,
South Dakota Pattern Jury Instructions, Vol. 2,
One treatise on criminal law,
The State Bench Manual, and
A criminal form book.

A regional law library should be provided to fulfill other research needs.

Commentary

Despite the quality of professional personnel, a prosecutor's office will have a difficult time operating effectively without an adequate supporting staff. It is anticipated that, under a reorganization of the State's prosecutor system, caseloads will increase to the extent that prosecutors will be forced to devote themselves to matters that demand their legal expertise, while the handling of para- and sub-legal matters will be delegated to competent staff.

Good office management policies require that prosecutors utilize time to its best advantage by devoting themselves to the legal tasks that demand their special skills. Under a prosecution reorganization plan greater attention will need to be given to principles of office management. The standard specifically advocates that prosecutors who serve metropolitan jurisdictions appoint an office manager to handle program planning and budget management. Even in smaller offices these tasks could be delegated to capable staff members, leaving attorneys free for law-related tasks.

The standard advocates the use of paraprofessionals for law-related tasks not requiring prosecution expertise. These persons should be differentiated from legal secretaries and stenographic help. The American Bar Association's Special Committtte on Legal Assistants (1974:4) study indicates that currently 33 institutions offer formal programs for preparing legal assistants. Nearby schools offering legal assistant education programs include the Community College of Denver and the University of Denver in Colorado and the University of Minnesota and Hennepin State College in Minnesota.

The ABA Special Committee on Legal Assistants notes in its earlier report, **New Careers in Law: II** (1971), that the private law sector has utilized para- and sub-professionals in an effort to increase efficiency and lower costs while the public sector has failed to make full use of these assistants because of organizational difficulties. The ABA, however, sees a heavy demand ahead for legal assistants.

Lee Turner in an article, "Effective Use of Law Personnel Revisted" (1970:113-123), advocates the development of specific procedures to insure the completion of crucial, non-legal tasks to be assigned to specialized personnel. Such standardized and routine procedures free the lawyer from concern over the completion of these tasks. Some examples are: the opening and examining of mail; calendaring of hearings and deadlines; docket control; preparations of out-going interrogatories; verifying in-coming interrogatories against file information; scheduling depositions and appointments; preparation of file briefs upon completion of discovery; outlining of depositions; collating; indexing brief retrieval; shepardizing at pretrial; notifying of clients and witnesses by form letter; scheduling witnesses; preparing subpoenas and checking jury lists at trial. Turner notes that by resolution of its 1968 House of Delegates the ABA confirmed the need for and supported the use of non-lawyers in all procedures except counseling clients about legal matters, engaging directly in the practice of law, appearing in court, and appearing in formal proceedings as part of the legal process.

The availability of an adequate law library is also of obvious importance to attorneys in terms of legal research, reference and case preparation. The standard outlines those references to which the prosecutor should have immediate access. In addition regional libraries should exist to fulfill prosecutor's in-depth research needs. The courts have established law libraries in some circuits. The Task Force feels that these circuit court libraries could be supplemented for use by prosecutors as well. All staff attorneys should be provided with personal copies of particular law books, such as the South Dakota Criminal Code, that are needed on a daily basis.

Implementation

A. Agencies Involved:
Prosecutors.
Courts.

B. Administrative Actions:

Individual prosecutors' offices are responsible for the appointment of office managers and the utilization of paraprofessionals. In implementing hiring procedures each prosecutor's office would be responsible for recruiting staff members from all segments of the community.

Prosecutors should work together with the courts in the circuits they serve for the purpose of developing adequate regional law libraries.

C. Funding:

The staff and facility standards outlined herein should not depend for implementation on the implementation of Standard 11.1. Adequate staff and facilities are necessary no matter what type of prosecutor organization exists in the State.

Law books, improved facilities and additional staff will require funding. The source of funding will depend upon the type of prosecutor system utilized. Under Standard 11.1 a joint policy of funding similar to that used in the district county court formula has been offered as a suggestion.

Courts Standard 11.4

State-Wide Organization of Prosecutors

In the State of South Dakota there should be organized an entity that makes available to local prosecutors who request them the following:

1. Assistance in the development of innovative prosecution programs;

2. Support services, such as laboratory assistance; special counsel, investigators, accountants, and other experts; data gathering services; appellate research services; and office management assistance.

The office of the State Attorney General should be the entity performing these functions.

Commentary

The necessity and value of a statewide entity organized to provide the services described above should be evident. The statewide entity envisioned in Standard 11.4 would provide

the technical and laboratory resources necessary to enable prosecutors to perform their investigative and prosecution functions effectively. This entity would provide a forum for the exchange of ideas and policies among prosecutors necessary to increase consistency of law enforcement from one jurisdiction to another throughout the State. Through this entity statewide policies could be developed regarding personnel, training and other matters that have aroused concern in the State. The President's Commission on Law Enforcement and the Administration of Justice (1967) and the American Bar Association (1970) have endorsed the establishment of a statewide body. These recommendations flow in part from successful experiences with similar bodies in the judiciary and from prosecution councils already in existence in California, Indiana, Texas, Massachusetts and Kansas.

The South Dakota States Attorneys Association is an informal body which does not possess the coordination and resources needed to provide the services outlined in this standard. Because the Office of the Attorney General already possesses the resources and powers necessary, the Courts Task Force feels that this office would be the logical entity to provide these services.

Implementation

A. Agencies Involved:
Attorney General.

B. Administrative Actions:
The Office of the Attorney General is empowered to assume these functions under SDCL 1-11-1 (5) (1967) and 28-3-3 (1967).

C. Funding:
Funding for these services is already available through the Office of the Attorney General.

Courts Standard 11.5

Education of Professional Personnel

Education programs should be utilized to assure that prosecutors and their assistants have the highest possible professional competence. All newly appointed prosecutors should attend prosecutors' training courses prior to taking office, and in-house training programs for new assistant prosecutors should be available. All prosecutors and assistants should attend a formal prosecutors' training course each year in addition to the regular in-house training.

The failure of any prosecutor, without good cause, to pursue educational programs as prescribed in this standard should be considered by the State as grounds for discipline or removal.

Commentary

The work of the prosecutor is a complex combination of investigative, law enforcement and criminal prosecution functions. For most new prosecutors appropriate training will be limited to their legal studies and possibly some court experience. As a result, most new prosecutors are ill-prepared to handle the prosecution function.

In response to this problem, Standard 11.5 specifies that all prosecutors should undergo specialized training prior to taking office, attend on-going in-house training courses and attend formal prosecutor training courses beyond the local level. Because South Dakota does not offer a preparatory training course at this time, existing programs could be utilized until an appropriate course could be developed. The Northwestern University Short Course for Prosecuting Attorneys is offered as one example.

In-house training should exist for new assistant prosecutors. These should include familiarization with office policies and procedures and familiarization with the local courts, police and other agencies of the criminal justice system. All prosecutors should pursue formal training and refresher courses. Refresher courses are necessary if prosecutors are to keep abreast of rapid changes in law, procedure and other facets of the prosecution function. The National College of District Attorneys offers an extensive series of such courses each year.

No less than in the case of the State's judges, it is the feeling of the Courts Task Force that the quality of prosecution rests upon the quality of prosecution personnel. Adequate preparation and training are means to insure this quality. As a result, the Task Force has included a provision in Standard 11.5 which states that, without good cause, the failure of a prosecutor to comply with the education and training requirements of this standard should result in discipline or removal from office.

Implementation

A. Legislation:
Under a reorganization of the State's prosecutor system envisioned in Standard 11.1, some office, body or commission should be established to oversee and discipline or remove prosecutors for cause. These powers could be placed in the Office of the Attorney General, the body in charge of prosecutor appointments or some special commission established for this purpose. Current law provides the Attorney General with some discipline and removal powers. These could be elaborated or vested in some other body. This office or body could be empowered to set training standards for prosecutors, or the legislature may wish to set these standards in developing its overall reorganization of the State's prosecutor system. However, the upgrading of training standards should not wait for a reorganization of the State's prosecutor system, since highly trained personnel will benefit the old system as well as the new.

Courts Standard 11.6

Filing Procedures and Statistical Systems

The prosecutor's office should have a file control system standardized statewide and capable of locating any case file in not more than 30 minutes after demand, and a statistical system standardized statewide, either automated or manual, sufficient to permit the prosecutor to evaluate and monitor the performance of the prosecutor's office.

Commentary

With a reorganization of South Dakota's prosecutor system, caseloads which have been distributed among many local offices will be processed through a number of larger offices. This means that the amount of information handled by a single

prosecutor's office will be greater than that handled by many smaller offices at the present time. The burden of recording and filing information will also increase. Accordingly, the implementation of an efficient file control system will be of increasing importance. Since a case file is the prosecutor's only record of criminal litigation, a misplaced file could result in the delay or outright dismissal of a case.

The implementation of a file control system would enable prosecutors to retrieve information upon demand. Standard 11.6 calls for a standardized statewide system in order to facilitate access to information among prosecutors and criminal justice agencies throughout the State.

Efficiency demands that a statistical system be developed to enable prosecutors to monitor and evaluate the performance of their offices. Statistics in South Dakota are presently so inadequate that there is no way to know how much money is being spent for prosecution purposes and how many cases are being handled. The Task Force sees the need for a standardized statewide system that will provide performance indices on both the individual office and statewide level. A standardized statewide system would be amenable to integration into other criminal justice systems throughout the State. According to the standard this system could be either automated or manual as needs and volume dictate.

Implementation

A. Agencies Involved:
Prosecutors.

B. Legislation:

A legislative package should be developed prescribing or authorizing an appropriate statewide standardized file control system for prosecutors and a statewide standardized statistical system sufficient for monitoring and evaluating prosecutor's offices. To supplement this latter system the statistical system could include participation in an existing statewide data base system, such as O.B.T.S. (Offender Based Transaction Statistics), which is in the planning stages.

C. Funding:

Possible funding sources would include the State through the Legislature, joint State and local funding or the LEAA.

Courts Standard 11.7

Development and Review of Office Policies

Each prosecutor's office should develop a detailed statement of office practices and policies for distribution to every assistant prosecutor. These policies should be reviewed every six months. The statement should include guidelines governing screening, diversion and plea negotiations, as well as other internal office practices.

Commentary

Prosecutors are able to exercise discretion at every phase of the adjudication process. Screening, diversion, charging and plea negotiations are among those functions that are subject to the prosecutor's discretion. The President's Commission on Law Enforcement and the Administration of Justice (1967) and the National District Attorneys' Association (Leonard and Saxe, 1975) have each acknowledge the discretionary power of the prosecutor and its potential benefit to the administration of justice and the flow of the criminal case. At the same time, the discretionary decisions of the prosecutor are rarely monitored, making them vulnerable to inconsistencies, abuses and mistakes.

Because the decisions of the prosecutor may have a powerful impact on the lives of individuals who are involved in the criminal justice process, it is imperative that these decisions be monitored in some way to insure their consistency and fairness. The National Advisory Commission (1973:243) concurs, stating that,

> . . . these (decisions) should not be made in a purely random, ad hoc and informal manner. Such decisions should be made in accordance with policies that have been carefully developed and frequently reviewed. Although different criminal cases present different factual settings and involve defendants with varying backgrounds, efforts should be made, particularly in large offices, to see that differences in policy reflect different circumstances and not merely different policies being followed by different staff attorneys.

Under a reorganization of the State's prosecutor system, presumably leading to offices of a number of attorneys, consistency in policy would be particularly important. Yet offices of one prosecutor also need to formulate policies and subject them to periodic review as a check for continued effectiveness and consistency.

Because of the need for some means to monitor the discretionary powers of the prosecutor, Standard 11.7 advocates the development of a detailed statement of office practices and policies to be distributed to every assistant prosecutor. This statement would be of particular assistance to newer prosecutors who lack guidelines for making discretionary decisions. Office policies should be reviewed periodically to insure that they are being followed and to pinpoint those that are no longer useful.

Implementation

A. Agencies Involved:
Prosecutors.

B. Administrative Actions:

The development and periodic review of policies as discussed in this standard would be the only form of implementation required. The chief prosecuting officer would have the responsibility to insure that valid policies remain intact and are being followed while outdated or unworkable policies are discarded.

Courts Standard 11.8

The Prosecutor's Investigative Role

The prosecutor's primary function should be to represent the State in court. Prosecutors should cooperate with the police in their investigation of crime. Prosecutors should have investigatorial resources at their disposal to assist them in case preparation, to supplement the results of police investigation when police lack adequate resources for such investigation, and, in a limited number of situations, to undertake an initial investigation of possible violations of the law.

Prosecutors should be given the power, subject to appropriate safeguards, to issue subpoenas requiring potential witnesses in criminal cases to appear for questioning. Such witnesses should be subject to contempt penalties for unjustified failure to appear for questioning or to respond to specific questions.

The office of the prosecutor should review all applications for search and arrest warrants prior to their submission by law enforcement officers to a judge for approval.

Commentary

Police and prosecutors must work together during criminal investigations, since information and evidence uncovered during an investigation may form an integral part of a successful prosecution. In addition there will be occasions when prosecutors require supplemental investigative tools as specified in the standard. Both the National Advisory Commission (1973) and the American Bar Association (1970) recommend that the State provide an investigative resource pool of this nature. One resource, previously mentioned in Standard 11.4, would be the technical services provided by the statewide organization of prosecutors and the Office of the Attorney General.

South Dakota law permits magistrates to subpoena witnesses for interrogation purposes. SDCL 23-20-10 (1967). According to Standard 11.8, prosecutors would be given this power. No penalty would be adminstered for failure to comply with the subpoena without a judicial hearing on the propriety of the subpoena as well as the recipient's reasons for not responding to it. The subpoena would be simply an extention of the prosecutor's investigative resources. Not only would the judicial hearing be designed to protect the rights of the recipient but it would be an inducement for prosecutors to resist issuing subpoenas unless they have a sound basis for believing that the interrogation would provide information of value in the investigation or prosecution. Further the National Advisory Commission (1973:245) strongly recommends the use of procedures to protect the rights of any persons subpoenaed for this purpose.

> Steps also should be taken to protect the right of the subjects against self-incrimination. The prosecutor should be required to give the subject an explanation of his rights. These rights should include the right to have an atorney present during the interrogation and to have an attorney at State expense if the subject is unable to provide his own.

Finally, the implication is that a subject who contested the subpoena would not be punished unless the subject refused to comply even after a judicial hearing ruled that the subpoena was valid.

The final portion of the standard, which calls for prosecution review of search and arrest warrants, is designed in part to increase coordination between police and prosecutors while undertaking investigations where an evenutal prosecution is expected. More importantly, the provision offers the prosecutor an opportunity to determine whether the given set of facts satisfies the probable cause requirement of the fourth amendment. (National Advisory Commission, 1973:245). The American Bar Association (1970: St. 3.1B) insists that prosecutors "should take the lead in assuring that investigations of criminal activities are conducted in accordance with the safeguards of the Bill of Rights as implemented by legislation and the decision of the courts."

Implementation

A. Agencies Involved:
   Attorney General.
   Counties.
   Prosecutors.

B. Legislation:

For implementation purposes a statute should be enacted giving prosecutors powers as outlined in this standard. An elaboration of SDCL 15-6-45 (a) (1967), which allows attorneys of record to subpoena witnesses for court appearances and otherwise governs the issuance of subpoenas, may be appropriate.

C. Administrative Actions:

The courts and police agencies need to set policies and take action to insure that the prosecutor reviews all search and arrest warrants before their submission to a judge for approval.

The Office of the Attorney General should take appropriate steps to provide investigative resources to prosecutors as needed in addition to those supplied by local police.

D. -Funding:

Funding for investigations is now available through the Office of the Attorney General. Additional funding may be provided by the State and/or the counties. See also Standards 11.1 and 11.4.

Courts Standard 11.9

Prosecutor Relationships with the Public and With Other Agencies of the Criminal Justice System

The prosecutor should be aware of the importance of the function of the prosecutor's office for other agencies of the criminal justice system and for the public at large. The prosecutor should maintain relationships that encourage interchange of views and information and that maximize coordination of the various agencies of the criminal justice system.

The prosecutor should maintain regular liaison with the police department in order to provide legal advice to the police, to identify mutual problems and to develop solutions to these problems. The prosecutor should participate in police training programs and keep the police informed about current developments in law enforcement, such as significant court decisions. The prosecutor should develop and maintain a liaison with the police legal advisor in those areas relating to police-prosecutor relationships.

The State should develop for the use of police a basic, uniform statewide police report form that includes all relevant information about the offense and offender necessary for charging, plea negotiations and trials. The completed form should be routinely forwarded to the prosecutor's office after the offender has been processed by the police. Police officers should be informed by the prosecutor of the disposition of any case with which they were involved and the reason for the disposition.

The relationship between the prosecutor and the court and defense bar should be characterized by professionalism, mu-

tual respect and integrity. It should not be characterized by demonstrations of negative personal feelings or excessive familiarity... Assistant prosecutors should negate the appearance of impropriety and partiality by avoiding excessive camaraderie in their courthouse relations with defense attorneys, remaining at all times aware of their image as seen by the public and the police.

The prosecutor should establish regular communication with correctional agencies for the purpose of determining the effect of prosecution practices upon correctional programs. The need to maximize the effectiveness of such programs should be given significant weight in the formulation of practices for the conduct of the prosecution function.

The prosecutor should regularly inform the public about the activities of the prosecutor's office and of other law enforcement agencies and should communicate prosecution views to the public on important issues and problems affecting the criminal justice system; however, the prosecutor should not discuss the merits of individual cases. The prosecutor should encourage the expression of views by members of the public concerning the prosecutor's office and its practices, and such views should be taken into account in determining office policy.

Commentary

Standard 11.9 is designed to make prosecutors aware of the role they play in the entire criminal justice process and the effect they may have on the ability of other agencies to perform their functions. Greater efforts to exchange information and coordinate with these agencies should increase the prosecutor's effectiveness in the criminal justice system.

Specifically, the prosecutor has a responsibility to provide legal advice when necessary to police. Because of a number of court decisions affecting the way in which police perform their duties, the police need for legal advice is increasing. The ABA (1970: St. 2.7A) recommends that in the case of a large department, the prosecutor's office and the police department may each wish to designate one individual as a person to handle interoffice matters. Prosecutors should participate in police training programs as another means of maintaining liaison with police and keeping the police informed about legal changes in law enforcement.

Standard 11.9 calls for the development of a uniform statewide police report form. In a recent survey of South Dakota's Attorneys, only 40% of those responding (40 out of 63 responded) indicated that existing police report forms are adequate in the information they supply concerning the offense and the offender for purposes of charging, negotiating a plea and trying the case. One problem exists in the lack of uniformity among police reports statewide. This situation particularly affects officers who patrol areas covering a number of jurisdictions and calling for a wide variety of forms. The Courts Task Force has recognized the overriding need for uniform statewide police report forms that include all relevant and necessary information about the offense and the offender. These forms should be completed by the police and routinely forwarded to the prosecutor's office after the offender has been processed. As part of the liaison and coordination between police and prosecutors, the prosecutor should inform police officers of the disposition of cases in which they were involved and the reasons for the disposition.

It should be obvious that prosecutors must conduct themselves in a manner that accurately reflects the professionalism and dignity of their office. This standard briefly outlines some legal and ethical responsibilities of prosecuting attorneys. Codes of professional conduct have been developed in more depth by the American Bar Association (1970:45).

Because the duties and activities of the prosecutor may be unknown or misunderstood, the prosecutor must maintain accountability to the public and perform an educational function as well. The Courts Task Force feels that prosecutors have a duty to explain the activities of their office to the public and express prosecution views on matters of general concern, such as the issue of combined law enforcement. On the other hand, public statements on the merits of an individual case diminish the integrity and professionalism of the prosecutor's position and should be avoided.

In a recent survey of states attorneys 49% of those responding (39 out of 63 responded) indicated they used no definite procedures for receiving and processing complaints. Public input need not be in the form of a complaint. However, public input is essential if an office is to be responsive to community needs. This standard specifically advocates that prosecutors encourage the public to express their views concerning the practices of the office and that prosecutors take these views into consideration in determining office policy.

Implementation

A. Agencies Involved:
South Dakota Division of Criminal Investigation.
Prosecutors.
Police.

B. Administrative Actions:

The standards outlined above are the personal and professional responsibility of every prosecutor. Chief prosecuting officers should make all new staff attorneys aware of the standards of professional conduct.

The South Dakota Division of Criminal Investigation (D.C.I.) should take responsibility for developing a uniform statewide police report form to be used by all South Dakota police agencies. This form could be developed in conjunction with South Dakota's O.B.T.S. (Offender Based Transaction Statistics), which is now in the planning stages. Individual police agencies have a responsibility to institute procedures to insure that police report forms are routinely forwarded to the prosecutor's office after an offender has been processed by the police.

CHAPTER TWELVE

THE DEFENSE

Courts Standard 12.1

Availability of Publicly Financed Representation in Criminal Cases

Public representation should be made available to eligible defendants (as defined in Standard 12.1) in all criminal cases at their request, or the request of someone acting for them, beginning at the time the individuals either are arrested or are requested to participate in an investigation that has focused upon them as likely suspects. Counsel should be provided at every stage of the proceedings, including sentencing, appeal, and post-conviction review. Counsel initially appointed should continue to represent the defendant through all stages of the proceedings unless a new appointment is made because geographical considerations or other factors make it necessary.

Defendants should be discouraged from conducting their own defense in criminal prosecutions.

Commentary

The case law is very explicit. Where any individual is in jeopardy of losing his/her freedom, defense counsel is an absolute necessity. **Argersinger v. Hamlin,** 407 U.S. 25 (1972). Similarly, where a defendant is incapable of providing counsel at his/her own expense, the court is directed to insure that he/she is represented **prior** to trial and at trial: preliminary hearing, **Coleman v. Alabama,** 339 U.S. 1 (1970); in custody and at interrogations, **Miranda v. Arizona,** 384 U.S. 436 (1966); or where compelled to appear in a postcharge line-up, **Kirby v. Illinois,** 406 U.S. 682 (1972).

There are several advantages to early representation:

1. The defendant may be discouraged from waiving certain fundamental constitutional rights during the prearraignment stages. Issues such as the right against self-incrimination and consent to searches and seizures may result in motions later, thus contributing to court congestion.

2. Defense attorneys are also responsible (at least to their clients) for conducting investigations and obtaining experts before perishable or transitory evidence is lost. Such activities can scarcely be carried out by an incarcerated, indigent defendant.

3. Counsel may also be effective in the early stages of the proceeding in conducting effective plea negotiations, while at some later point there may be little he/she can do. Diversion efforts may be somewhat more realistic and beneficial to both society and the client and may be facilitated by efforts of counsel.

4. Where counsel enters the case at the focus-of-suspension stage, they will be better prepared for their client's day in court. Otherwise, the farther into the proceedings that defense counsel is absent, the less they may know about their client's circumstances and general character.

As regards avenues of appeal and their use, attorneys should indicate to clients what they are but should not have to take up meritless appeals. Unfortunately, without denying a defendant his/her constitutional rights, this would be difficult. Perhaps counsel should research the merits of any given appeal and report back to that client their evaluation of success. Counsel might even make a statement to the court regarding the merit of such an appeal.

Not permitting defendants to conduct their own defense (**pro se**) is simply unconstitutional. However, a defendant might be discouraged from doing so based upon, but not limited to, the following criteria:

1. The defendant will not be able to deal effectively with the legal factual issues likely to be raised;

2. The defendant's self-representation is likely to impede the reasonably expeditious processing of the case; or

3. The defendant's conduct is likely to be disruptive of the trial process. (NAC, 1973: 253).

In an effort to counter criteria 1 and 2, the court might require counsel to be present in order to provide advice to the defendant. Criteria 3, however, leaves the burden on the court, because intervention might pose serious questions about denying a constitutional right to defend oneself in court. It should also be noted that the **pro se** defendant is the exceptional case.

Legislation similar to that noted in Standard 12.6 (Financing of Defense Services) is appropriate and H.B. 685, para. 6 (1976) speaks to this area and would provide the necessary law to insure that a defendant's rights are protected.

In the absence of such legislation, the courts should fill the void by use of a ruling to the same effect. In controlling the use of the **pro se** defense, the courts alone will be responsible on a case-by-case basis.

Implementation

A. Agencies Involved:
   County and/or state government.
   State Bar Association.

B. Legislation:
   Legislation should be similar to that previously attempted in this area, specifically H.B. 685 or S.B. 119 (presented to the 1976 Legislative Session).

C. Funding:
   Several possible plans present themselves:
   1. State responsibility for total payment and support of a statewide public defender program.
   2. Each individual county establishes its own public defender program.
   3. Counties combine and by contract contribute to the support of a regional public defender system.
   4. Each county (or an aggregate of counties) establishes programs and recoups some costs from defendants via SDCL 23-2-3.1 thru 23-2-3.3 (Provisions for Institution of a Lien).

Courts Standard 12.2

Payment for Public Representation

An individual provided public representation should be required to pay any portion of the cost of the representation that he/she is able to pay at the time. Such payment should be no more than an amount that can be paid without causing substantial hardship to the individual or his/her family. Where any payment would cause substantial hardship to the indi-

vidual or his/her family, such representation should be provided without cost.

The test for determining ability to pay should be a flexible one that considers such factors as amount of income, bank account, ownership of a home, a car, or other tangible or intangible property, the number of dependents, and the cost of subsistence for the defendant and those to whom he/she owes a legal duty of support. In applying this test, the following criteria and qualifications should govern:

1. Counsel should not be denied to any person merely because friends or relatives have resources adequate to retain counsel or because he/she has posted, or is capable of posting, bond.

2. Whether a private attorney would be interested in representing the defendant in his/her present economic circumstances.

3. The fact that an accused on bail has been able to continue employment following his/her arrest should not be determinative of ability to employ private counsel.

4. The defendant's own assessment of his/her financial ability to obtain representation without substantial hardship to himself/herself or family should be considered.

Commentary

The criteria enumerated in subsections 1 through 4 are not exhaustive and can be expanded upon as necessary. Care should be taken not to encourage any invasion of privacy in the determination of indigency, nor should recoupment procedures, if implemented, work any substantial hardship on an indigent defendant.

The question of who shall have the responsibility of determining indigency is unsettled at present. Were it possible to surrender the responsibility to an independent agency, the courts and public defender could avoid any conflict that might develop between the two. For example, if the courts certify a defendent as indigent and during the ensuing investigation the defender discovers this is not the case, what should be done?

Granted, South Dakota's court system is not presently taxed with a caseload that threatens its continued operation, but will it always be so?

Private attorneys who accept a case should do what they have agreed to do for the amount settled upon. Of course, an attorney can petition the court to be changed to a court appointed counsel if the client's resources are depleted. Some means should be available to prevent a defendent from ending up with no counsel or from having to change counsel midway through a trial.

Implementation

A. Agencies Involved:
Courts.

B. Legislation:
See Implementation for Standard 12.1.

C. Administrative Actions:
Court procedure for determining indigency must be standardized to reflect subsections 1 thru 4. (Also, see implementation for Standard 12.1 supra).

Courts Standard 12.3
Initial Contact with Client

The first client contact and initial interview by the public defender, attorney staff, or appointed counsel should be governed by the following:

1. The accused, or a relative, close friend, or other responsible person acting for him/her, may request representation at any stage of any criminal proceedings. Procedures should exist whereby the accused is informed of this right, and of the method for exercising it. Upon such request, the public defender or appointed counsel should contact the interviewee as soon as possible.

2. If, at the initial appearance, no request for publicly provided defense services has been made, and it appears to the judicial officer that the accused has not made an informed waiver of counsel and is eligible for public representation, an order should be entered by the judicial officer referring the case to the public defender, or to appointed counsel. The public defender or appointed counsel should contact the accused as soon as possible following entry of such an order.

3. Where, pursuant to court order or a request by or on behalf of an accused, a publicly provided attorney interviews an accused and it appears that the accused is financially ineligible for public defender services, the attorney should help the accused obtain competent private counsel in accordance with established bar procedures and should continue to render all necessary public defender services until private counsel assumes responsibility for full representation of the accused.

Commentary

Anyone eligible for defender services (or appointed counsel) should be able to apply directly to the public defender or appointing authority for representation. These persons should also have a right to an immediate interview (rather than waiting until Monday morning at 9:00 A.M. following arrest on Friday night).

Creating time limits, regardless of how flexible, is likely to create more problems. Besides, if the time limit range is too flexible, there may as well be none.

An on-call system might be developed where, in the absence of a full-time defender, various attorneys desiring court appointments could be called in order of their appearance on this list.

The only question on subsection 2 involves whether or not an attorney (or defender) should be present against the expressed wishes of the defendant. A court ruling on this issue may prove to be the most sensible route.

Subsection 3 raises a question as to the propriety of lawyers acting as agents for other lawyers. A more equitable solution might be to utilize a listing kept by an independant agency and to contract only attorneys on that list. Those appearing on the list would presumably be willing to take the case.

Implementation

A. Agencies Involved:
Police.
Courts.
State Bar Association.

B. Administrative Actions:

Procedures should be developed within all police agencies to aid an arrested individual in contacting the public defender's office. Courts, where police agencies were unsuccessful in securing the public defender, should continue efforts after determining defendant's status as regards indigency or nonindigency.

Courts Standard 12.4

Public Representation of Convicted Offenders

Counsel should be available at the penitentiary to advise any inmate desiring to appeal or collaterally attack his/her conviction. An attorney also should be provided to represent: an indigent inmate of any detention facility at any proceeding affecting detention or early release; an indigent parolee at any parole revocation hearing; and an indigent probationer at any proceeding affecting probationary status.

Commentary

"Detention facility" shall be defined as including, but not limited to, the following:

> Jails, reformatories, prisons, mental institution, or any facility where an individual is held against his/her will for any period of time.

There is little question that inmates should have the right to seek redress for unfair, illegal or otherwise defective convictions. If for no other reason, an attorney could aid in indicating the merits of any given appeal and perhaps suggest what the inmate's likelihood of success in court would be.

Extending the benefits of counsel to inmates for purposes other than collateral attack would perhaps lessen the dehumanizing effects of prisons by providing the inmate someone outside the penitentiary wih whom he/she has contact and who can take a personal interest in him/her.

In the absence of enabling legislation, the courts could rule that counsel be available for indigent inmates to perfect appeals (among other needs). However, as the courts have no financing power, the efficacy of providing services in this fashion may be less than satisfactory.

Increased tolerance by the courts of the efforts of "jail house lawyers" might serve to lessen the demands made upon the outside bar by inmates. Of course, this should not serve as a replacement for providing competent, trained counsel and this, too, may cause some problems.

Implementation

A. Agencies Involved:
   Courts.
   Corrections.
   State Bar Association.

B. Legislation:

Enabling legislation for purposes of fixing sources of funding would be extremely helpful.

C. Administrative Actions:

Corrections agencies will necessarily have to cooperate in order to make such a standard productive. While statutory construction may not allow necessary flexibility, a court ruling might. Because courts are responsible for determining indigency initially, much may be said for their continued control over any such system.

D. Funding:

Again, determination of indigency may be the duty of the courts. However, if corrections agencies are able to accomplish the same ends, time and money may be saved.

Courts Standard 12.5

Delivery of Defense Services: Methods

1. A full-time defender organization should be available for all communities, rural or metropolitan, as the preferred method of supplying legal services to those charged with crime who are financially unable to employ counsel. The full-time defender organization may be a public activity, a private organization, a panel attorney system under an administrator, or any appropriate combination of the foregoing. However, failing the creation of a full-time public defender system, a coordinated appointed counsel system should be developed.

2. If a panel of attorneys provide defense representation, such service should be supervised by a full-time administrator who is responsible for the selection, rotation, and removal of attorneys, the continuing education of these attorneys in criminal law, the preparation of interested attorneys for the panel, the selection of counsel for specific cases, and the delivery of quality representation by panel attorneys. A panel of attorneys may also be used to supplement a public or private defender organization.

Commentary

The problems inherent in contacting private counsel and persuading them to accept court appointments would largely disappear with the establishment of a full-time public defender. Granted, private attorneys would become less involved in criminal cases; however, this may not be an unwelcome change. After all, criminal representation is not the most attractive, or lucrative, field of practice in law.

Implementation

A. Agencies Involved:
   Courts.
   State Bar Association.
   County and State government.

B. Legislation:

Statutory authority is essential to creating and maintaining a Public Defender System in South Dakota. Again, H.B. 685, referred to in Standard 12.1, serves as an appropriate model.

C. Administrative Actions:

The decision to use a public defender or an appointed counsel system (if both exist) may be delegated to the courts.

D. Funding:

Funding will be as outlined in Standard 12.1 or as the Legislature deems appropriate.

Courts Standard 12.6

Financing of Defender Services

The State has the responsibility to assure adequate funding of defense services serving clients charged with State and local offenses. The defense service may be organized and administered at either the State, regional, or local government level, whichever is the most efficient and practical and is best able to achieve adequacy of funding.

Commentary

The following is taken from the Proposed Standards for Defender Services (National Legal Aid and Defender Association) and is included for information purposes only.

1.3 In rural communities, units of local government should combine to establish a regional defender office consisting of a minimum of four (4) attorneys, three (3) secretaries, one (1) investigator and one (1) social worker, all of whom are full-time employees.

The staff should be large enough to permit specialization, thus promoting efficiency in disposing of cases while providing opportunities to develop particular expertise. A well organized multi-attorney office also has the advantage of providing continuous service with little or no delay during periods of vacation or the illness of a member of the staff.

In extremely rural areas, prior to **Argersinger v. Hamlin**, it might have been argued that such a staff was not feasible because of the small indigent criminal caseload. However, even before **Argersinger**, a 1969 study of defense services in Illinois concluded that some rural areas where no organized office was available were carrying out constitutional requirements to provide counsel because no private counsel was available in the community to accept appointments.

Units of local government that individually do not produce sufficient caseloads to warrant the minimum staff required for an efficient, effective defender office should combine resources rather than funding a smaller office of a part-time operation. However, one should be aware that as the area served increases, caseloads must be reduced to allow for additional travel time. Moreover, since the multi-county office will not be serving a unified court, each court must cooperate so that cases will be scheduled in a manner that would not create delays because one attorney would have to be in opposite ends of the territory on the same day. The following guidelines may also prove useful:

1. Each attorney should be assigned to one particular specialty. For example one might be assigned to misdemeanor and juvenile cases; another to appeal and another to post conviction; a third to trial; with a fourth undertaking a reduced caseload in each area by assuming supervisory, training and administrative responsibility.

2. Each attorney should be capable of functioning with equal skill in the other departments of the office and, periodically, assignments should be rotated to assure that all lawyers maintain their skills in each area of representation and avoid stagnation. However, specialization is necessary to assure efficiency and speedy justice. One of the frequently cited arguments opposing utilization of assigned defender systems or assigned counsel systems is that more frequently than not the private attorney has very little criminal trial practice. Therefore, while zealous in attitude, his/her ability is somewhat diminished and the defendant does not get the kind of representation that he/she should.

3. Where a defender's office services a number of courts, each court must cooperate so that public defender cases are set for a convenient time that will minimize the travel.

With the extensiveness and range of representation required today, unlike urban areas, rural areas do not have sufficient attorneys to meet the need. Few seldom, if ever, are criminal law specialists. Indeed, most are seldom involved in a criminal case. In fact, involvement in a criminal case for most attorneys is normally the result of a long-standing client finding himself/herself in difficulty with the law and asking the attorney if he/she would take the case. Only an organized defender's office can introduce the expertise necessary to efficiently and effectively represent criminal cases.

Implementation

A. Agencies Involved:
State and county government.

B. Legislation:
Statute. See Standard 12.1 and 12.5 under Implementation.

C. Funding:
Formulation of an equitable funding policy will be left to the State and counties.

Courts Standard 12.7

Defender To Be Full-Time and Adequately Compensated

The complexities and demands of the defense function require that the defender be a full-time skilled professional appointed and retained on the basis of demonstrated ability and high personal integrity. The defender should serve at an annual salary no less than that of the judge of the trial court of general jurisdiction.

In order to meet these standards, the jurisdiction of every public defender's office should be designed so that population, caseload and other relevant factors warrant at least one full-time public defender.

Commentary

The advantages of a full-time defender in terms of continuity of service, undivided attention to one kind of client, and decreased expense (over a court appointed system) to the supporting county (or other governmental unit) speaks favorably for the establishment of such a system.

Given the arrangement of South Dakota's population, an arrangement to allow counties so inclined to participate in the use of services by a contract plan would appear to meet with maximum success. Each would pay according to its level of utilization.

There is general agreement that judges should have as little to do with the appointment procedure (for public defender) as possible. This simply goes some distance to prevent any kind of conflict that might arise due to friendship or animosity.

Adequate compensation may even insure against loss of

competent attorneys to the more lucrative rewards of private practice. If not, there may at least be equally capable people willing to assume the position.

Implementation

A. Agencies Involved:
State.
Counties.

B. Legislation:
Legislation should be determined by relevant parties, depending on funding arrangements, and should thereafter be prescribed by statute.

Courts Standard 12.8

Selection of Public Defender

The method employed to select public defenders should insure that the public defender is as independent as any private counsel who undertakes the defense of a fee-paying criminally accused person.

Commentary

The following criteria may provide additional guidance:

1. There should be appointed in each district (or area with a large enough population base, including adjacent counties by contract, to support a defender) by the governor, from a certified list of nominees, a person who shall be known as the Public Defender. The appointment shall be approved by the Senate, except that temporary appointments may be made if a vacancy occurs when the legislature is not in session.

2. The nominees shall have been admitted to the practice of law in the State for at least five (5) years and shall have such other qualifications as are set by standards determined by the nominating board.

3. Tenure in office should not be less than four (4) years during good behavior.

Implementation

A. Agencies Involved:
State Bar Association.
Governor.
Legislature.

B. Legislation:
Statute. Provisions for a list (drawn up by the State Bar Association, for example) to be submitted to the Governor and appointment confirmed by the Senate. The qualifications of candidates may also be decided by the Bar Association and set forth by statute.

Courts Standard 12.9

Performance of Public Defender Function

Policy should be established for and supervision maintained over a defender office by the public defender. It should be the responsibility of the public defender to insure that the duties of the office are discharged with diligence and competence.

The public defender should seek to maintain his/her office and the performance of its function free from political pressures that may interefere with the ability to provide effective defense services. The public defender should assume a role of leadership in the general community, interpreting his/her function to the public and seeking to hold and maintain their support of and respect for this function.

The relationship between the law enforcement component of the criminal justice system and the public defender should be characterized by professionalism, mutual respect, and integrity. It should not be characterized by demonstrations of negative personal feelings on one hand or excess familiarity on the other. Specifically, the following guidelines should be followed:

1. The relations between public defender attorneys and prosecution attorneys should be on the same high level of professionalism that is expected between responsible members of the bar in other situations.

2. The public defender must negate the appearance of impropriety by avoiding excessive and unnecessary comaraderie in and around the courthouse and in relations with law enforcement officials, remaining at all times aware of his/her image as seen by the client community.

3. The public defender should be prepared to take positive action, when invited to do so, to assist the police and other law enforcement components in understanding and developing their proper roles in the criminal justice system, and to assist them in developing their own professionalism. In the course of this educational process the public defender should assist in resolving possible areas of misunderstanding.

4. The public defender should maintain a close professional relationship with fellow members of the legal community and organized bar, keeping in mind at all times that this group offers the most potential support for his/her ofifce in the community and that, in the final analysis, he/she is one of them. Specifically:

a. He/she must be aware of their potential concern that he/she will preempt the field of criminal law, accepting as clients all accused persons without regard to their ability or willingness to retain private counsel. The public defender must avoid both the appearance and fact of competing with the private bar.

b. He/she must, while in no way compromising representation of indigent clients, remain sensitive to the calendaring problems that beset civil cases as a result of criminal case overloads, and cooperate in resolving these.

c. He/she must maintain the bar's faith in the defender system by affording vigorous and effective representation to his/her own clients.

d. She/he must maintain dialogue between the public defender's office and the private bar, never forgetting that the bar more than any other group has the potential to assist in keeping the office free from the effects of political pressures and influences.

Commentary

It is basically agreed that the local bar can function as a "buffer" for the defender office so as to preclude external pressure or interference. At the same time it should be pointed out that some of the guidelines might be difficult, but not impossible, to maintain as a matter of policy. Further-

more, such activities and behavior as contemplated by the instant standard would doubtless be impossible to legislate.

Implementation

A. Agencies Involved:
Office of public defender (if and when established).
State Bar Association.

B. Administrative Actions:
The public defender's office should be responsible for making initial contacts amongst the local law enforcement agencies to express interest in assisting them.

Courts Standard 12.10

Selection and Retention of Attorney Staff Members

Hiring, retention, and promotion policies regarding public defender staff attorneys should be based upon merit. Staff attorneys, however, should not have civil service status.

Commentary

Ultimately it is wise to vest control of such matters in the Chief Public Defender.

Implementation

A. Agencies Involved:
Public defender.
State Bar Association.

B. Legislation:
Statute. Such law would define hiring, retention and promotion suitably.

C. Administrative Actions:
The State Bar Association may be contacted to promulgate what it feels to be reasonable criteria for hiring, retention, and promotion of public defender staff attorneys.

Courts Standard 12.11

Salaries for Defender Attorneys

Salaries through the first 5 years of service for public defender staff attorneys should be comparable to those of attorney associates in local private law firms.

Commentary

Generally, the Task Force agreed that this standard presented some problems of specificity. There was concern over whether or not a given pay rate or scale could be recommended in a standard.

In the absence of a statewide public defender, some questions were raised as to making the regional defender's salary commensurate with what court appointed attorneys would receive.

It was suggested that perhaps a set rate be established for the public defender by computing the hourly rate and then determining who among private counsel would be willing to accept cases at that rate. Letters might be sent to all private attorneys in counties not covered by a public defender system (or even within a covered county, in order to handle excess cases) stating the dollar amount and asking if they would accept appointment at that rate. If not, their names would not appear on the eligible-for-appointment list.

For example, the appointed attorney system might use an hourly rate of 3 times the public defender's hourly rate, in order to cover overhead.

It was finally decided that the hourly rate for appointed counsel should be two and one-half times the hourly pay of a circuit court judge, based on 2,000 hours per year or 50 weeks at 40 hours per week.

Certainly the defender's salary and the appointed counsel's hourly rate should not be so dissimilar as to compel the defender to go into private practice or the private attorney to refuse to accept court appointments.

Implementation

A. Agencies Involved:
State and county government.

B. Legislation:
The amount, method of deriving such revenue, etc., should all be included in the authorizing legislation, such as H.B. 685 referenced in Standards 12.1 and 12.4.

C. Funding:
The standard pertains to both public defenders and appointed counsel. Funding for salaries and other expenditures will depend upon the arrangement(s) agreed upon by the State and county administration officials. It is recommended, however, that the public defender and office of the prosecutor do not differ grossly in terms of salary and expenditures for support services.

Courts Standard 12.12

Workload of Public Defenders

The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.

For the purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for postjudgment is a separate case. If the public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his/her office might reasonably be expected to lead to inadequate representation in those cases, he/she should bring this to the attention of the court. If the court accepts such assertions, the court should direct the public defender to refuse to accept or retain additional cases for representation by his/her office.

Commentary

There are many difficulties inherent in establishing fixed caseloads and for many reasons any recommendations should only be tentative. Changes will have to be made, and creating

any hard and fast rule will cause considerable problems. Caseload will have to be a matter of office policy.

Implementation

A. Agencies Involved:
Courts.
Public defenders.
Prosecutors.

B. Administrative Actions:

Courts should operate their dockets so as not to exceed the public defender's capacity, utilizing appointed counsel when such limits are reached. The public defender's office should resist attempts by both the courts and the prosecutor's office to force it to accept cases after the upper limits have been reached. By the same token, the public defender should be responsible to the client population and establish realistic caseload limits. If the maximum is to be exceeded, the decision should rest with the public defender's office solely.

C. Funding:

Caseload and funding should be as exclusive from each other as possible in order to avoid "quota" type systems.

Courts Standard 12.13

Community Relations

The public defender should be sensitive to all of the problems of the client community. He/she should be particularly sensitive to the difficulty often experienced by the members of that community in understanding the public defender's role. In response:

1. The public defender should seek, by all possible and ethical means, to interpret the process of plea negotiation and the public defender's role in it to the client community.

2. The public defender should, where possible, seek office locations that will not cause the public defender's office to be excessively identified with the judicial and law enforcement components of the criminal justice system, and should make every effort to have an office or offices within the neighborhoods from which clients predominately come.

3. The public defender should be available to schools and organizations to educate members of the community as to their rights and duties related to criminal justice.

Commentary

While the initial impetus should come from the defender's office, support and assistance should also be forthcoming from the State Bar Association, State's Attorney's Association, defense counsel generally and other important components of the criminal justice system.

Implementation

A. Agencies Involved:
Public defenders.

B. Administrative Actions:

The affirmative duty to implement the instant standard lies within the public defender's office.

Courts Standard 12.14

Supporting Personnel and Facilities

Public defender offices should have adequate supportive services, including secretarial, investigation, and social work assistance.

In rural areas (and other areas where necessary units of local government should combine to establish regional defenders' offices that will serve a sufficient population and caseload to justify a supporting organization that meets the requirements of this standard.

The budget of a public defender for operational expenses other than the costs of personnel should be substantially equivalent to, and certainly not less than, that provided for other components of the justice system with whom the public defender must interact, such as the courts, prosecution, the private bar, and the police. The budget should include:

1. Sufficient funds to provide quarters, facilities, copying equipment, and communications comparable to those available to private counsel handling a comparable law practice.

2. Funds to provide tape recording, photographic and other investigative equipment of a sufficient quantity, quality, and versatility to permit preservation of evidence under all circumstances.

3. Funds for the employment of investigative personnel, experts and specialists, such as psychiatrists, forensic pathologists and other scientific experts in all cases in which they may be of assistance to the defense.

4. Sufficient funds or means of transportation to permit the office personnel to fulfill their travel needs in preparing cases for trial and in attending court or professional meetings.

Each defender lawyer should have a private office that will assure absolute privacy for consultation with clients.

The prosecutor and his/her staff should have immediate access to a library sufficiently extensive to fulfill the research needs of the office. Staff attorneys should be supplied personal copies of books, such as the South Dakota Criminal Code, needed for their day-to-day duties.

The basic library available to a public defender's office should include the following:

South Dakota Compiled Laws Annotated (one set for each attorney),
South Dakota Reporter, or the Northwestern Reporter,
U.S. Supreme Court Reports (from 1960),
Dakota Digest,
South Dakota Pattern Jury Instructions, Vol. 2,
One treatise on criminal law,
The State Bench Manual, and
A criminal form book.

A regional law library should be provided to fulfill other research needs.

Commentary

The serious concern of the Task Force revolved around investigative and expert services that the prosecutor has access to on a cost-free basis. Use of police services, court facilities and a budget that supports other extraneous necessities, all this and more is available to the prosecutor's office. Provision, budget or policy must be made for the public defender's office in order that the client is not short-changed

in the end. Some policy should exist to provide similar support facilities for court-appointed counsel.

Implementation

A. Agencies Involved:
Courts.
Prosecutors.
Police.

B. Administrative Actions:

There should be an affirmative position taken by the above-named agencies to provide the public defender's office with the necessary assistance. A court ruling may be necessary to prompt more recalcitrant agencies to assist. Certainly the Attorney General's office can be of substantial assistance.

C. Funding:

In whatever fashion and to whatever extent the states attorney's office is provided for, the same should pertain to the public defender's office.

Courts Standard 12.15

Education of Professional Personnel

Education programs should be utilized to assure that public defenders and their assistants have the highest possible professional competence. All newly appointed public defenders should attend training courses prior to taking office, and in-house training programs for new assistant defenders should be available. All public defenders and assistants should attend a formal training course each year, in addition to the regular in-house training.

The failure of any public defender, without good cause, to pursue educational programs as prescribed in this standard should be considered by the State as grounds for discipline or removal.

Commentary

In order to maintain the high level of performance within the public defender's office, ongoing educational programs should be supported by the State. Sanctions should also attach for failure to avail oneself of such educational opportunities.

Implementation

A. Agencies Involved:
Public defenders.
Governor.
State Bar Association.

B. Administrative Actions:

The governor's office should assume responsibility for securing funding to meet such educational requirements as may be decided upon and to remove from their positions persons failing to comply, as is the case with judicial personnel. This provision might be set forth by statute in order to avoid ambiguity.

CHAPTER THIRTEEN
JUVENILES

Courts Standard 13.1
Court Jurisdiction Over Juveniles

The circuit court should be authorized to order the institutionalization of a juvenile only upon a determination of delinquency and a finding that no alternative disposition would accomplish the desired result. A determination of delinquency should require a finding that the State has proven that the juvenile has committed an act that, if committed by an adult, would constitute a criminal offense.

Specialized training should be provided for all persons participating in the processing of cases related to juvenile and family matters through the circuit court, including prosecutors, defense and other attorneys, and the circuit court judge. Law schools should recognize the need to train attorneys to handle legal matters related to family problems and should develop programs for that training. These programs should have a heavy clinical component.

Commentary

Article V of the South Dakota Constitution was created to reduce the number of lower courts, among other reasons. While the legislature does have power to create lesser tribunals, the Task Force felt that such a move in the near future was very unlikely. Because the circuit court is presently exercising control in this area, continued control is deemed appropriate.

Granted, there may exist enough clients in more densely populated centers in South Dakota to support a family court. However, either lesser populated areas would not be able to economically support such a family court or the court would have to be in a circuit to serve sparsely populated geographic areas. In either case, the present circuit court system was felt to be sufficient.

There can be no gainsaying the need for specialized training set forth in the second paragraph. Problems may arise where sanctions are created and enforced for failure to comply with said training requirements. This is particularly true where circuit court judges are to be the targets of such training and sanctions.

Where professional personnel, such as probation officers, are concerned, the task for requiring additional training will not be difficult to implement.

Implementation

A. Funding:

Money must necessarily be provided either to support in-state training or to send people out of the State for such training. Because a new court with special jurisdiction will not be created and because the circuit already exercises jurisdiction in this area, statutory conflicts are absent.

Courts Standard 13.2
Intake, Detention and Shelter Care in Delinquency Cases

In each circuit the intake function should be vested in an intake unit for the purpose of centralization and specialization. A sufficient number of personnel should be employed to satisfy the intake personnel needs of each circuit.

Among their duties intake personnel should:

1. Make the initial decision whether to place a juvenile in detention or shelter care. Intake staff should assume control over admissions on a 24-hour basis;

2. Make the decision whether to offer a juvenile referred to the court the opportunity to participate in diversion programs; and

3. Make, in consultation with the prosecutor, the decision whether to file a formal petition in the court alleging that the juvenile is delinquent and ask that the court assume jurisdiction over the juvenile.

Criteria should be formulated for the placement of juveniles in detention and shelter care. Predetention screening of juveniles referred for court action should place into their parental home, a shelter, or nonsecure residential care as many juveniles as may be consistent with their needs and the safety of the community.

Criteria governing detention prior to adjudication should include the following:

1. Prehearing detention should not be authorized unless the child is an escapee from either an institution for delinquent children or a penal institution or is alleged to be delinquent by reason of having committed an offense against a person that resulted in the victim requiring medical attention for injuries. A formula should also be developed to take cognizance of both the seriousness of offenses and frequency of offenses. Detention should be necessary only to protect the person or property of the child; to provide supervision and care for the child when there is no other feasible way of providing it; or to secure the presence of the child at further court proceedings.

2. Detention decisions should be made only by intake personnel, not by police officers.

3. Juveniles should not be detained in jails, lockups, or other facilities used for adults.

4. Adequate diagnostic, detention, or other appropriate facilities should be developed for juveniles who must be detained prior to adjudication, between adjudication and disposition and at the post-dispositional stage.

Use of shelter care rather than detention should be encouraged whenever possible. Adequate facilities, such as foster homes, group homes, or other physically nonrestricting situations, should be provided for shelter care.

Placement of a child in a shelter care facility should be permitted only under the following circumstances:

1. The child does not wish to return home;

2. The child has been adjudicated delinquent or in need of supervision two or more times for being a runaway or for being beyond parental control;

3. The child comes from a home in which there is not a responsible adult to provide supervision; or

4. The child is of compulsory school age, has been suspended or expelled from school, and has inadequate supervision at home during school hours.

A child who comes within one of the above categories should be placed in shelter care only if such placement is necessary to provide supervision and care for the child when there is not a parent or other person able and willing to provide care.

Criteria for the placement of juveniles in detention and shelter care should be applied in practice.

A juvenile placed in detention or shelter care should be released if no petition alleging delinquency (or, in the case of a juvenile placed in shelter care, no petition alleging neglect) is filed in the court within 24 hours of the placement. A juvenile placed in detention or shelter care should have the opportunity for a judicial determination of the propriety of continued placement in the facility at the earliest possible time, but no later than 48 hours after placement.

Commentary

Intake, which is essentially a screening and referral process, is a recognized procedure within the South Dakota courts. The reasons that justify intake are similar to those that justify screening, diversion and plea negotiations in the criminal process. The application of the full criminal process may be too severe when there is a fine line between legal and illegal conduct. The nature of the violation, the circumstances of its commission or the character of the accused may make the filing of a petition inappropriate. Problems may exist within the home which do not call for formal juvenile court processing and are more directly the responsibility of the parents rather than the juvenile. Appropriate dispositional alternatives may be found without the necessity for detention and formal adjudication. Intake indicates a willingness to emphasize screening and diversion as opposed to the punishment and deterrence that so often characterize the adult criminal process. Intake helps to prevent abuses that have previously characterized the system by keeping youth, whose conduct is not dangerous and whose acts would not be criminal if committed by an adult, from the stigma and potential harmful effects of formal processing.

Because of the uniqueness of juvenile processing and the specialization involved in the intake function, the standard advocates the creation of a special intake unit within each circuit. Naturally, sufficient personnel should be retained for this purpose. Presently court service workers in South Dakota are required to perform a wide variety of court and probation services. This standard emphasizes centralization and specialization as an improvement over the present system. However, present services will not be improved if the intake burden is placed on an insufficient number of court service workers.

In outlining the duties of intake personnel, the standard places primary responsibility for intake on the intake unit. The intake unit should assume responsibility for intake on a 24-hour basis. Police should not be permitted to make detention and other juvenile intake decisions. At the present time police are permitted to detain juveniles in temporary custody, though the court must be notified of this fact. SDCL 26-8-23.1 (1976).

The standard also indicates that the decision to file a formal petition should be made in consultation with the prosecutor. Because intake workers generally are not trained in the law, the advice of the prosecutor is one way to insure that the filing of a formal petition is a valid outcome of any individual intake procedure. As a practical matter, early consultation with the prosecutor could save the court time and resources needlessly wasted because the petition was insufficient on the basis of evidence or some other factor. However, the ultimate decision whether or not to file a petition should be made by the intake unit, whose primary emphasis is on alternatives to formal disposition and reintegration of the juvenile offender.

The standard emphasizes the need for criteria for the placement of juveniles in detention and shelter care. The need for criteria has been recognized to some extent by the South Dakota Court Services, which has published a series of guidelines for its workers dealing with intake, caseflow and diversion. However, these criteria do not cover the appropriateness of detention or shelter care, nor do the statutes specifically address this subject.

The guidelines outlined in the standard are designed to diminish the frequent arbitrariness of detention and shelter care decisions. Presently South Dakota law prohibits the jail detention of a juvenile who is under fifteen years of age. SDCL 26-8-19 (1975). This law is a step in the right direction but does not fully satisfy the standard. In addition adherence to this law has not been consistent because of a lack of available alternative facilities. The standard maintains that juveniles should not be held in jails, lockups or other adult facilities but rather should be held in facilities that are appropriate for juveniles. Implementation of the standard will mean that, in some cases, diagnostic, detention and other appropriate facilities will have to be developed within the State.

As further limitations on placement, the standard indicates that a juvenile should be released from detention or shelter care if no petition alleging delinquency or neglect has been filed in the court within 24 hours of placement. In other words, detention or shelter care decisions should be subject to direct court supervision. The emphasis in either case should be on the least restrictive placement possible. Guidelines concerning placement are outlined in the standard.

The standard goes beyond South Dakota law by calling for a judicial hearing to determine the propriety of continued detention or shelter care within 48 hours after placement. Since the intake worker will usually make the initial placement decision, the juvenile should have the opportunity for a judicial review of this decision. Although South Dakota law does not stipulate this requirement, South Dakota does require a "prompt judicial hearing" on the probable cause for detention. **Black Bonnet v. South Dakota** 357 F. Supp. 889 (1972). Although the law has yet to be changed in compliance with the **Black Bonnet** case, an amendment to the statutes over and above the ruling in this case would be needed to comply with the stricter 48 hour requirement advocated in the standard.

Implementation

A. Agencies Involved:
South Dakota Court Services.
Police.
Courts.

B. Legislation:
Title 26, Chapter 8 of the South Dakota Compiled Laws governing minors should be carefully examined and appropriately amended in compliance with this standard. Among those laws affected will be statutes governing temporary custody and detention.

C. Administrative Actions:
South Dakota Court Services would require some internal reorganization for the purpose of vesting the intake function in an intake unit in each circuit. The court, through its budget, should provide for the hiring of additional personnel as necessary.

In order to comply with this standard Court Services should take action to assume control over admissions on a 24-hour basis. Police agencies can assist in this process by voluntarily referring juveniles to intake workers for the purpose of making initial detention, shelter care, screening and diversion decisions.

In addition to present efforts to formulate intake policies, Court Services should institute policies (a) requiring consultation with the prosecutor in making a decision of whether or not to file a formal petition and (b) establishing criteria for detention and shelter care.

Both police and Court Services should encourage and work toward the development of sufficient and appropriate facilities for detention and shelter care. The use of jails for juvenile detention and the use of facilities that are more restrictive than the situation warrants should be prohibited as a matter of intake policy.

Courts Standard 13.3

Processing Certain Delinquency Cases as Adult Criminal Prosecutions

The circuit court should have the authority to order certain delinquency cases to be processed as if the alleged delinquent was above the maximum age for circuit court delinquency jurisdiction. After such action, the juvenile should be subject to being charged, tried, and (if convicted) sentenced as an adult.

An order directing that a specific case be processed as an adult criminal prosecution should be entered only under the following circumstances:

1. The juvenile involved is above a designated age;

2. A full and fair hearing has been held on the propriety of the entry of such an order; and

3. The judge of the circuit court has found that such action is in the best interests of the public.

In each jurisdiction, more specific criteria should be developed, either through statute or rules of court, for determining when juveniles should be processed as criminal defendants.

If an order is entered directing the processing of a case as an adult criminal prosecution and the juvenile is convicted of a criminal offense, the defendant should be permitted to assert the impropriety of the order or the procedure by which the decision to enter the order was made on review of his/her conviction. When the conviction becomes final, however, the validity of the order and the procedure by which the underlying decision was made should not be subject to any future litigation.

Commentary

South Dakota law presently agrees with the instant standard as written.

The question of waiver for juveniles to adult court has many problems, not the least of which is the fact that it depends on judicial discretion. This is stated in subsection 3 of the instant standard. There are, however, few if any ways of controlling such discretion.

The instant standard suggests that the criteria for waiver to adult court should be predicated on degree of danger to the community. More specific guidelines should definitely be developed, indicating with greater specificity those factors which should be taken into account. The seriousness of the instant offense, extent to which longer community protection may be warranted, juvenile's susceptibility to various rehabilitation programs and other considerations must certainly be considered when addressing the question of waiver.

Implementation

A. Agencies Involved:
Circuit Court.
South Dakota Court Services.

B. Administrative Actions:
The criteria for determining waiver to adult court should probably be by court rule. Statutes might make them too difficult to adjust for exceptional cases.

Courts Standard 13.4

Adjudicatory Hearing in Delinquency Cases

The hearing to determine whether the State can produce sufficient evidence to establish that a juvenile who is allegedly delinquent is in fact delinquent (the adjudicatory hearing) should be distinct and separate from the proceeding at which — assuming a finding of delinquency — a decision is made as to what disposition should be made concerning the juvenile. At the adjudicatory hearing, the juvenile alleged to be delinquent should be afforded all of the rights given a defendant in an adult criminal prosecution, except that trial by jury should not be available in delinquency cases.

A juvenile's parents should not be permitted to waive a juvenile's right to notice, since to do so could effectively restrict the juvenile's ability to exercise other constitutional and legal rights in preparation for the adjudication hearing.

In all delinquency cases, a legal officer representing the State should be present in court to present evidence supporting the allegation of delinquency.

If requested by the juvenile, defense counsel should use all methods permissible in a criminal prosecution to prevent a determination that the juvenile is delinquent. Defense counsel should function as the advocate for the juvenile. Defense counsel's performance should be unaffected by any belief counsel might have that a finding of delinquency might be in the best interests of the juvenile. As advocate for the juvenile alleged to be delinquent, counsel's actions should not be affected by the wishes of the juvenile's parents or guardian if those differ from the wishes of the juvenile.

Commentary

A separation of the adjudicatory and dispositional hearings enables the court to hold a true fact-finding hearing at the adjudicatory stage, characterized by equal protection and due process, while "at the dispositional stage the rules of evidence might be relaxed and information concerning the juvenile's need for services might be considered." (National Advisory Commission, 1973:302). Once adjudication has been completed the court must have time to investigate and review background information, extenuating circumstances, dispositional alternatives and other factors relevant to an appropriate disposition. In fact, the trend in South Dakota has been away from judicial review of social reports prior to or during the adjudicatory process. A separation of the adjudi-

catory and dispositional hearings is necessary if the court is to be expected to conduct a true fact-finding hearing on the one hand and award special consideration to a juvenile's need for services on the other.

In the wake of rising juvenile criminality and unsuccessful treatment philosophies the President's Commission on Law Enforcement and the Administration of Justice (1967:7) recognized that "the great hopes held for the juvenile court have not been fulfilled . . . While statues, judges and commentators still talk the language of compassion, help and treatment, it has become clear that in fact the same purposes that characterize the use of the criminal law for adult offenders — retribution, condemnation, deterrence and incapacitation — are involved in the disposition of juvenile offenders too . . ."

Recognizing the injustice of this situation, Standard 13.4 charges the courts to afford juveniles the rights afforded to adults in criminal prosecutions. Recognizing the potential for arbitrariness and injustice, the trend in the courts has been to rule in favor of protecting the procedural and due process rights of juveniles. The Supreme Court gave impetus to this trend through its ruling in **Kent v. United States,** 383 U.S. 541 (1966), which supported juvenile counsel's access to social records. The court also held that for appeal purposes the juvenile court must give a full statement of the reasons for waiver of jurisdiction, including demonstration that a "full investigation" has been made. Another case, **In re Gault,** 387 U.S. 1 (1967), supported the juvenile's right to adequate and timely notice of proceedings and charges, legal counsel, the privilege against self-incrimination and the right to confront and cross-examine adverse witnesses. In **In re Winship,** 397 U.S. (1970) the "proof beyond a reasonable doubt" standard was applied to juvenile delinquency proceedings when institutional confinement was at issue.

One apparent exception involves a juvenile's right to a jury trial. Although arguments exist on both sides, the Supreme Court has held that, in applying the fundamental fairness test, due process does not require a jury trial in State juvenile proceedings. See **McKeiver v. Pennsylvania,** 403 U.S. 528 (1971). The standard adheres to the present court ruling in this regard. However, some states, Colorado for example, have instituted juries in juvenile court proceedings.

Along with this consideration of procedural rights, the standard challenges the propriety and perhaps the constitutionality of SDCL 26-8-14 (1967) which permits a parent, guardian or custodian of a child alleged to be dependent or delinquent to waive the juvenile's right to notice, thereby enabling the court to, "thereupon proceed to an examination and hearing and determine the dependency or delinquency of such child and his/her care, custody, discipline or disposition . . . " This law effectively denies a child the right to notice in situations where the parent or guardian waives notice, a particularly flagrant injustice when the parent or guardian is the person who has petitioned for the child to be declared dependent or delinquent by the court. This denial of the right to notice would seem to restrict the juvenile's ability to exercise other constitutional and legal rights in preparation for the adjudicatory hearing. (Newberger, 1972:72).

Standard 13.4 calls for the presence of a legal officer to represent the State in all delinquency cases. Presently, unofficial estimates indicate that state's attorneys are rarely called upon to support allegations of delinquency. Yet without a legal officer to represent the State, the judge must assume that role, particularly when a defense attorney is present. This situation destroys the judge's traditional position as a neutral observer, mediator and weigher of fact, a particularly important position when a jury is not present. It is also paradoxical that defense counsel is available, even required, while there are no personnel to assume the adequate presentation of cases against minors, even when the act committed would be a felony if committed by an adult. (Sanford Fox, 1970:37). As adjudication as a fact-finding process gains momentum, the trend should be in favor of a legal officer to represent the State and present evidence to support the allegation of delinquency.

The proper role of counsel during adjudication has been the subject of some controversy. The controversy stems from the fact that at times the wishes of the juvenile may conflict with what parents or counsel feels are the juvenile's best interests. For instance, counsel may feel that an affirmation of delinquency would be desirable because it would result in needed treatment or removal from an undesirable home situation. The parents may wish to see the juvenile removed also. At times parents use the courts to punish children whom they are unable or unwilling to control.

However, the standard takes the position that counsel should act as the child's advocate, unswayed by personal preference or parent's wishes if these run counter to the wishes and rights of the juvenile. Defense counsel should devote full efforts to accomplishing the client's objectives. In this case the client is the juvenile.

Implementation

A. Agencies Involved:
   Courts.
   Prosecutors.
   Defense attorneys.

B. Legislation:
   The legislative vehicle for the separation of adjudicatory and dispositional hearings may exist under SDCL 26-8-22.10 (1976). However, the statute should be clarified to this effect. SDCL 26-8-14 (1967) should be repealed. For implementationtion purposes South Dakota laws covering due process and juvenile court procedures should be reviewed and adjusted as necessary to insure that, as indicated in this standard, the juvenile alleged to be delinquent is afforded all of the rights given a defendant in an adult criminal prosecution, except for the right to a jury trial.

C. Administrative Actions:
   The court has a responsibility to insure the separation of adjudicatory and dispositional hearings in juvenile cases. With or without appropriate legislation, a court rule to this effect would be desirable.

   The court should also assume responsibility to insure the presence in court of a legal officer to represent the State in cases involving an allegation of delinquency. This requirement should be a matter of statewide court policy.

Courts Standard 13.5

Dispositional Hearings in Delinquency Cases

The dispositional hearing in delinquency cases should be separate and distinct from the adjudicatory hearing. The pro-

cedures followed at the dispositional hearings should be identical to those followed in the sentencing procedure for adult offenders.

Commentary

Standard 13.5 complements Standard 13.4, which advocates the separation of adjudicatory and dispositional hearings in delinquency cases.

Adult sentencing procedures indicated in this standard refer to those outlined in the standards and goals of the South Dakota Courts and Corrections Task Forces and not necessarily the sentencing procedures set forth in the State's statutes. It is recognized that the dispositional stage of a delinquency case should offer a wider range of dispositional alternatives than are available in adult sentencing. Procedurally, the two should not differ. This procedure includes, but is not limited to, right to counsel, right to present arguments and evidence favoring a more lenient disposition and the right to access to the information upon which the dispositional decision is made.

Implementation

A. Agencies Involved:
Courts.

B. Administrative Actions:

For implementation purposes the courts should establish rules to insure that procedures followed at dispositional hearings for juveniles are identical to procedures followed in the sentencing of adult offenders. The only manner in which disposition in delinquency cases should differ from adult sentencing should be in the wider range of dispositional alternatives available in delinquency cases.

CHAPTER FOURTEEN

MASS DISORDERS

Courts Standard 14.1

Mass Disorder Plan Development

There should be developed for each judicial unit a comprehensive plan for the administration of the entire criminal justice system during and following mass disorders.

Commentary

As opposed to setting out a standard for each component of the criminal justice system, the above single standard was adopted. The following explore part of the rationale for this approach.

1. The standards should address an overall planning process — not separate standards advocating separate plans for the courts, prosecution, and defense services. (A state plan exists but is largely ignored)

2. The courts should not have to "play soldier" — in other words, the courts should be obligated to execute their portion of the overall plan and not be responsible for overseeing the other component to insure compliance.

3. Ultimately, one must ask exactly how much value would be derived from such a standard in South Dakota. The simple lack of magnitude of disturbances (such as was seen in Detroit, Watts, New York, etc.) indicates questionable value for implementation in South Dakota.

An analysis of planning which has either taken place, is in progress or is anticipated, involves several elements. A contingency plan may be defined as (1) a plan, (2) which is coordinated, (3) comprehensive in scope, (4) developed in advance of contingency, and (5) implemented. Many communities have perhaps as yet failed, or refused, to recognize the essential elements of a contingency plan, as well as particular problems that can arise and have thereby been delinquent in developing such a plan.

It is essential that a plan be clearly differentiated from a study. Both are usually presented as reports; however, the plan provides a detailed course of action; a study merely explains some phenomenon. An emergency justice plan requires a high degree of coordination in order to operate effectively. Without adequate coordination the various parts of the plan will likely not operate smoothly during an emergency. Individual parts of a system may operate properly, but these parts, being interdependent, must be integrated for the total system to operate effectively. Criminal justice systems, which are for the sake of convenience compartmentalized, must be viewed as total entities and planning within such a system, particularly its operation during an emergency, must similarly be all encompassing. Various mediums through which plans are organized have been developed; however, most frequently a "coordinating group" is established. Group composition normally represents all agencies in the criminal justice system on either a local or state-wide basis, depending upon the extent of potential trouble.

Implementation

A. Agencies Involved:

All law enforcement agencies, including courts, corrections, etc.

Attorney General.

Municipal governments.

B. Legislation:

There is some question as to whether such a plan should be part of the state laws. To the extent that some agency or office is to be responsible for development, revision, and implementation of such a plan, then this is the proper topic of such a statute.

C. Administrative Actions:

Implementation is a two-step process: (1) the development of a written detailed program of proposed action — a paper plan — followed by (2) the effective mobilization of the physical machinery essential to carry out the program — the deployment of the plan. Implementation is, in a sense, a political process, requiring a mandate from the political structure to develop a plan rather than a study. The attractiveness of conducting a study should be countered by its basic uselessness in determining who should do what and when. Implementation demands that the power structure maintain a continued surveillance to insure deployment of the necessary personnel and physical resources in accordance with the terms of the plan. The mere delivery to the appointing authority of a set of suggestions (such as might result from a study) is simply unequal to the task for insuring successful implementation.

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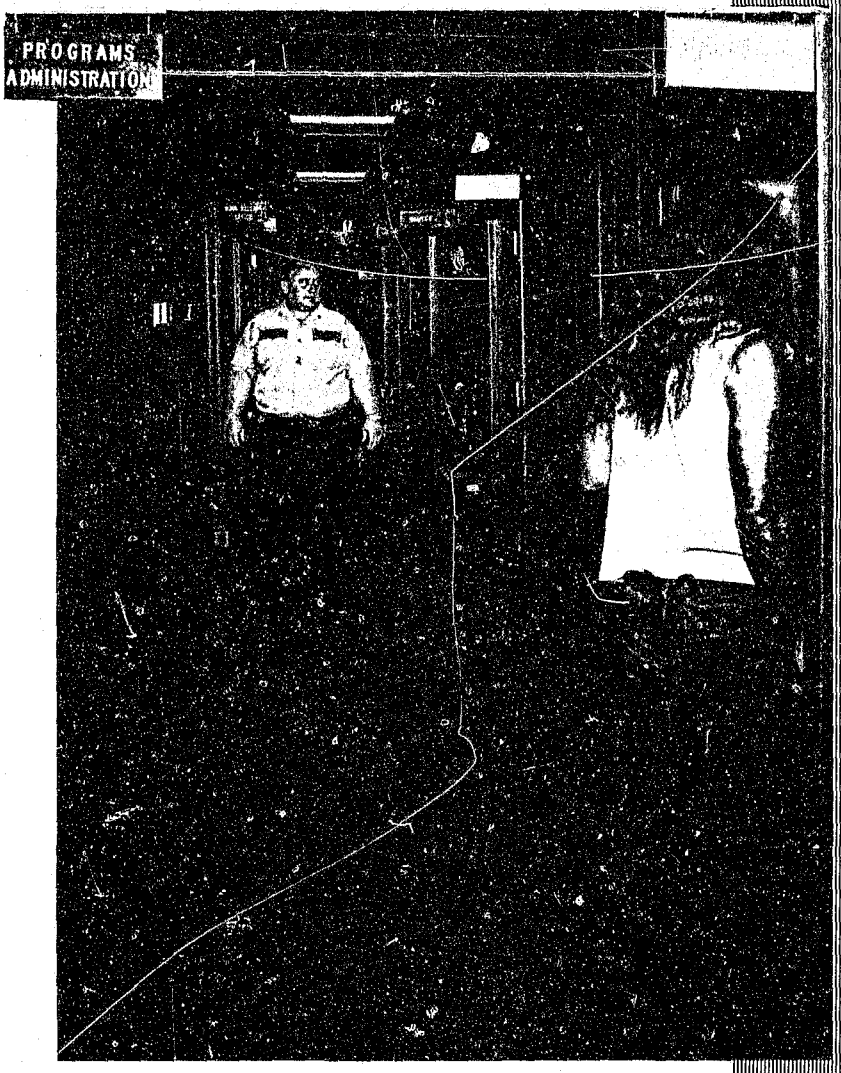

corrections

CHAPTER ONE

RIGHTS OF OFFENDERS

Corrections Standard 1.1

Access to Courts

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

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

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

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

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

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

6. Access to legal services and materials appropriate to the kind of action or remedy being pursued should be provided as an integral element of the offender's right to access to the courts. The right of offenders to have access to legal materials was affirmed in Younger v. Gilmore, 404 U. S. 15 (1971), which is discussed in Standard 1.3.

Commentary and Implementation

See Standard 1.3.

Corrections Standard 1.2

Access to Legal Services

Each correctional agency should immediately develop and implement policies and procedures to fulfill the right of offenders to have access to legal assistance, through counsel or counsel substitute, with problems or proceedings relating to their custody, control, management, or legal affairs while under correctional authority.

Commentary and Implementation

See Standard 1.3.

Corrections Standard 1.3

Access to Legal Materials

Each correctional agency, as part of its responsibility to facilitate access to courts or each person under its custody, should establish policies and procedures to fulfill the right of offenders to have reasonable access to legal materials.

Commentary

The law clearly acknowledges and protects the right of prisoners and offenders to reasonable access to the courts. The doctrine has been affirmed by the Supreme Court, **Ex Parte Hull**, 312 U.S. 546 (1941). (NAC, 1973:24). Closely related to this right of access to the courts are the rights to have legal services and materials.

The Supreme Court cases **Johnson v. Avery**, 393 U.S. 483 (1969) and **Younger v. Gilmore**, 404 U.S. 15 (1971) establish these rights.

However, the problem is not with recognizing access to the courts, legal services and materials as rights of prisoners but with fulfilling these rights. One must keep in mind that these rights apply to both juveniles and adults who not only are detained in any correctional facility but also to those who are on probation or parole. The question then becomes one of how these rights are to be implemented by all the different agencies involved. Making a lawyer available to every offender is obviously unrealistic. Similarly, establishing an adequate law library in every local jail, juvenile facility, and adult institution is out of the question. Therefore, each individual agency must be responsible for developing policies and procedures to fulfill the offender's rights of access to the courts, legal services and legal materials.

Possible solutions to the problem include: (1) using the interlibrary loan system to obtain legal materials; (2) working out cooperative agreements with local attorneys to gain access to legal materials; (3) hiring third year law students as interns to work as legal advisors to offenders; (4) providing extra training to one agency employee in the area of prisoners' rights in order to better aid offenders. In any event, each correctional agency should be prepared to fulfill these rights in order not to be brought under the scrutiny of the courts.

Implementation

A. Agencies Involved:
USD Law School.

State Bar Association.
Police.
Correctional agencies.
Board of Charities and Corrections.

B. Administrative Actions:

Correctional administration must develop policies and procedures to implement these rights.

C. Funding:
LEAA.
State Library Commission.
State and local governments.

Corrections Standard 1.4

Protection Against Personal Abuse

Each correctional agency should establish immediately policies and procedures to fulfill the right of offenders to be free from personal abuse by correctional staff or other offenders. The following should be prohibited:

1. Corporal punishment.

2. The use of physical force by correctional staff except as necessary for self-defense, protection of another person from imminent physical attack, or prevention of riot or escape.

3. Solitary or segregated confinement as a disciplinary or punitive measure except as a last resort and then not extending beyond 10 days' duration.

4. Any act or lack of care, whether by willful act or neglect, that injures or significantly impairs the health of any offender.

5. Infliction of mental distress, degradation, or humiliation.

Correctional authorities should:

1. Evaluate their staff periodically to identify persons who may constitute a threat to offenders and where such individuals are identified, reassign or discharge them.

2. Develop institution classification procedures that will identify violence-prone offenders and where such offenders are identified, insure greater supervision.

3. Implement supervision procedures and other techniques that will provide a reasonable measure of safety for offenders from the attacks of other offenders. Technological devices such as closed circuit television should not be exclusively relied upon for such purposes.

Commentary

Within the past decade, complaints of personal abuse have flooded into the courts from inmates of correctional facilities. The courts have upheld many of these prisoners' allegations and have found the correctional facilities and/or the administrators to be in violation of the eighth amendment which prohibits cruel and unusual punishment. The standard enumerates a variety of punitive activities, which, at least on an individual basis, may fall short of the eighth amendment ban but which should be included in the legal protections available to the offender.

The standard requires that correctional authorities take affirmative steps to diminish the level of violence and abuse within correctional institutions. Staff should be evaluated in terms of their ability to interact with offenders on a nonviolent basis. Offenders who have been identified as being violence-prone should be segregated from the general population of the institution. Similarly, the supervision should be adequate to insure the personal safety of the offenders.

Implementation

A. Agencies Involved:
Correctional agencies.
Board of Charities and Corrections.

B. Legislation:

The Legislature needs to set a limit on length of solitary confinement.

C. Administrative Actions:

Administrators must develop and implement policies and procedures to protect prisoners from personal abuse. They must also evaluate their staff, develop classification procedures for offenders, and improve their supervision techniques.

Corrections Standard 1.5

Healthful Surroundings

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

The facility should provide each inmate with:

1. Reasonable protection and privacy as appropriate to the type and purpose of the facility.

2. Adequate temperature control and ventilation to provide a reasonable degree of physical comfort.

3. Adequate lighting.

4. Clean and decent installations for the maintenance of personal cleanliness.

5. Recreational opportunities and equipment; when climate and physical conditions permit, recreation or exercise in the open air.

All new construction of or major reconstruction on correctional facilities should provide each inmate with:

1. Their own room or cell of adequate size.

2. Heat or cooling as appropriate to the season to maintain temperature in the comfort range.

3. Natural and artificial light.

4. Clean and decent installations for the maintenance of personal cleanliness.

5. Recreational opportunities and equipment; when climatic conditions permit, recreation or exercise in the open air.

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

Independent comprehensive safety and sanitation inspections should be performed at least annually on an unscheduled basis by qualified personnel: State or local inspectors of food, medical, housing, and industrial safety who are independent of the correctional agency. Correctional facilities should be subject to applicable State statutes relating to health, sanitation and safety.

Commentary

Healthful surroundings should be provided to all inmates.

However, this objective is extremely difficult to fulfill given the condition of many of the local lock-ups and jails in South Dakota. The standard recognizes that many of South Dakota's local jails could not possibly meet the requirements set forth and therefore, makes a distinction between existing facilities and any major reconstruction on or new construction of correctional facilities.

In existing facilities it may be impossible to provide individual cells, natural lighting, areas for open air recreation, and heating or cooling appropriate to the season. However, the existing facility should provide at the minimum the five points listed in the first section of the standard if it does not want to risk coming under the scrutiny of the courts.

Given the general level of sanitation and health in the United States, the current tolerance of deficient conditions, particularly in local jails and detention facilities, is inexplicable. Likewise, if the objective of placing people in jails, penitentiaries, etc. is to rehabilitate and to reintegrate them into society, a prerequisite to accomplishing those goals would include providing healthful surroundings to the inmates. Therefore, any major reconstruction or new construction of any correctional facility should incorporate stricter health standards.

An important part of this standard pertains to establishing inspection procedures. Each facility should be thoroughly inspected for health, sanitation and safety hazards at least once a year and if possible more than once. These investigations should be conducted by the appropriate state or local people who are independent of the correctional system. This evaluation should be conducted on the basis of state statutes relatiny to health, sanitation and safety.

Implementation

A. Agencies Involved:
   State Health and Sanitation Department.
   Board of Charities and Corrections.
   Department of Social Services.
   Correctional agencies.
   Police.
   Courts.

B. Legislation:
   The legislature must give the Health and Sanitation Department the right to inspect the correctional facilities and provide this department with some degree of clout to see that the standards are met.

C. Funding:
   LEAA.
   State appropriations.
   Federal monies.
   Local budgets.

Corrections Standard 1.6

Medical Care

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

1. An examination of any person under confinement for a period over 48 hours, excluding weekends and holidays, by a medically trained person.

2. Medical services performed by persons with appropriate training under the supervision of a licensed physician.

3. Emergency medical treatment on a 24-hour basis.

4. Access to an accredited hospital.

Medical problems requiring special diagnosis, services, or equipment should be met by medical furloughs or purchased services.

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

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

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

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

Commentary

Offenders do not give up their rights to bodily integrity whether from human or natural forces because they are convicted of a crime. The courts have upheld numerous prisoner claims for the right to specific medical treatment and have ordered payment of damages by prison officials who have denied medical care (in some cases).

In South Dakota, medical services, particularly in rural areas, are scarce and are often not available to the general public. The standard is not calling for better medical care for prisoners than that obtainable by the general public, but emphasizes that the correctional agencies are responsible for providing medical services when the need arises. The correctional agencies should have an established plan for providing these medical services when necessary. All personnel within the correctional agency should be familiar with the medical resources which they are to utilize when an emergency occurs.

Implementation

A. Agencies Involved:
   Medical Association.
   Department of Social Services.
   Counties.
   State Health Department.
   Correctional agencies.
   Police.

B. Administrative Actions:
   Each correctional agency must develop a medical plan to serve their clients.

C. Funding:
   LEAA may provide monies for medical personnel.
   State, county and local appropriations.

Corrections Standard 1.7

Searches

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

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

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

a. The plan should provide for:

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

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

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

(4) Publication of the plan.

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

Commentary

Correctional authorities have the right to search the persons and the property of those people who are under their control. The search may be for the purpose of controlling contraband within an institution, gathering evidence pertaining to a particular crime, or fulfilling some other legitimate correctional objective. The purpose of this standard is to limit the type and insure the legality of the searches to which people under the control of the correctional authorities are subjected. The standard recognizes the necessity for unscheduled searches within correctional institutions to control contraband and to uncover evidence of other illegal activities. However, searches which are conducted for other reasons should be authorized only by top management personnel in order to eliminate the possibility of searches made for harassment purposes.

Publication of the search plan does not mean that the actual time and dates of the searches must be published. It does mean that those under correctional authority should be aware that searches will be made, what kinds of searches they are subject to, and under what conditions the searches will be initiated. By publishing this part of the search plans, the offender population will know what to expect and tensions will be alleviated.

Implementation

A. Agencies Involved:
Correctional agencies.

B. Administrative Actions:
Correctional administrators must develop the search plan, policies and procedures.

Corrections Standard 1.8

Nondiscriminatory Treatment

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

1. An essential equality of opportunity in being considered for various program options, work assignments, and decisions concerning offender status.

2. An absence of bias in the decision process, either by intent or in result.

3. All remedies available to noninstitutionalized citizens open to prisoners in case of discriminatory treatment.

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

Commentary

Although there is no question about the courts' position on discriminatory practices as regards to prisoners based on race, religion, nationality, sex, or political beliefs, insuring non-discriminatory treatment of prisoners is another matter. Each correctional agency should reevaluate their policies and procedures in light of this standard and work toward equalizing the treatment provided to all its clients. This standard expresses an ideal which all agencies should strive to achieve.

Implementation

Correctional agencies are legally bound to implement this standard.

Corrections Standard 1.9

Rehabilitation

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

1. The correctional authority and the governmental body of which it is a part should give first priority to implementation

of statutory specifications or statements of purpose.

2. Each correctional agency providing parole, probation, or other community supervision, should supplement its rehabilitative services by referring offenders to social services and activities available to citizens generally. The correctional authority should, in planning its total range of rehabilitative programs, establish a presumption in favor of community-based programs to the maximum extent possible.

3. A correctional authority's rehabilitation program should include a mixture of educational, vocational, counseling, and other services appropriate to offender needs. Not every facility need offer the entire range of programs, except that:

a. Every attempt should be made to provide opportunities for basic education up to high school equivalency on a basis comparable to that available to citizens generally, for offenders capable and desirous of such programs.

b. Every attempt should be made to have a selection of vocational training programs available to offenders; and

c. A work program involving offender labor on public maintenance, construction, or other projects should not be considered part of an offender's access to rehabilitative services when the offender requests (and diagnostic efforts indicate that he/she needs) educational, counseling, or training opportunities.

4. Correctional authorities regularly should advise courts and sentencing judges of the extent and availability of rehabilitative services and programs within the correctional system to permit proper sentencing decisions and realistic evaluation of treatment alternatives.

5. Governmental authorities should be held responsible by courts for meeting the requirements of this standard.

Commentary

Despite the general agreement among penologists that rehabilitative programs should be the core of any correctional system, the courts have refused to hold that there is an absolute right to rehabilitation during incarceration. (Palmer, 1973: 127). Several cases from areas closely related to corrections suggest, however, that such a right does exist. Mental patients who have been involuntarily committed have won cases in which they demanded that some treatment for mental disease be provided. Similarly, courts have held that incarcerated juveniles have a right to rehabilitative programs. (**In re Creek v. Stone,** 379 F. 2d 106 (1967); **In re Elmore,** 382 F. 2d 125 (1967); **Mataralla v. Kelley,** 359 F. Supp. 478 (S.D.N.Y. 1973; **Nelson v. Heyne,** 355 F. Supp. 451 (N.D. Ind. 1972)).

Although the absence of rehabilitation programs within the correctional system may not be presently constitutionally required, the Supreme Court noted in **Holt v. Sarver,** 309 F. Supp. 362 (1970) that the lack of rehabilitative programs was a factor in finding the prison unconstitutional and that a sociological theory or idea may ripen into constitutional law. In view of the possibility that persons committed to penal institutions are also entitled to have programs of rehabilitation and education available to them, South Dakota's jails, juvenile institutions and adult correctional facilities need to start re-examining their programs in terms of their rehabilitative value.

The standard recognizes that not every rehabilitative program can be available for every offender. The test to be applied should be whether the offender has access to some programs which are "appropriately related" to the purpose for which the offender was sentenced. (NAC, 1973:45). Where possible, community resources should be utilized to the maximum extent.

Although a lack of financial resources is often the reason for not developing rehabilitation programs, should these programs become a constitutional or statutory requirement, the Supreme Court of the United States and some lower courts have made it perfectly clear that a lack of funds is not a legitimate reason for denying the constitutional rights of inmates. **Holt v. Sarver,** 309 E. Supp. 362 (1970). The correctional agencies may be responsible for providing rehabilitation programs for its clients. If scarce resources and/or other reasons make it impossible for the correctional agency to provide appropriate programs to the offenders, this situation should be reported to the sentencing court. The court should seriously consider this information and take the appropriate action it sees necessary to carry out the original sentence.

Implementation

A. Agencies Involved:
Correctional agencies (public and private).
Courts.
Police.
Department of Social Services.
Department of Public Instruction.
Vocational rehabilitation programs.

B. Administrative Actions:
The correctional administrators must develop rehabilitation programs for their clients.

C. Funding:
LEAA.
Title XX of the Social Secuity Act, as amended in 1974.
Department of Labor.
Department of Public Instruction.
Correctional agency budgets.

Corrections Standard 1.10

Retention and Restoration of Rights

South Dakota should enact legislation immediately to assure that no person is deprived of any license, permit, employment, office, post of trust or confidence, or political or judicial rights based solely on an accusation of criminal behavior. Also, in the implementation of Standard 1.11, Collateral Consequences of a Criminal Conviction, legislation depriving convicted persons of civil rights should be replaced. This legislation should provide further that a convicted and incarcerated person should have restored to him/her on release all rights not otherwise retained.

The appropriate correctional authority should:

1. With the permission of an accused person, explain to employers, families, and others the limited meaning of an arrest as it relates to the above rights.

2. Work for the repeal of all laws and regulations depriving accused or convicted persons of civil rights.

3. Provide services to accused or convicted persons to help them retain or exercise their civil rights or to obtain restoration of their rights or any other civil disability that may occur.

Commentary

See Standard 1.11.

Corrections Standard 1.11

Collateral Consequences of a Criminal Conviction

South Dakota should enact by 1978 legislation repealing all mandatory provisions depriving persons convicted of criminal offenses of civil rights or other attributes of citizenship. Such legislation should include:

1. Repeal of all existing provisions by which a person convicted of any criminal offense suffers civil death, loss of civil rights, or forfeiture of estate or property.

2. Repeal of all restrictions on the ability of a person convicted of a criminal offense to hold and transfer property, enter into contracts, sue and be sued, and hold offices of private trust.

3. Repeal of all mandatory provisions denying persons convicted of a criminal offense the right to engage in any occupation or obtain any license issued by government.

4. Repeal of all statutory provisions prohibiting the employment of ex-offenders by State and local governmental agencies.

Statutory provisions may be retained or enacted that:

1. Restrict or prohibit the right to hold office during actual confinement.

2. Forfeit public office upon confinement.

3. Restrict the right to serve on juries during actual confinement.

4. Authorize a procedure for the denial of a license or governmental privilege to selected criminal offenders when there is a direct relationship between the offense committed or the characteristics of the offender and the license or privilege sought.

The legislature also should:

1. Authorize a procedure for an ex-offender to have his/her conviction expunged from the record provided that this shall not apply to records kept solely for use by law enforcement and correctional agencies, and the courts.

2. Require the restoration of civil rights upon the expiration of sentence.

Commentary

Civil liabilities resulting from a criminal conviction impose heavy burdens upon ex-offenders and hinder their reintegration into their communities. These two standards emphasize the need for the inmates to be restored to full citizenship when they are released from custody.

Federal, state and local governments should lift restrictions on hiring ex-offenders. More important, licensing boards should be required to demonstrate a valid relationship between the crime committed and the reason for denying a specific license to an ex-offender.

Not only should ex-convicts be restored to full citizenship upon completing their sentences, but some provision for expunging their criminal records should also be made available after a specified period of no further criminal behavior. Expungement should particularly be made available to the first time offender and juveniles since a criminal record clearly prohibits employment in many areas. If the offender is to reconstruct his/her life socially and economically, roadblocks such as a criminal record and civil liabilities should be eliminated as extensively as possible. However, expungement should not mean that the courts and proper criminal justice agencies are totally banned from using these records upon a new criminal conviction of the ex-offender in question.

Implementation

A. Agencies Involved:
Courts.
Correctional agencies.
Department of Social Services.
Department of Commerce and Consumer Affairs.
Police.

B. Legislation:
As indicated in the standard.

Corrections Standard 1.12

Rules of Conduct

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

1. Be designed to effectuate or protect an important interest of the facility or program for which they are promulgated.

2. Be the least drastic means of achieving that interest.

3. Be specific enough to give offenders adequate notice of what is expected of them.

4. Be accompanied by a statement of the range of sanctions that can be imposed for violations. Such sanctions should be proportionate to the gravity of the rule and the severity of the violation.

5. Be promulgated after appropriate consultation with offenders and other interested parties.

Correctional agencies should provide offenders under their jurisdiction with an up-to-date written statement of rules of conduct applicable to them.

Correctional agencies in promulgating rules of conduct should not attempt generally to duplicate the criminal law. Where an act is covered by administrative rules and statutory law the following standards should govern:

1. Acts of violence or other serious misconduct should be prosecuted criminally and not be the subject of administrative sanction.

2. Where the State intends to prosecute, disciplinary action should be deferred.

3. Where the State prosecutes and the offender is found not guilty, the correctional authority should not take further punitive action.

Commentary

Rules of conduct should be made available to any person under the control of the correctional system. The purpose of providing a rulebook listing specific offenses and penalties is to insure that all members of the prison community, including inmates and guards, understand exactly which activities are prohibited and what the resultant penalty may be for any offense. (Krantz, et al, 1973:157). A rulebook written with sufficient clarity and detail on what constitutes an of-

fense can help alleviate much harmful discretion that takes place in a prison setting. Adoption of a rulebook of prison disciplinary offenses is further recommended because there are indications that the compilation of such a rulebook will be required by the courts as part of the due process standards applicable to prison disciplinary procedures. (Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971).

Once a rulebook is completed, it should be periodically updated and changed as changing practices dictate.

Implementation

A. Agencies Involved:
   Correctional agencies.
   Board of Charities and Corrections.
   Department of Social Services.
   Police.
B. Administrative Actions:
   Development, implementation of a conduct rulebook.
C. Funding:
   General budget of agency.
   LEAA.

Corrections Standard 1.13

Disciplinary Procedures

Each correctional agency should immediately adopt disciplinary procedures for each type of residential facility it operates and for the persons residing therein.

Minor violations of rules of conduct are those punishable by no more than a reprimand, or loss of commissary, entertainment, or recreation privileges for not more than 24 hours. Rules governing minor violations should provide that:

1. Staff may impose the prescribed sanctions after informing the offender of the nature of the misconduct and giving the inmate a chance to explain or deny it.

2. If a report of the violation is placed in the offender's file, the offender should be so notified.

3. The offender should be provided with the opportunity to request a review by an impartial officer or board of the appropriateness of the staff action.

4. Where the review indicates that the offender did not commit the violation or the staff's action was not appropriate, all reference to the incident should be removed from the offender's file.

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

Rules governing major violations should provide for the following prehearing procedures:

1. Someone other than the reporting officer should conduct a complete investigation into the facts of the alleged misconduct to determine if there is probable cause to believe the offender committed a violation. If probable cause exists, a hearing date should be set.

2. The offender should receive a copy of any disciplinary report or charges of the alleged violation and notice of the time and place of the hearing.

3. The offender, if he/she desires, should receive assistance in preparing for the hearing from a member of the correctional staff, another inmate, or other authorized person.

4. No sanction for the alleged violation should be imposed until after the hearing except that the offender may be segregated from the rest of the population if the head of the institution finds that the inmate constitutes a threat to other inmates, staff members, or own person.

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

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

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

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

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

5. The offender should be allowed to select someone to assist him/her at the hearing.

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

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

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

Commentary

There is no question that prison authorities have the right to punish rule violators within their institutions. However, if a prisoner will suffer any grievious loss of liberty or change in status as a result of this punishment, the inmate must be accorded some due process rights before his/her interests can be abridged. The National Advisory Commission (1973:52) states:

> Due process is a concept authorizing varying procedures in differing contexts of governmental action. It does not require in all cases the formal procedures associated with a criminal trial. On the other hand, due process does contain some fundamentals that should regulate all governmental action having a potentially harmful effect on an individual.
>
> Basic to any system that respects fundamental fairness are three requirements:
>
> 1. that the individual understands what is expected of him so he may avoid the consequences of inappropriate behavior;
> 2. if he is charged with a violation, that he be informed of what he is accused; and
> 3. that he be given an opportunity to present evidence in contradiction or mitigation of the charge.

The Supreme Court of the United States in Wolff v. McDonnell, 94 S. Ct. 2963 (1974) set out minimum requirements which

must be accorded to an inmate in a disciplinary hearing. These included: advance written notice of the charges must be given to the inmate facing disciplinary action; a written statement by the factfinders as to the evidence relied on and reasons for the disciplinary action must be available; the inmate should be allowed to call witnesses and documentary evidence in his/her defense; and inmates should be provided with counsel or counsel substitutes in certain cases.

The standard is consistent with Supreme Court requirements but allows the offender more rights than the Supreme Court specifically discusses in the Wolff case. The extra safeguards help insure that the offender will receive a fair hearing.

Implementation

See Standard 1.15.

Corrections Standard 1.14

Procedures for Nondisciplinary Changes of Status

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

1. The regulations should:

a. Specify criteria for the several classifications to which offenders may be assigned and the privileges and duties of persons in each class.

b. Specify frequency of status reviews or the nature of events that prompt such review.

c. Be made available to offenders who may be affected by them.

d. Provide for notice to the offenders when status is being reviewed.

e. Provide for participation of the offenders in decisions affecting their program.

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

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

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

Commentary

Nondisciplinary changes of status can have a tremendous effect on the life of the inmate who is the subject of this change. In fact, in many cases it is very difficult to discern when a change in status or a transfer is being used as a disciplinary tactic and when it is being imposed in the best interest of the inmate.

To help safeguard the prisoner from suffering a grievous loss when these changes in status or transfers occur, the standard requires the correctional agency to specify in writing the rules and procedures for determining and changing offender status, including transfers or other major decisions which will drastically affect the life of the inmate. The standard provides for inmate input into the decisions made affecting his/her life and allows for a hearing with due process requirements when an adverse change can be made in the offender's status.

Implementation

See Standard 1.15.

Corrections Standard 1.15

Grievance Procedure

Each correctional agency should immediately develop and implement a grievance procedure which is subject to review by the appropriate governing body of the agency. The procedures should have the following elements:

1. Each person being supervised by the correctional authority should be able to report a grievance.

2. The grievance should be transmitted without alteration, interference or delay to the person or entity responsible for receiving and investigating grievances.

a. Such person or entity preferably should be independent of the correctional authority. It should not, in any case, be concerned with the day-to-day administration of the corrections function that is the subject of the grievance.

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

3. Promptly after receipt, each grievance not patently frivolous should be investigated. A written report should be prepared for the correctional authority and the complaining person. The report should set forth the finding of the investigation and the recommendations of the person or entity responsible for making the investigation.

4. The correctional authority should respond to each such report, indicating what disposition will be made of the recommendations received.

Commentary

The establishment of grievance mechanisms in corrections is one of the most challenging tasks confronting correctional officials today. Unresolved grievances have caused collective violence, riot and disorder in correctional institutions.

The South Carolina Department of Corrections (1973) notes that almost every institution has some accepted means, usually, informal, for inmates to raise a grievance. But all too often, the procedural apparatus for effectively resolving the grievance is lacking, unknown to the inmate, or misunderstood.

In order to establish effective grievance mechanisms, correctional administrators should consider the following six principles. (Singer and Keating, 1975)

1. The mechanism must guarantee written responses to all grievances, and these responses must include reasons for denials.
2. There must be time limits at every level of the mechanism to prevent putting off difficult issues.
3. A basic goal of any mechanism should be the resolution of grievances at the lowest level possible, preferably by the people closest to the problem (line staff and inmates).
4. The grievance mechanism must include outside, independent review at some level.
5. **The introduction of a grievance mechanism must include a plan for training and orientation of staff and inmates.**
6. An integral part of any effective grievance mechanism is a monitoring system to see if the system is working effectively.

Observance of the above listed principles, together with the commitment of top administrators to the fair and timely resolution of grievances, will result in an effective grievance mechanism. A successful grievance mechanism can alleviate many tensions and problems within prisons and should be available in every correctional facility.

Implementation

A. Agencies Involved:
Board of Charities and Corrections.
South Dakota State Penitentiary.
South Dakota Training School.

B. Administrative Actions:
The administrators of the correctional facilities must take the responsibility of enforcing these standards. Disciplinary procedures, transfer policy and grievance mechanisms must be developed to provide guidelines to both inmates and employees. Written policy often helps to reduce tension by letting all parties concerned know what are the limitations on their behavior.

C. Funding:
Correctional budgets may be tapped for training purposes to familiarize the staff and inmates of changes within the facility.

Corrections Standard 1.16

Free Expression and Association

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

Commentary

See Standard 1.18.

Corrections Standard 1.17

Exercise of Religious Beliefs and Practices

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

1. Provide access to appropriate facilities for worship and meditation.

2. Enable offenders to adhere to the dietary laws of their faith.

3. Arrange the institution's schedule to the extent reasonably possible so that inmates may worship or meditate at the time prescribed by their faith.

4. Where and when feasible allow access to clergy and spiritual advisors of all faiths represented in the institution's population for the purpose of worship and counseling.

5. Permit receipt of any religious literature and publications that can be transmitted legally through the United States mails.

6. Allow religious medals and other symbols that are not unduly obtrusive, dangerous or destructive to person or property.

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

1. Whether there is substantial literature supporting the practice as related to religious principle.

2. Whether there is a formal, organized worship of shared belief by a recognizable and cohesive group supporting the practice.

3. Whether there is a loose and informal association of persons who share common ethical, moral, or intellectual views supporting the practice.

4. Whether the belief is deeply and sincerely held by the offender.

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

1. The belief is held by a small number of individuals.

2. The belief is of recent origin.

3. The belief is not based on the concept of a Supreme Being or its equivalent.

4. The belief is unpopular or controversial.

In determining whether practices are religiously motivated, the correctional agency should allow the offender to present evidence of religious foundations to the official making the determination.

The correctional agency should not proselytize persons under its supervision or permit others to do so without the consent of the person concerned. Reasonable opportunity and access should be provided to offenders requesting information about the activities of any religion with which they may not be actively affiliated.

In making judgments regarding the adjustment of rehabilitation of an offender, the correctional agency should allow the offender to present evidence of religious foundations to the official making the determination.

The correctional agency should not proselytize persons under its supervision or permit others to do so without the consent of the person concerned. Reasonable opportunity and access should be provided to offenders requesting information about the activities of any religion with which they may not be actively affiliated.

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

1. Consider, in any manner prejudicial to determinations of offender release or status, whether or not such beliefs are religiously motivated.

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

Commentary

See Standard 1.18.

Corrections Standard 1.18

Access to the Public

Each correctional agency should develop and implement immediately policies and procedures to fulfill the right of offenders to communicate with the public.

Commentary

Standards 1.16, 1.17, and 1.18 are directed toward implementing the basic first amendment rights of offenders. Although a person may be incarcerated, that person's rights to free expression and association, religious freedom, and access to the public are not totally abridged. These rights are subject to extra limitations but cannot be completely denied. In all three of these areas, the correctional authorities should take the least drastic measures possible to maintain institutional security.

Implementation

See Standard 1.19.

Corrections Standard 1.19

Remedies for Violation of an Offender's Rights

Each correctional agency should immediately adopt policies and procedures, and where applicable should seek legislation, to insure proper redress where an offender's rights as enumerated in this chapter are abridged.

1. Administrative remedies, not requiring the intervention of a court, should include at least the following:

a. Procedures allowing an offender to seek redress where that inmate believes his/her rights have been or are about to be violated. Such procedures should be consistent with Standard 1.15, Grievance Procedure.

b. Policies of inspection and supervision to assure periodic evaluation of institutional conditions and staff practices that may affect offender's rights.

c. Policies which:

(1) Assure wide distribution and understanding of the rights of offenders among both offenders and correctional staff.

(2) Provide that the intentional or persistent violation of an offender's rights is justification for removal from office or employment of any correctional worker.

(3) Authorize payment of claims in accordance with South Dakota Workman's Compensation schedule to offenders as compensation for physical injury caused by a violation of any right.

Commentary

The pressure for the recognition of rights for the offender has come through active judicial intervention into the correctional system, for the most part at the insistence of offenders. Offenders are bringing actions against correctional administrators under state and federal **habeas corpus** proceedings and under 42 U.S.C. 1983 the Civil Rights Act, and the courts are awarding relief and remedies to the offenders in many cases.

Recognition of prisoner's rights is ineffective without the attendant remedies. The correctional authorities should not sit back and wait for the court to intervene whenever a question of prisoner's rights arises. Instead, correctional authorities should take the initiative and develop administrative policies and procedures to provide prisoners with remedies when they have legitimate complaints that their rights are being violated. If the correctional administration can solve the problem, there would be no need for the inmate to burden the courts with complaints. Access to the courts must be available at all times to the prisoner, but would be unnecessary if administrative remedies were fair and adequate.

Implementation

A. Agencies Involved:
All correctional agencies.

B. Legislation:
Already existing.

C. Administrative Actions:
Correctional administrators must check policy and procedures to insure the first amendment rights of inmates. These officials must try to set as few limitations as possible upon these rights. Should the inmates' rights be violated, appropriate administrative remedies should be available to rectify the violations.

CHAPTER TWO
DIVERSION FROM THE CRIMINAL JUSTICE PROCESS

Corrections Standard 2.1
Use of Diversion

Each local jurisdiction, in cooperation with related State agencies should develop and implement by 1977 formally organized programs of diversion that can be applied in the criminal justice process from the time an illegal act occurs to adjudication.

1. The planning process and the identification of diversion services to be provided should follow generally and be associated with "total system planning" as outlined in Standard 8.1

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

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

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

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

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

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

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

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

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

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

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

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

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

e. The offender does not present a substantial danger to others.

f. The offender voluntarily accepts the offered alternative to further justice system processing.

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

Commentary

The word "diversion" has been tossed around in the criminal justice system extensively in the last decade but rarely has it been well defined. The National Advisory Commission (1973:73) defines "diversion" as:

> a formally acknowledged and organized effort to utilize alternatives to initial or continued processing into the justice system. To qualify as diversion, such efforts must be undertaken prior to adjudication and after a legally proscribed action has occured.

Diversion may occur at three major points: prior to police contact (i.e. school programs aimed at diverting youngsters from criminal activities), and prior to official police and court processing. Therefore, the police, prosecutors, mental health and other social service agencies may develop diversion programs.

Regardless of which agency administers a diversion project, a well planned program should delineate (1) the stage at which the offender will be diverted, (2) who will make the diversion decision, (3) the types of offenders who would benefit from the particular program, (4) the specific purposes of the project, and (5) the evaluation criteria to be used to measure the success/failure rate of the diversion program. Once these policies have been developed, the diversion program should be available to all eligible participants. In order to make the diversion decision less arbitrary and discretionary, the person making the decision to divert or not to divert should be required to write a brief explanation for the action taken. An additional right to judicial review of the diversion decision should not be required.

Many diversion programs have reported consistently better results with their graduates in terms of lower recidivism rates, more job placements, and general social stability than defendants handled by normal arrest and prosecution procedures. (NAC, 1973). A number of diversion programs appear to have higher cost/benefit ratios than traditional criminal justice processing. In addition, Watkins states (1975:63),

> Much of the benefit of diversion may be in the quality of justice it offers its clients. Often they are outsiders, suspicious of the establishment. Diversion activities may be the first services "the establishment" has offered which meet their needs. As a result of their participation in diversion they may 'join the system, and society, as well as the individual, benefits. Reduced recidivism rates among diversion clients, though tentative, do support this conclusion.

Implementation

A. Agencies Involved:
   Corrections.
   Courts.
   Police.
   Planning districts.
   Counties.
   Social service agencies.

B. Administrative Actions:
   Criminal Justice leaders must start emphasizing the need for diversion and begin planning to develop alternatives where needed. Each agency involved should establish policies and procedures pertaining to diversion and provide for evaluation of any diversion programs which are developed.

C. Funding:
   LEAA.
   Local agency budgets.

CHAPTER THREE

PRETRIAL RELEASE AND DETENTION

Corrections Standard 3.1

Comprehensive Pretrial Process Planning

Each criminal justice jurisdiction should immediately begin to develop a comprehensive plan for improving the pretrial process. In the planning process, the following information should be collected:

1. The extent of pretrial detention including the number of detainees, the number of days of detention, and the range of detention by time periods.

2. The cost of pretrial release programs and detention.

3. The disposition of persons awaiting trial, including the number released on bail, released on nonfinancial conditions, and detained.

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

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

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

7. Conditions of treatment of and rules governing persons awaiting trial.

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

9. The length of time required for bringing a criminal case to trial where such delay is found to be excessive, the factors causing such delay.

The comprehensive plan for the pretrial process should include the following:

1. Assessment of the status of programs and facilities relating to pretrial release and detention.

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

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

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

5. A strategy for processing large numbers of persons awaiting trial during mass disturbances, including a means of utilizing additional resources on a temporary basis.

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

Commentary

The person awaiting trial is subjected to the criminal justice system, and yet he/she is not legally a part of it. Innocence is presumed, but the person's freedom is restricted. In most jurisdictions, a police agency has control of the person's body; a judicial officer and then a private bail bondsman have control of the person's liberty; and the prosecuting and defense attorneys have control over how long this status will continue. With so many different agencies involved, the necessity for comprehensive, broadly participatory planning in the pretrial stage of criminal prosecution is critical. (NAC, 1973).

Before the pretrial process can be greatly improved, information about the existing system needs to be gathered and analyzed. After this information is collected, then a committee composed of representatives from all parts of the criminal justice system and the community can begin to plan realistically for changes in the pretrial process. Planning for future programs on a comprehensive basis, rather than sporadically developing pretrial detention programs, will help insure the success of these projects.

Implementation

A. Agencies Involved:
   Police.
   Corrections.
   Courts (prosecution and judges).
   Defense attorneys.
   Community representatives.
   Planning districts.

B. Administrative Actions:
   A decision to gather the necessary information and develop a plan for the pretrial process should be made by criminal justice personnel.

C. Funding:
   LEAA.
   Local budgets.

Corrections Standard 3.2

Construction Policy for Pretrial Detention Facilities

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

1. Development of a comprehensive plan in accordance with Standard 3.1;

2. Implementation, funding, and evaluation of Standards 3.3 and 3.4;

3. Examination and planning for pretrial detention facilities; and

4. Regionalization of pretrial detention facilities.

Commentary

The National Advisory Commission states (1973:114),

For reasons difficult to explain fully, construction of a facility to incarcerate people seems easier to accomplish than the implementation of programs to allow them to retain their liberty. While the maintenance of jails is generally more expensive and the initial costs high, too many jurisdictions continue to build buildings instead of helping people.

The Task Force recognizes that many of South Dakota's jails are in deplorable physical condition and that major renovations and new construction are desparately needed. However, funds should not be appropriated for this construction until some extensive planning has been done which demonstrates that construction of a facility is the only feasible alternative. Therefore, the points outlined in the standard should be actively considered before further construction is authorized.

Implementation

A. Agencies Involved:
Board of Charities and Corrections.
Counties.
State Criminal Justice Commission.
Cities.
Planning Districts.

Corrections Standard 3.3

Alternatives to Arrest

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

1. Enumeration of minor offenses for which a police officer should be required to issue a citation in lieu of making an arrest or detaining the accused unless:

a. The accused fails to identify him/herself or supply required information;

b. The accused refuses to sign the citation;

c. The officer has reason to believe that the continued liberty of the accused constitutes an unreasonable risk of bodily injury to him/herself or others;

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

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

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

2. Discretionary authority for police officers to issue a citation in lieu of arrest in all cases where the officer has reason to believe that the accused will respond to the citation and does not represent a clear threat to him/herself or others.

3. Criminal penalties for willful failure to respond to a citation.

4. Authority to make lawful search incident to an arrest where a citation is issued in lieu of arrest.

Similar steps should be taken to establish policy encouraging the issuance of summons in lieu of arrest warrants where an accused is not in police custody. This policy should provide:

1. An enumeration of minor offenses for which judicial officers should be required to issue a summons in lieu of an arrest warrant unless they find that:

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

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

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

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

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

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

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

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

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

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

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

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

Commentary

Giving police officers the authority to issue citations as opposed to making an arrest not only reduces the burden on the police department but also lessens the stigma of an arrest record for the person being issued the citation. However, the police officers must be provided with specific guidelines detailing offenses for which citations may be used. Experience indicates that mere statutory authority will not increase police issuances of citations. Explicit guidelines and procedures must be provided for appropriate agencies in order to encourage police officers to feel safe in issuing citations. Generally, these will necessarily take the form of check lists of factors supporting the issuance of a citation.

This standard still allows police officers to make an arrest if they feel the person in question will not respond to the citation or is a danger to him/herself or others. Likewise, officers will still have the authority to make a lawful search even though a citation is being issued. By utilizing the citation system, numerous police work-hours can be saved and directed towards better law enforcement.

In addition to the police issuing citations, the judicial officers should be required to issue a summons in lieu of an ar-

rest warrant unless the conditions enumerated in Standard 3.3 exist.

The use of citations and summons can reduce the burden on the criminal justice system, but a successful program hinges on cooperation between the judiciary and the law enforcement agencies. South Dakota as of yet has not developed extensive policies on using citations in lieu of arrests and summons in lieu of arrest warrants. South Dakota is not plagued by large amounts of violent personal crime, and its criminal population would be susceptible to utilizing a citation and summons process. Likewise, in many instances due to the small population of most of South Dakota towns and cities, gathering the necessary background information on the person in question would not be a major problem, and citations and summonses could be more reliably issued.

Implementation

A. Agencies Involved:
Police.
Court system.

B. Legislation:
Legislation giving authority to use a citation or summons for other than traffic offenses or misdemeanors is necessary.

C. Administrative Actions:
Police agencies must develop the policies and guidelines for issuing citations in lieu of arrest. Training for officers will be necessary. The court will need to provide training for the judges.

Corrections Standard 3.4

Alternatives to Pretrial Detention

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

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

a. Release on recognizance without further conditions.

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

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

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

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

f. Release on the basis of financial security.

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

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

i. Detention of the accused.

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

Willful failure to appear before any court or judicial officer as required should be made a criminal offense.

Commentary

Pretrial release and detention includes an important area in corrections which has long been neglected. With the increasing number of people being processed through the already over-burdened criminal justice system, new methods and techniques need to be developed in order to reduce penetration into the system as much as possible. By developing pretrial release programs, not only will the burden on the criminal justice system be lightened, but the person being processed through the system will also be treated more fairly.

The American Bar Association in Standards Pertaining to Pretrial Release (1968:23) state:

> The bare fact that a person has been charged with a crime does not justify his detention before conviction. Only if some legitimate purpose of the criminal process, such as prevention of flight, requires it, should the defendant be deprived of pretrial liberty. The history of the bail system, at least since the English Bill of Rights of 1689, and the prohibition against excessive bail, illuminate the principle, if not always the practice, that charged defendants are not to be locked up simply because they must answer to a criminal charge.
>
> History aside, however, it is now clear that unnecessary pretrial detention involves unconscionable costs both to individual defendants, and their families and to the public which must pay the financial price of detention. The defendant has not yet been convicted and, while the presumption of innocence surely does not preclude all pretrial detention, something akin to it does prevent the use of pretrial detention as a sort of anticipatory form of punishment.

In an attempt to alleviate the hardships caused by pretrial detention, and to overcome the inequities of the bail system, judicial officers should rely upon the other alternatives outlined in this standard. Although the Task Force does not recommend abolishing the existing South Dakota bail system, it does recognize that there are discrepancies and shortcomings within the present system which need to be corrected.

Implementation

A. Agencies Involved:
Bailbondsman Association.
Courts.
Police.
Corrections.

B. Administrative Actions:
Police, courts and corrections agencies should work together to develop alternatives to pretrial detention.

Corrections Standard 3.5

Pretrial Services

South Dakota should enact by 1977 legislation specifically establishing the administrative authority over and responsibility for persons awaiting trial. Such legislation should provide as follows:

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

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

Commentary

Persons awaiting trial have historically been the responsibility of no single agency. The lack of clear-cut administrative responsibility and overlapping claims to jurisdictions have made reform in this area particularly difficult.

By designating one agency to have responsibility over the pretrial detainee, changes should be much easier to institute.

Implementation

A. Agencies Involved:
   Courts.
   Police.
   Corrections.

B. Legislation:
   Legislation is needed to designate who has jurisdiction over pretrial detainees.

Corrections Standard 3.6

Rights of Pretrial Detainees

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

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

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

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

4. Persons detained awaiting trial should be accorded the same rights recommended for persons convicted of crime as set forth in Chapter 1 of this report. In addition, the following rules should govern detention of persons not yet convicted of a criminal offense:

   a. Treatment, the conditions of confinement, and the rules of conduct authorized for persons awaiting trial should be reasonable and necessarily related to the interest of the state in assuring the person's presence at trial. Any action or omission of governmental officers deriving from the rationales of punishment, retribution, deterrence, or rehabilitation should be prohibited.

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

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

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

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

Commentary

Although presumably innocent, persons held in pretrial detention often are denied more rights than convicted offenders held in prisons. The abridgement of these rights are often directly related to the poor quality of the local jails in which these people are held.

Dr. Dahlin's 1971 study of South Dakota jails showed that of these facilities:

32% cannot separate male from female
38% cannot separate juvenile from adult
62% cannot separate untried from sentenced.

This inability to separate different types of people within the jail population is a violation of the pretrial detainee's rights. However, people continue to be confined in these facilities because other resources are not available. At the same time, the courts have made it perfectly clear that inadequate resources can never be adequate justification for the state's depriving any person of his/her constitutional rights; if a state cannot obtain resources to detain persons awaiting criminal trial in accordance with minimum constitutional standards, the state will not be permitted to detain such persons; the court can and must require release of persons held under conditions which violate their constitutional rights. (**Hamilton v. Love**, 328 F. Supp. 1182 (1971), **Rhem v. Malcom**, 507 F. 2d 333 (1974)).

South Dakota should be concerned about protecting the rights of people held in pretrial detention and begin to implement this standard immediately.

Implementation

A. Agencies Involved:
   Courts.
   Police.
   Corrections.

B. Legislation:
   Already in existence.

C. Administrative Actions:
   Administrators responsible for pretrial detainees should immediately begin to develop policies to fulfill the rights of these people.

Corrections Standard 3.7

Speedy Trial

South Dakota should develop policies and procedures to expedite criminal trials and thus minimize pretrial detention.

Commentary

For the accused population not eligible for some form of pretrial release, speedy trials are the quickest way to get them out of inadequate jails. Since most of the crimes committed by persons released on bail occurs after the first sixty days on release, the problem of crime by bailees could be largely resolved by simply speeding up the judicial process. But, more important, a speedy trial could shorten the defacto "preventive detention" of prisoners who cannot afford bail. (Mattick, 1974:285).

Implementation

A. Agencies Involved:
Board of Charities and Corrections.
Courts.

CHAPTER FOUR

SENTENCING

Corrections Standard 4.1

Sentencing the Nondangerous Offender

South Dakota penal code revisions should include:

1. A requirement that the least drastic sentencing alternative be imposed that is consistent with the public safety. The court should impose the first of the following alternatives which will insure rehabilitation, deterrence, and/or punishment and thereby protect the public safety:
   a. Unconditional release
   b. Conditional release
   c. A fine
   d. Release under supervision in the community.
   e. Sentence to a half-way house or other residential facility located in the community.
   f. Sentence to partial confinement with liberty to work or participate in training or education during all but leisure time, or
   g. Total confinement in a correctional facility.

Commentary

There are many different purposes for sentencing an offender. (All of which the court should consider before passing judgement). Protection of public safety takes precedence over all the other grounds for sentencing. In order to protect the public from future harm, the court should consider in each case, the rationales of rehabilitation, deterrence, or punishment separately or in combination, to determine the nature of the sentence imposed. The court should approach the problem of disposition by considering all the alternatives listed in the standard and imposing the least drastic one.

Implementation

A. Agencies Involved:
   Courts.
B. Legislation:
   Legislation is needed to delineate and authorize the range of alternatives available to judges when imposing sentence.

Corrections Standard 4.2

Fines

In enacting penal code revisions, the South Dakota legislature should determine the categories of offenses of which a fine is an appropriate sanction and provide a maximum fine for each category.

Criteria for the imposition of a fine also should be enacted, to include the following:

1. A fine should be imposed where it appears to be a deterrent against the type of offense involved or an appropriate correctional technique for an individual offender. Fines should not be imposed for the purpose of obtaining revenue for the government.

2. A fine should be imposed only where the imposition will not interfere seriously with the offender's ability to make reparation or restitution to the victim.

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

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

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

3. Authority for the imprisonment of a person who intentionally refuses to pay a fine or who fails to make a good-faith effort to obtain funds necessary for payment. Imprisonment solely for inability to pay a fine should not be authorized.

Legislation authorizing fines against corporations should include the following special provisions:

1. Authority for the court to base fines on sales, profits, or net annual income of a corporation where appropriate to assure a reasonably even impact of the fine on defendants of various means.

2. Authority for the court to proceed against specified corporate officers or against the assets of the corporation where a fine is not paid.

Commentary

The imposition of fines as penalties for criminal acts dates back to Biblical times. However, the purpose and the administration of fines are rarely documented within state statutes.

If fines are to serve as an effective tool in dealing with criminal offenders, there must be a rational relationship between the crime committed and the fine imposed. Should it be determined that payment of a fine is an appropriate disposition for an offender, the court should consider the individual's ability to pay the fine and allow for its payment on an installment basis. Imprisonment solely for the inability to pay a fine is unconstitutional; however, if a person intentionally refuses to pay a fine, the court may order that person to be imprisoned.

Implementation

A. Agencies Involved:
   Courts.
B. Legislation:
   As outlined in the standard.

Corrections Standard 4.3

Multiple Sentencing

The South Dakota legislature should authorize the sentencing court to allow a defendant to plead guilty to any other offenses he/she has committed within the state, after the concurrence of the prosecutor and after determination that the plea is voluntarily made. The court should take each of these offenses into account in setting the sentence. Thereafter, the defendant should not be held further accountable for the crimes to which he/she has pleaded guilty.

Commentary

The "multiple offender" presents problems to the court when it must consider sentencing the person. This standard would allow the court to sentence the offender on all charges pending, or for crimes yet undetected by authorities within South Dakota to which the accused wishes to plead guilty. This consideration of more than one plea at the sentencing hearing would result in a substantial decrease in the workloads of both the courts and law enforcement. At the same time, the defendant may benefit from this consolidation of offenses because he or she would avoid suffering through another trial and, in addition, may receive a lesser sentence.

Implementation

A. Agencies Involved:
Courts.
B. Legislation:
As outlined in the standard.

Corrections Standard 4.4

Credit for Time Served

Sentencing courts should immediately adopt a policy giving credit to defendants against their maximum terms and against their minimum terms, if any, for time spent in confinement under the following circumstances.

1. Time spent in confinement arising out of the charge or conduct on which such charge is based prior to arrival at the institution to which the defendant eventually is committed for service of sentence. This should include time spent in confinement prior to trial, prior to sentencing, pending appeal, prior to transportation to the correctional authority, and prior to probation and parole revocation hearings.

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

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

The court should assume the responsibility for assuring that the record reveals in all instances the amount of time to be credited against the offender's sentence and that such record is delivered to the correctional authorities. The correctional authorities should assume the responsibility of granting all credit due an offender at the earliest possible time and of notifying the offender that such credit has been granted.

Time spent under supervision prior to trial should be considered by the court in imposing sentence. The court should be authorized to grant the offender credit in an amount to be determined in the discretion of the court, depending on the length and intensity of such supervision.

Commentary

In the interest of justice, credit should be allowed for all time served by an offender prior to, during and after trial. Although the reason a person is detained may not be specifically related to the sentence, the person has been deprived of liberty and this loss should be acknowledged by the sentencing court.

The court should make the amount of time to be credited to the accused a matter of record and should send this information to the appropriate correctional officials.

Implementation

A. Agencies Involved:
Board of Charities and Corrections.
Courts.
Police.
Correctional agencies.
State's Attorneys.
Clerk of court.
Board of Pardons and Paroles.
B. Legislation:
Legislation is needed to allow credit for time served by an offender prior to, during and after trial.

Corrections Standard 4.5

Judicial Visits to Institutions

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

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

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

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

Commentary

The desirability of judicial visits to correctional agencies is undebatable. South Dakota's judges have the authority to visit any correctional facility, but many do not take the time to do so. However, firsthand knowledge of the state's penal institutions and of the programs these institutions can offer would help guide the judge's sentencing decisions. The judges should visit the correctional facilities at least once a year, and talk to the administrators and inmates at these facilities for the purpose of updating their knowledge of the correctional system.

Implementation

A. Agencies Involved:
Courts.
Correctional facilities (state and local).
Board of Charities and Corrections.
B. Administrative Actions:
The court system must adopt a policy requiring judges to visit the correctional facilities in their areas.

Corrections Standard 4.6

Sentencing Institutes

Court systems should immediately adopt the practice of conducting sentencing institutes to provide judges with the background of information they need to fulfill their sentencing responsibilities knowledgeably.

Commentary

Many judges find the task of passing sentence to be one of the most difficult aspects of their jobs. Since the judges do have a substantial amount of discretion when sentencing, unequal sentences are often the result. By establishing sentencing institutes to educate judges in sentencing practices and alternatives, the sentencing process should become more uniform and fair.

Implementation

A. Agencies Involved:
Courts.
B. Funding:
LEAA.
Court system budget.

Corrections Standard 4.7

Preparation for Presentence Report Prior to Adjudication

The sentencing court should develop immediately guidelines as to the preparation of presentence reports prior to adjudication, in order to prevent possible prejudice to the defendant's case and to avoid undue incarceration prior to sentencing. The guidelines should reflect the following:

1. No presentence report should be prepared until the defendant has been adjudicated guilty of the charged offense unless:

a. The defendant, on advice of counsel, has consented to allow the investigation to proceed before adjudication; and

b. The defendant presently is incarcerated pending trial; and

c. Adequate precautions are taken to assure that nothing disclosed by the presentence investigation comes to the attention of the prosecution, the court or the jury before adjudication.

2. Upon a showing that the report has been available to the judge prior to adjudication of guilt, there should be a presumption of prejudice, which the State may rebut at the sentence hearing.

Commentary

Preparation of a presentence report is time consuming and may require several weeks of investigation, information-gathering, and analysis. (NAC,1973:186). For this reason, the practice of preparing the presentence report prior to adjudication is a good one, but precautions must be taken to prevent possible prejudice to the case of the accused. If the presentence report is prepared before adjudication, none of the contents should be disclosed to the judge, jury or prosecution. Upon a showing that the report has been available to the judge prior to adjudication of guilt, there should be a presumption of prejudice.

Implementation

A. Agencies Involved:
Courts.
Division of Corrections.
Board of Pardons and Paroles.
Board of Charities and Corrections.

CHAPTER FIVE

CLASSIFICATION OF OFFENDERS

Corrections Standard 5.1

Comprehensive Classification Systems

Each correctional agency, whether community-based or institutional, should immediately reexamine its classification system and reorganize it along the following principles:

1. Recognizing that corrections is not characterized by a lack of knowledge and deficient resources, and that classification systems therefore are more useful for assessing risk and facilitating the efficient management of offenders than for diagnosis of causation and prescriptions for remedial treatment, classification should be designed to operate on a practicable level and for realistic purposes, guided by the principle that:
   a. No offenders should receive more surveillance or "help" than they require; and
   b. No offenders should be kept in a more secure condition or status than their potential risk dictates.
2. The classification system should be developed under the management concepts discussed in Chapter 12 and issued in written form so that it can be made public and shared. It should specify:
   a. The objectives of the system based on a hypothesis for the social reintegration of offenders, detailed methods for achieving the objectives, and a monitoring and evaluation mechanism to determine whether the objectives are being met.
   b. The critical variables of the typology to be used.
   c. Detailed indicators of the components of the classification categories.
   d. The structure (committee, unit, team, etc.) and the procedures for balancing the decisions that must be made in relation to programming, custody, personal security, and resource allocation.
3. The system should provide full coverage of the offender population, clearly delineated categories, internally consistent grouping, simplicity, and a common language.
4. The system should be consistent with individual dignity and basic concepts of fairness (based on objective judgments rather than personal prejudices).
5. The system should provide for maximum involvement of the individual in determining the nature and direction of his/her own goals, and mechanisms for appealing administrative decisions affecting the individual.
6. The system should be adequately staffed, and the agency staff should be trained in its use.
7. The system should be sufficiently objective and quantifiable to facilitate research, demonstration, model building, intrasystem comparisons, and administrative decisionmaking.
8. The correctional agency should participate in or be receptive to cross-classification research toward the development of a classification system that can be used commonly by all correctional agencies.

Commentary

The American Correctional Association (1966:351) states:

> Some organized procedures are obviously necessary to insure the best possible kind of integration, coordination, and continuity of diagnosis, individualized program planning, and general conduct of care and treatment as applied first in the institution and continued later in the community. Classification is the term used to designate these organized procedures.

The classification system should be familiar to all employees of the institution and the objectives of the system should be spelled out for both inmates and staff. One of the major objectives of the classification system should be the eventual reintegration of the offender into the free community. To obtain this objective, the inmate should be allowed to have input into the classification decision and not be held in a more secure condition or status than his/her potential risk dictates.

Implementation

See Standard 5.3

Corrections Standard 5.2

Classification for Inmate Management

Each correctional agency operating institutions for committed offenders, in connection with and in addition to implementation of Standard 5.1, should reexamine and reorganize its classification system immediately, as follows:

1. The use of reception-diagnostic centers should be discontinued.
2. Whether a reception unit or classification committee or team is utilized within the institution, the administration's classification issuance described in Standard 5.1 also should:
   a. Describe the makeup of the unit, team or committee, as well as its duties and responsibilities.
   b. Define its responsibilities for custody, employment, and vocational assignments.
   c. Indicate what phases of an inmate program may be changed without unit, team, or committee action.
   d. Specify procedures relating to inmate transfer from one program to another.
   e. Prescribe form and content of the classification interview.
   f. Develop written policies regarding initial inmate classification and reclassification.
3. The purpose of initial classification should be:
   a. To screen inmates for safe and appropriate placements and to determine whether these programs will accomplish the purposes for which inmates are placed in the correctional system, and
   b. Through orientation to give new inmates an opportunity to learn of the programs available to them and of the performance expected to gain their release.
4. The purpose of reclassification should be the increasing involvement of offenders in community-based programs as set forth in Standard 6.4, Inmate Involvement in Community Programs.
5. Initial classification should not take longer than 1 week.
6. Each classification should be reviewed at intervals not exceeding 6 weeks.
7. The isolation or quarantine period, if any, should be as brief as possible.

Commentary

This standard is intended only to supplement Standard 5.1. The goal of classification is realistically set as the screening of inmates for risk and for appropriate placement in programs involving increasing degrees of community involvement. Once again, it is emphasized that all employees in the institution who come into contact with the prisoners should know the basis of the classification system, why individuals are classified as they are, and what special conditions, if any, apply to the different classifications.

Similarly, the inmates themselves should know what behavior is expected from them in order to gain more freedom and, eventually, release. In order to check on the progress of the inmate, the prisoner's classification status should be reviewed at intervals not exceeding six weeks so that any necessary changes can be made.

Implementation

See Standard 5.3

Corrections Standard 5.3

Community Classification Teams

State and local correctional agencies should establish jointly and cooperatively by 1978, in connection with the planning of community-based programs, classification teams in the target areas of the State for the purpose of encouraging the diversion of selected offenders from the criminal justice system, minimizing the use of institutions for convicted or adjudicated offenders, and programming individual offenders for community-based programs. Establishment of community classification teams should be governed by Standard 5.1, Comprehensive Classification Systems, and the following considerations:

1. The planning and operation of community classification teams should involve State and local correctional personnel (institutions, jails, probation, and parole); personnel of specific community-based programs (employment programs, halfway houses, work-study programs, etc.); and police, court, and public representatives.

2. The classification teams should assist pretrial intervention projects in the selection of offenders for diversion from the criminal justice system, the courts in identifying offenders who do not require institutionalization, and probation and parole departments and State and local institutional agencies in original placement and periodic reevaluation and reassignment of offenders in specific community programs of training, education, employment, and related services.

3. The classification team, in conjunction with the participating agencies, should develop criteria for screening offenders according to:

a. Those who are essentially self-correcting and do not need elaborate programming.

b. Those who require different degrees of community supervision and programming.

c. Those who require highly concentrated institutional controls and services.

4. The policies developed by the classification team and participating agencies also should consider the tolerance of the general public concerning degrees of "punishment" that must be inflicted. In this connection the participation of the public in developing policies, as discussed in Chapter 6, would be useful.

5. The work of the classification team should be designed to enable:

a. Departments, units, and components of the correctional system to provide differential care and processing of offenders.

b. Managers and correctional workers to array the clientele in case-loads of varying sizes and programs appropriate to the clients' needs as opposed to those of the agencies.

c. The system to match client needs and strengths with department and community resources and specifically with the skills of those providing services.

6. The classification team should have a role in recommending the establishment of new community programs and the modification of existing programs to involve volunteers, ex-offenders, and paraprofessionals as discussed in Chapter 6 and elsewhere in this report. It should also have an evaluative and advisory role in the operation of community programs as they affect the fulfillment of the needs of offenders assigned to them.

7. The organization of the classification team should be flexible and involve rotating membership and chairpersons selected on an alternating basis among participating agencies.

Commentary

Classification procedures often serve only one purpose. The National Advisory Commission notes (1973:216):

> As they operate at present, most classification schemes are designed to decide what should be done with those persons who are committed to institutions. Few systems are intended to determine which offenders need not be processed into or through the existing correctional system, or what specifically should be done for those adjudicated or convicted and immediately or subsequently placed in community-based programs . . . A rational method is needed by which choices can be made to exclude offenders who do not need correctional agencies services.

A classification team composed of representatives from the police, courts, corrections and the public could be used to identify offenders who represent low risks to others and who do not require expensive custodial or correctional programs. These offenders then would be diverted to community-based programs.

If the ultimate goal of the classification system is to reintegrate the offender into society, community representatives should be involved in the classification decision. By including community members on the classification team, a better career plan will be developed for the offender because more resources and alternatives will be discussed. The more the community accepts responsibility for the future of the offender, the greater the possibility is that the inmate will be accepted back into that community as a contributing citizen.

Implementation

A. Agencies Involved:
Corrections.
Courts.
Police.
Social service agencies.
Community representatives.

CONTINUED

2 OF 4

CHAPTER SIX

CORRECTIONS AND THE COMMUNITY

Corrections Standard 6.1

Development Plan for Community-Based Alternatives to Confinement

The State correctional system or correctional system of other units of government should begin immediately to analyze its needs, resources, and gaps in service and to develop by 1978 a systematic plan with timetable and scheme for implementing a range of alternatives to institutionalization. The plan should specify the services to be provided directly by the correctional authority and those to be offered through other community resources. Community advisory assistance (discussed in Standard 6.3) is essential. The plan should be developed within the framework of total system planning discussed in Chapter 8, Local Adult Institutions, and State planning discussed in Chapter 12, Organization and Administration.

Minimum alternatives to be included in the plan should be the following:

1. Diversion mechanisms and programs prior to trial and sentence.
2. Nonresidential supervision programs in addition to probation and parole.
3. Residential alternatives to incarceration.
4. Community resources open to confined populations and institutional resources available to the entire community.
5. Prerelease programs.
6. Community facilities for released offenders in the critical reentry phase, with provision for short-term return as needed.
7. Programs for misdemeanant offenders.

Commentary

Professionals in the criminal justice field have long recognized the value of community-based efforts in crime prevention and control. In fact, many correctional systems are currently using community-based alternatives in pursuit of reintegration of the offender into society. However, few systems provide a full range of activities, and an even smaller number systematically plan for the development of these programs.

The State correctional system should immediately begin to plan the development of community corrections. These plans should indicate where programs are needed, who will be responsible for funding and administering the programs, and what specific programs are most needed in the State. Community-based programs or alternatives should be available at all stages of the criminal justice system, starting with arrest and moving on through release from a correctional institution.

Implementation

A. Agencies Involved:
County and City Governments.
Social service agencies.
Planning districts.
Courts.
Police.
Corrections (private, local, state).
Board of Charities and Corrections.

B. Funding:
A solid base of financial support is needed to develop community-based corrections. Funds should come from LEAA, state and local governments.

Corrections Standard 6.2

Marshalling and Coordinating Community Resources

The state correctional system or the systems of other units of government should take appropriate action immediately to establish effective working relationships with the major social institutions, organizations, and agencies of the community, including the following:

1. Employment resources — private industry, labor unions, employment services, civil service systems.
2. Educational resources — vocational and technical, junior college and university, adult basic education, private and commercial training, government and private job development and skills training.
3. Social Welfare services — public assistance, housing, rehabilitation services, mental health services, counseling assistance, neighborhood centers, unemployment compensation, private social service agencies of all kinds.
4. The law enforcement system — Federal, State, and local law enforcement personnel, particularly specialized units providing public information, diversion, and services to juveniles.
5. The judicial system — court service workers, judicial staff.
6. Other relevant community organizations and groups — ethnic and cultural groups, recreational and social organizations, religious and self-help groups, and others devoted to political or social action.

At the management level, correctional agencies should seek to involve representatives of these community resources in policy development and inter-agency procedures for consultation, coordinated planning, joint action, and shared programs and facilities. Correctional authorities also should enlist the aid of such bodies in formation of a broad-based and aggressive component that will speak for correctional and inmate needs and support community correctional programs.

At the operating level, correctional agencies should initiate procedures to work cooperatively in obtaining services needed by offenders.

Commentary

The Singer Company Report states (1973:1):

> Americans can no longer rest on the comfortable assumption that the establishment of institutional machinery to deal with crime constitutes an adequate response to the problem. The continuing evidence of increasing criminal activity has made it clear that our courts, police and correctional institutions cannot solve the problem alone. We cannot ask those in the criminal justice system to take full responsibility for a task demanding the concerted action of every individual, community and institution in the country. Just as the causes of crime lie imbedded in the structure of the community, so do its solutions.

Most communities have the necessary elements for running successful community correctional programs. The professionals in the criminal justice system should begin to form alliances with the various agencies within the communities and, then, together, develop alternatives to incarceration of offenders. A well planned and coordinated effort by the correctional system and the other community agencies will result in a more efficient delivery of services so urgently needed for the offender's successful reintegration into the community.

Implementation

A. Agencies Involved:
As outlined in the standard.

Corrections Standard 6.3

Corrections' Responsibility for Citizen Involvement

The State correctional system should create immediately: (a) a multipurpose public information and education unit, to inform the general public on correctional issues and to organize support for and overcome resistance to general reform efforts and specific community-based projects; and (b) an administrative unit responsible for securing citizen involvement in a variety of ways within corrections, including advisory and policymaking roles, direct service roles, and cooperative endeavors with correctional clients.

1. The unit responsible for securing citizen involvement should develop and make public a written policy on selection process, term of service, tasks, responsibilities, and authority for any advisory or policymaking body.

2. The citizen involvement unit should be specifically assinged the management of volunteer personnel serving in direct service capacities with correctional clientele, to include:

a. Design and coordination of volunteer tasks.

b. Screening and selection of appropriate persons.

c. Orientation to the system and training as required for particular tasks.

d. Professional supervision of volunteer staff.

e. Development of appropriate personnel practices for volunteers, including personnel records, advancement opportunities, and other rewards.

3. The unit should be responsible for providing for supervision of offenders who are serving in volunteer roles.

4. The unit should seek to diversify institutional programs by obtaining needed resources from the community that can be used in the institution and by examining and causing the periodic reevaluation of any procedures inhibiting the participation of inmates in any community program.

5. The unit should lead in establishing and operating community-based programs emanating from the institution or from a satellite facility and, on an ongoing basis, seek to develop new opportunities for community contacts enabling inmate participants and custodial staff to regularize and maximize normal interaction with community residents and institutions.

Commentary

Historically, the correctional system has not revealed its inner workings to the general public. The administration of the prisons has been left entirely to the discretion of the correctional authorities. This closed system approach to corrections promotes ignorance and fear on the part of the average citizen and allows the exercise of unlimited discretion by correctional employees. Fortunately, this secretive atmosphere surrounding prison life is evaporating and being replaced by more open communications between the people within the correctional system and people in the community.

The Joint Commission on Correctional Manpower and Training (1969b:28) notes:

> Community understanding and support are perhaps even more important to corrections than to many other public services. For the ability of the released offenders to fit into normal community life is the real test of whether corrections has succeeded or failed with them.

Volunteers constitute one of the major communication links between the correctional system and the community. Organized, well trained and supervised volunteers can provide numerous services to both the correctional employees and the inmates. These same volunteers can educate the public on the needs and problems of the correctional system. Because volunteers are a valuable resource, the correctional administration should design programs which will insure future volunteer involvement with the agency.

Implementation

A. Agencies Involved:
Corrections.
Community representatives.

Corrections Standard 6.4

Inmate Involvement in Community Programs

Correctional agencies should begin immediately to develop arrangements and procedures for offenders sentenced to correctional institutions to assume increasing individual responsibility and community contact.

1. When offenders are received at a correctional institution, they should meet with the classification unit (committee, team, or the like) to develop a plan for increasing personal responsibility and community contact.

2. At the initial meeting, behavioral objectives should be established, to be accomplished within a specified period. After that time another meeting should be held to make adjustments in the individual's plan which, assuming that the objectives have been met, will provide for transition to a lower level of custody and increasing personal responsibility and community involvement.

3. Similarly, at regular time intervals, each inmate's status should be reviewed, and if no strong reasons exist to the contrary, further favorable adjustments should be made.

4. Allowing for individual differences in time and progress or lack of progress, the inmate should move through a series of levels broadly encompassing movement from (a) initial security involving few outside privileges and minimal contact with community participants in institutional programs to (b)

lesser degrees of custody with participation in institutional and community programs involving both citizens and offenders, to (c) partial-release programs under which he/she would sleep in the institution but have maximum participation in institutional and outside activities involving community residents, to (d) residence in a halfway house or similar noninstitutional residence, to (e) residence in the community at the place of his/her choice with moderate supervision, and finally to release from correctional supervision.

5. The presumption should be in favor of decreasing levels of supervision and increasing levels of individual responsibility.

6. When an inmate fails to meet behavorial objectives, the team may decide to keep him/her in the same status for another period or move the inmate back. On the other hand, the inmate's behavioral achievements may indicate that he/she can be moved forward rapidly without having to go through all the successive stages.

7. Throughout the process, the primary emphasis should be on individualization — on behavioral changes based on the individual's interest, abilities, and priorities. Offenders also should be afforded opportunities to give of their talents, time, and efforts to others, including other inmates and community residents.

8. A guiding principle should be the use of positive reinforcement in bringing about behavioral improvements rather than negative reinforcement in the form of punishment.

9. The implementation of Standard 6.4 will fully utilize institutional procedures and guidelines which insure control and custody of the institution and maximize the positive social adjustment of the offender.

Commentary

Within the prison setting, there should be different levels of freedom available to deserving inmates. Although it may be necessary initially to impose greater security measures upon an inmate, as the prisoner progresses through his/her classification program, more contact with both the prison population and the community should be allowed as an incentive for the inmate to improve. These levels could involve work-release or study release, furloughs, halfway houses or similar types of programs.

The Task Force recognizes that institutional and community security are of utmost importance when considering programs which would allow increased freedom to the inmates. However, by following the pre-established guidelines of the institution, these alternatives can be utilized without jeopardizing the safety of the community or the prison. At the same time, the offenders will be able to participate in a larger number of programs outside the institution which may lead to their future successful reintegration into the community.

Implementation

A. Legislation:

Legislation may be necessary to authorize community-based correctional programs.

B. Funding:

Adequate funds to develop the community-based programs will need to be appropriated. LEAA funds and local government budgets should be tapped if possible.

CHAPTER SEVEN

JUVENILE INTAKE AND DETENTION

Corrections Standard 7.1

Juvenile Intake Services

Each juvenile court jurisdiction should take action immediately, including the pursuit of enabling legislation where necessary, to establish within the court organized intake services operating as part of or in conjunction with the detention center. Intake services should be geared to the provision of screening and referral intended to divert as many youngsters as possible from the juvenile justice system and to reduce the detention of youngsters to an absolute minimum.

Commentary

Intake is the term which has traditionally been used to describe the preliminary case of juvenile offenders. Intake processes serve a number of functions which Waalkes (1964) outlines in the following passage:

> The intake process is an important one in specialized courts and is generally advocated on the grounds that it permits the court to screen its own intake not just on jurisdictional grounds, but, within some limits, upon social grounds as well. It can cull out cases which should not be dignified with further court process. It can save the court from subsequent time-consuming procedures to dismiss a case. It provides an immediate test of jurisdiction at the first presentation of a case. It ferrets out the contested matters in the beginning and gives the opportunity for laying down guidelines for appointment of counsel and stopping all social investigation and reporting until the contested issues of fact have been adjudicated. It provides machinery for referral of cases to other agencies when appropriate and beneficial to the child. It gives the court an early opportunity to discover the attitudes of the child, the parents, the police, and any other referral sources. It is a real help in controlling the court's caseload. Because it operates in the sensitive area of direct confrontation with the police, the school, and other community agencies, intake can make or break the community's good communication with and understanding of the juvenile court's role.

Intake is an important part of the juvenile system and the courts should take the initiative in developing these services. In larger courts a separate intake unit may be established. In smaller courts where this is not practical, the intake function may be centralized in one person.

Implementation

A. Agencies Involved:
Courts.

Corrections Standard 7.2

Juvenile Detention Center Planning

When total system planning conducted as outlined in Standard 8.1 indicates need for renovation of existing detention facilities to accommodate an expanded function involving intake services or shows need for construction of a new juvenile detention facility, each jurisdiction should take the following principles into consideration in planning the indicated renovations or new construction.

1. The detention facility should be located in a residential area in the community and near court and community resources.

2. Population of detention centers should not exceed 30 residents.

3. Living area capacities within the center should not exceed 10 or 12 youngsters each. Only individual occupancy should be provided, with single rooms and programming regarded as essential. Individual rooms should be pleasant, adequately furnished, and homelike rather than punitive and hostile in atmosphere.

4. Security should not be viewed as an indispensable quality of the physical environment but should be based on a combination of staffing patterns, technological devices, and physical design.

5. Existing residential facilities within the community should be used in preference to new construction.

6. Facility programming should be based on investigation of community resources, with the contemplation of full use of these resources, prior to determination of the facility's in-house program requirements.

7. New construction and renovation of existing facilities should be based on consideration of the functional interrelationships between program activities and program participants.

8. Detention facilities should be coeducational and should have access to a full range of supportive programs, including education, library, recreation, arts and crafts, music, drama, writing, and entertainment. Outdoor recreational areas are essential.

9. Citizen advisory boards should be established to pursue development of in-house and community-based programs and alternatives to detention.

Commentary

The importance of planning in the criminal justice system can not be emphasized enough. Within this total system planning effort, juvenile detention must be considered. Juvenile detention does present problems in South Dakota because in rural areas of the state, the only place for detaining juveniles is within the local jail. Many of these local jails are old, unsanitary, and rundown.

The South Dakota criminal justice planning effort must begin to focus on the area of juvenile detention and begin to establish alternatives for detaining youthful offenders. This planning stage should explore community resources in depth before recommending construction of new facilities or development of programs within existing facilities.

Implementation

A. Agencies Involved:
Board of Charities and Corrections.
Local units of government.
Courts.
Local school authorities.
Police.

Corrections Standard 7.3

Juvenile Intake and Detention Personnel Planning

Each jurisdiction should immediately reexamine its personnel policies and procedures for juvenile intake and detention personnel and make such adjustments as may be indicated to insure that they are compatible with and contribute toward the goal of reintegrating juvenile offenders into the community without unnecessary involvement with the juvenile justice system.

Personnel policies and procedures should reflect the following considerations:

1. While intake services and detention may have separate directors, they should be under a single administrative head to assure coordination and the pursuit of common goals.
2. There should be no discriminatory employment practice on the basis of race or sex.
3. All personnel should be removed from political influence and promoted on the basis of a merit system.
4. Job specifications should call for experienced, specialized professionals, who should receive salaries commensurate with their education, training, and experience and comparable to the salaries of administrative and governmental positions requiring similar qualifications.
5. Job functions and spheres of competency and authority should be clearly outlined, with stress on teamwork.
6. Staffing patterns should provide for the use of professional personnel, administrative staff, indigenous community workers, and counselors.
7. Particular care should be taken in the selection of line personnel, whose primary function is the delivery of programs and services. Personnel should be selected on the basis of their capacity to relate to youth and to other agencies and their willingness to cooperate with them.
8. The employment of rehabilitated ex-offenders, new careerists, paraprofessionals, and volunteers should be pursued actively.
9. Staff development and training programs should be regularly scheduled.

Commentary

While well developed programs administered in exemplary facilities are essential, the key to success or failure will be the staff. (NAC, 1973:272). Since the client population represents a broad spectrum of people, the juvenile intake and detention personnel should be drawn from several sources. All employees should be able to interact comfortably with both juveniles and adults.

In order to retain qualified personnel, salaries should be commensurate with the individual's level of education and training. Similarly, staff development and training programs should be scheduled on a regular basis in order to continually improve the skills of the staff.

Implementation

A. Agencies Involved:
   Division of Law Enforcement Assistance.
   Counties.
   Police.
   Employment agencies.
   Youth Service Agencies.
   Courts.
B. Funding:
   County appropriations and LEAA.

Corrections Standard 7.4

Detention and Disposition of Juveniles

South Dakota should enact legislation pertaining to the detention of juvenile offenders to include the following provisions:

1. A prohibition against detention of juveniles in jails, lockups, or other facilities used for housing adults accused or convicted of crime, unless the juvenile is held in a separate complex within those facilities and twenty-four hour supervision is provided.
2. Criteria for detention prior to adjudication of alleged juvenile offenders should include the following:
   a. Detention should be considered as a last resort where no other reasonable alternative is available.
   b. Detention should be used when the juvenile has no parent, guardian, custodian, or other person able to provide supervision and care for him/her and able to assure the juvenile's presence at subsequent judicial hearings.
3. Law enforcement officers should be prohibited from making the decision as to whether a juvenile should be detained. Detention decisions should be made by intake personnel and the court.

The legislation should authorize a wide variety of diversion programs as an alternative to formal adjudication. Such legislation should protect the interests of the juvenile by assuring that:

   a. Diversion programs are limited to reasonable time periods.
   b. The juvenile or his/her representative has the right to demand formal adjudication at any time as an alternative to participation in the diversion program.
4. The court should be able to permit the child to remain with his/her parents, guardian, or other custodian, subject to such conditions and limitations as the court may prescribe.

Commentary

This standard reemphasizes the position of the Task Force that juveniles should not be held in detention if some other alternative is available within the community. Similarly, programs need to be developed to divert juvenile offenders from the criminal justice system at the earliest stage possible. Legislation to promote the concept of the least drastic alternative (or minimum use of detention for juveniles) and diversion should be enacted.

Implementation

A. Legislation:
   As outlined in the standard.

CHAPTER EIGHT

LOCAL ADULT INSTITUTIONS

Corrections Standard 8.1

Total System Planning

South Dakota State and local corrections systems and planning agencies should immediately undertake, on a cooperative basis, planning for community corrections based on a total system concept that encompasses the full range of offenders' needs and the overall goal of crime reduction. Total system planning for a particular area should include the following concepts.

1. While the actual methodology may vary, total system planning should include these phases:

a. A problem definition phase, including initial demarcation of the specific service area, as determined by the scope of the problem to be addressed. Its identification results in a preliminary statement of the correctional problem.

b. Data survey and analysis designed to obtain comprehensive information on population trends and demography, judicial practices, offender profiles, service area resources, geographic and physical characteristics and political and governmental composition. Such information is needed to assess service area needs and capability and to determine priorities.

c. A program linkage phase involving examination of various ways to meet the problems identified. The linkages should emphasize service area resources that can be used to provide community-based correctional programs as alternatives to incarceration. Identification and development of diversion programs by program linkage will have significant implications for a service area's detention capability and program requirements.

d. A definition and description of the correctional delivery system for the service area developed on the basis of results of the previous phases. Facilty and nonfacility program requirements should be included.

e. Program and facility design, which proceed from delivery system definition. The resulting overall community correctional system design will vary with specific service area characteristics, it should follow a regional approach.

(1) A regionalized service delivery system should be developed for service areas that are sparsely populated and include a number of cities, towns, or villages. Such a system may be city-county or multicounty in composition and scope. Major facility and program components should be consolidated into a central area or municipality. Components should include intake and social investigation services, pretrial release services, pretrial and posttrial residential facilities, special programs, and resource coordination. Extended components, such as prerelease, work/education release, alcoholic and narcotic addict treatment, and related program coordination units, should be located in smaller population centers with provision for operational and administrative coordination with the centralized components. The centralized system component should be located in close proximity to court services and be accessible to private and public transportation.

2. All correctional planning should include consideration of the physical, social, and aesthetic impact imposed by any facility or network. Such consideration should be based on the National Environmental Policy Act of 1969.

3. All planning efforts should be made in the context of the master plan of the statewide correctional planning body.

4. Individual program needs, such as detention centers, should not be considered apart from the overall correctional service plan or the relevant aspects of social service systems (health, education, public assistance, etc.) that have potential for sharing facilities, resources, and experience.

5. All community correctional planning should give highest priority to diversion from the criminal justice system and utilization of existing community resources.

Commentary

This standard discusses the concept of regionalization and the development of community-based corrections, but above all, the importance of planning before any changes are made. "Total System Planning" is a process that defines, analyzes and develops responses to a specific set of problems and should be utilized when planning new correctional programs. People on the planning committee should be representatives from law enforcement agencies, State's attorneys, judges, probation and parole offices, community members, and architectural persons if building is in the plans.

These planning committees should consider the alternatives of regional jails and community-based corrections. The Task Force members realize that traveling may be a major obstacle to establishing regional jails in all parts of South Dakota. However, before the concept of regionalization is completely forgotten because of the traveling obstacle, the total situation should be carefully analyzed.

Many of the jails in the "un-regionalized" areas of South Dakota are in poor physical condition are, too small and antiquated, do not have the economic resources to provide their prisoners with any services, are understaffed, and may need extensive remodelling or repairs to stay in operation. If reorganization were possible the small towns could pool their resources in one facility and provide better services to all of their prisoners. Although in the final analysis it may turn out that regionalization is not feasible, that decision should come only after a thorough planning study has been completed.

Implementation

A. Agencies Involved:
- Legislature.
- Counties.
- State and district planning agencies.
- State Criminal Justice Commission.
- Courts.
- Police.
- Corrections.
- Board of Charities and Corrections.

B. Funding:
- State appropriations.
- Local budgets.
- LEAA.

Corrections Standard 8.2

State Inspection of Local Facilities

The State Legislature should immediately authorize the formulation of State standards for correctional facilities and operational procedures and State inspection to insure compliance.

1. The state agency should have authority to require those in charge of the facility to take necessary measures to bring the facility up to standards.

2. In the event that the facility's staff fails to implement the necessary changes within a reasonable time, the State agency should have authority to condemn the facility.

3. Once a facility is condemned, it should be unlawful to commit or confine any person to it. Prisoners should be relocated to facilities that meet established standards until a new or renovated facility is available. Provisions should be made for distribution of offenders and payment of expenses for relocated prisoners by the detaining jurisdiction.

Commentary

In discussing jails, Mattick (1974:830) states:

> The problem in American jails, put most concisely, is the problem of local control. Almost every aspect of local jailing that has been described as problematic would be better handled if jails were simply to become part of the state correctional system. It is doubtful, however, whether state or local authorities are ready to adopt such a 'radical' approach. In most states it is politically preferable to begin with minimal state or federal intervention in local jail administration. Among the earliest steps to be taken are the formulation and adoption of state standards, combined with inspection to assess the condition of local jails. The state standards can be written in such a way as to constitute a phased reform program over a period of years, and inspection can be used to maintain a check on the stages of compliance.

In South Dakota the Board of Charities and Corrections has the authority to promulgate regulations for local jails. In 1970, the Board of Charities and Corrections published **Jail Rules and Procedures for Guidance of Personnel and Governing Inmate's Conduct.** The pamphlet covers plant and equipment, receiving prisoners, supervision of prisoners, sanitation and housekeeping, jail security, the unusual prisoner, and rules governing inmates' conduct.

In addition to promulgating rules, the Board of Charities and Corrections has the duty to examine the conditions of jails, inquire into discipline and treatment of prisoners, the habits, diets and accommodations, and ascertain whether any rules and regulations prescribed by the Board have been violated. (SDCL 24-11-25) The Board of County Commissioners also has the duty to visit all the jails in its county once during its regular meeting each year. (SDCL 24-11-26) Likewise SDCL 24-11-27 makes provision for circuit judges to visit jails and make orders relating to jails or inmates therein, in accordance with law and the rules of the Board of Charities and Corrections. Violation of an order may be punished by a contempt of court citation.

Unfortunately, these inspections are not conducted on any systematic basis, if at all. Therefore, the regulations are not enforced. Standards or regulations which are not enforced do not serve as a mechanism to improve the quality of the local jails. Jails that should be condemned, or are in fact already condemned, continue to be used to house prisoners. This is an intolerable situation.

It is hoped that by establishing standards and inspection procedures to see that the jails are implementing these standards, that the jails in South Dakota will improve and offer better services to their prisoners.

Implementation

A. Agencies Involved:
   Board of Charities and Corrections.
   Courts.
   Police.
   Corrections.

B. Legislation:
   Legislation is needed to give a State agency the authority and clout needed to enforce the state correctional standards after an inspection reveals that a facility does not measure up to the standards.

C. Administrative Actions:
   Board of Charities and Corrections, county commissioners, and judges must do their duty and inspect their local jails.

D. Funding:
   State appropriations for inspection purposes.

Corrections Standard 8.3

Adult Intake Services

Each judicial jurisdiction should as soon as feasible take action, including the pursuit of enabling legislation where necessary, to establish centrally coordinated and directed adult intake services to:

1. Perform investigative services for pretrial intake screening. Such services should be conducted within 3 days and provide data for decisions regarding the appropriateness of summons release, release on recognizance, community bail, conditional pretrial release, or other forms of pretrial release. Persons should not be placed in detention solely for the purpose of facilitating such services.

2. Emphasize diversion of alleged offenders from the criminal justice system and referral to alternative community-based programs (halfway houses, drug treatment programs, and other residential and nonresidential adult programs). The principal task is identifying the need and matching community services to it.

3. Offer initial and ongoing assessment, evaluation, and classification services to other agencies as requested.

4. Provide assessment, evaluation, and classification services that assist program planning for sentenced offenders.

5. Arrange secure residential detention for pretrial detainees at an existing community or regional correctional center or jail, or at a separate facility for pretrial detainees where feasible. Most alleged offenders awaiting trial should be diverted to release programs, and the remaining population should be only those who represent a serious threat to the safety of others.

The following principles should be followed in establishing,

planning, and operating intake services for adults:

1. Intake services should be administratively part of the judiciary.
2. Ideally, intake services should operate in conjunction with a community correctional facility.
3. Initiation of intake services should in no way imply that the client or recipient of its services is guilty. Protection of the rights of the accused must be maintained at every phase of the process.
4. Confidentiality should be maintained at all times.
5. Social inventory and offender classification should be a significant component of intake services.
6. Specialized services should be purchased in the community on a contractual basis.
7. The following persons should be available to intake service programs, either as staff members or by contract:
   a. Psychiatrists
   b. Clinical psychologists
   c. Social workers
   d. Interviewers
   e. Education specialists

Commentary

Once again this standard emphasizes the importance of diverting people from the criminal justice system. The President's Commission on Law Enforcement and the Administration of Justice (1967a:22) said:

> There is increasing evidence . . . that, for many lesser and first offenders, full exposure to the criminal justice processes and formal correctional treatment may only contribute to the possibility of recidivism.

Similarly, the Chamber of Commerce of the United States pointed out (1972:3-4):

> County and local jails are the first contact with the correctional world for most offenders . . . but the situation in jails is particularly poor. Yet, the initial and lasting impressions toward corrections and our system of criminal justice are formed in these institutions.

An appropriately administered intake unit may alleviate the negative impact the criminal justice system has on many arrested individuals by (1) diverting and referring those individuals with sociomedical and other problems to other agencies outside the criminal justice system which can better serve them, and (2) by releasing those individuals from pretrial detention who are not a threat to the public safety or high risk trial jumpers. By organizing intake services, resources can be better allocated and information can be more rapidly and efficiently gathered. The economic as well as psychological cost to the client will be reduced, and the burden on the criminal justice system will be lightened.

Implementation

A. Agencies Involved:
   Corrections.
   Courts.
   Police.
   Mental health services.
   Department of Social Services.
   Educational system.

Corrections Standard 8.4

Pretrial Detention Admission Process

County, city, or regional jails or community correctional centers should immediately reorganize their admission processing for residential care as follows:

1. In addition to providing appropriate safeguards for the community, admission processing for pretrial detention should establish conditions and qualities conducive to overall correctional goals.
2. Detention center admission staffing should be sufficient to avoid use of holding rooms for periods longer than 2 hours. Emphasis should be given to prompt processing that allows individuals to be aware of their circumstances and avoid undue anxiety.
3. The admission process should be conducted within the security perimeter with adequate physical separation from other portions of the facility and from the discharge process.
4. Intake processing should include a hot water shower with soap, the option of clothing issue, and proper checking and storage of personal effects.
5. All personal property and clothing taken from individuals upon admission should be recorded and stored, and a receipt issued to them. The detaining facility is responsible for the effects until they are returned to their owner.
6. Proper record keeping in the admission process is necessary in the interest of the individual as well as the criminal justice system. Such records should include: name and vital statistics; a brief personal, social and occupational history; usual identity data; results of the initial medical examination; and results of the initial intake interview. Emphasis should be directed to individualizing the record-taking operation, since it is an imposition on the innocent and represents a component of the correctional process for the guilty.
7. Each person should be interviewed by a counselor, social worker, or other program staff member as soon as possible after reception. Interviews should be conducted in private, and the interviewing area furnished with reasonable comfort.
8. Medical treatment should be consistent with Standard 1.6.

Commentary

Standard 8.4 discusses the admission procedures which should be used when an arrested person is brought to the local jail for detention. The majority of jails in South Dakota cannot or do not follow the admissions procedures outlined. However, many of the newer facilities and regional jails have the capability to follow the suggested admission procedures and should do so in order to protect the rights of the detainee. The National Advisory Commission (1973:299) states:

> Protection of the individual, of society, and of individuals from one another while detained calls for recognition of these needs and their incorporation into improved admission and detention practices. Post-arrest intake processing should be a series of judgments, actions, and decisions which begins with consideration of diversion at initial intake. For persons subsequently processed, these steps should include humane approaches to prisoner handling, keeping necessary records, sufficient and sanitary processing, medical attention, and individual interviewing designed to humanize the entire process.

Implementation

A. Agencies Involved:
Counties.
Police.
Corrections.
Board of Charities and Corrections.

B. Administrative Actions:
Administrators of local jails must improve their admission procedures to protect the right, health and safety of persons detained.

C. Funding:
Local correctional budgets.
State appropriations.

Corrections Standard 8.5

Staffing

1. A program of preservice and inservice training and staff development should be given all personnel in locally based correctional institutions and programs. Provision of such a program should be a responsibility of the State government. New correctional workers should receive preservice training in the fundamentals of facility operation, correctional programming, and their role in the correctional process. With all workers, responsibilities and salaries should increase with training and experience.

2. Wherever feasible, professional services should be purchased on a contract basis from practitioners in the community or from other governmental agencies. Relevant State agencies should be provided space in the institution to offer services. Similarly, other criminal justice employees should be encouraged to utilize the facility, particularly parole and probation officers.

Commentary

The current pattern of staffing in South Dakota jails is sadly deficient. In many of these jails, there is not twenty-four hour supervision when prisoners are detained. Needless to say, the people staffing these facilities have not received any official training in the correctional field.

To help improve the quality of these local facilities, the State should provide training for local correctional personnel. When more specialized services are needed, the local jail should have the option of contracting with local professionals to help solve the problems.

Implementation

A. Agencies Involved:
Board of Charities and Corrections.
Corrections (local)

B. Administrative Actions:
Correctional administrators must emphasize the need for staff development and training.

C. Funding:
State appropriations to pay for training corrections staff. Money needs to be allocated so contract services may be provided to offenders with special problems.

Corrections Standard 8.6

Internal Policies

Every jurisdiction operating locally based correctional institutions and programs for adults should immediately adopt these internal policies:

1. A system of classification should be used to provide the basis for residential assignment and program planning for individuals. Segregation of diverse categories of incarcerated persons, as well as identification of special supervision and treatment requirements, should be observed.

2. Detention rules and regulations should be provided each new admission and posted in each separate area of the facility. These regulations should cover items discussed in Chapter 1, Rights of Offenders.

3. Every inmate has the right to visits from family and friends. Each facility should have at least eight regular visiting hours weekly. Visiting hours should be expanded beyond this minimum to the extent possible. The environment in which visits take place should be designed and operated under conditions as normal as possible. Maximum security arrangements should be reserved for the few cases in which they are necessary.

4. Three meals daily should be provided at regular and reasonable hours. Meals should be served of sufficient quantity, well prepared, and in an attractive manner and nutritionally balanced. Service should be prompt, so that hot food remains hot and cold food remains cold. Each facility should also have a commissary service.

5. The inmate's lives and health are the responsibility of the facility. Hence the facility should implement sanitation and safety procedures that help protect the inmates from disease, injury, and personal danger.

6. Each detention facility should have written provisions that deal with its management and administration. Proper legal authority, legal custody and charge of the facility, commitment and confinement rules, transfer and transportation of inmates, and emergency procedures are among the topics that should be covered.

Commentary

Both pretrial detainees and convicted offenders possess the same rights and privileges as ordinary citizens, except those rights which are necessarily limited by the fact of their confinement and the protection of society. This means that those offenders detained in locally based correctional facilities must have access to medical care, be provided with sanitary, healthy surroundings, nutritious food, and clothing. The administrators of the local correctional facilities are responsible for meeting the needs of those people detained. In order to fulfill the rights of those people incarcerated, local correctional facilities should develop policies and plans governing detainees' rights and privileges, rules of conduct, visitation arrangements, and levels of sanitation and safety. Internal policies which are well thought out in advance and are consistently implemented contribute to the smooth functioning and humaneness of any local correctional facility.

Implementation

A. Agencies Involved:
Board of Charities and Corrections.
Counties.
Corrections.
Police.

Corrections Standard 8.7

Local Correctional Facility Programming

Every jurisdiction operating locally based correctional facilities and programs for adults should consider the following points as guidelines for developing programs.

1. A decision making body should be established to follow and direct the inmates' progress through the local correctional system in conjunction with the community classification team. Members should include a parole and probation supervisor, the administrator of the correctional facility or his/her immediate subordinates, professionals whose services are purchased by the institution, representatives of community organizations running programs in the institution or with its residents, and inmates. This body should serve as a central information-gathering point. It should discuss with an individual inmate all major decisions pertaining to him/her.

2. Educational programs should be available to all residents in cooperation with the local school district. Particular emphasis should be given to self-pacing learning programs, packaged instructional materials, and utilization of volunteers and paraprofessionals as instructors.

3. A job placement program should be operated at all community correctional centers as part of the vocational training program. Such programs should be operated by State employment agencies and local groups representing employers and local unions.

4. Each local institution should provide counseling services. Individuals showing acute problems will require professional services. Other individuals may require, on a day-to-day basis, situational counseling that can be provided by correctional workers supervised by professionals.

5. Volunteers should be recruited and trained to serve as counselors, instructors, teachers, and recreational therapists.

6. A range of activities to provide physical exercise should be available. Other leisure library materials should be provided.

7. In general, internal programs should be aimed only at that part of the institutional population unable to take advantage of ongoing programs in the community.

8. Meetings with the administrator or appropriate staff of the institution should be available to all individuals and groups.

9. Persons awaiting trial in detention should not be required to participate in any program of work, treatment or rehabilitation. The following programs and services should be available on a voluntary basis for persons awaiting trial:

a. Educational, vocational, and recreational programs;

b. Treatment programs for problems associated with alcoholism, drug addiction, and mental or physical disease or defects.

c. Counseling programs for problems arising from marital, employment, financial, or social responsibilities.

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

Commentary

This standard involves educational programs, vocational programs, job placement and counseling services in local correctional facilities. Many major studies have noted the importance of these programs and have strongly recommended that these services be developed and strengthened within local correctional facilities. (American Correctional Association, 1966; National Sheriff's Association, 1966; Advisory Commission on Intergovernmental Relations, 1971; President's Commission on Law Enforcement and Administration of Justice 1967b).

The rationale behind developing educational, vocational, counseling and other types of services within local correctional facilities is based on the theory that time spent in detention should not be "idle," but that the detainees should be given an opportunity to work on those problems which contributed to their criminal conduct. Provision of these services may result in an improvement in inmate attitudes and social adjustment through the acquisition of skills, knowledge and attitudes.

Since pretrial detainees are not convicted offenders, their stay within the jail should be the least punitive. Although persons awaiting trial should not be required to participate in any programs, they should have the option of making their stay within the correctional facility more productive by taking advantage of any educational, vocational, or counseling services which may be available.

The Corrections Task Force realizes fully that many of the rural areas within the State cannot afford to provide a large range of services to people who are detained within their jails. However, community resources and volunteers should be utilized to the greatest possible extent to provide detainees with needed programs. In addition, before any new and/or regional facilities are built, the suggestions outlined in this standard should be seriously considered and incorporated into the planning phase.

Implementation

A. Agencies Involved:
Police.
Courts.
Corrections.
Educational system.
Employment agencies.
Social service agencies.
Board of Charities and Corrections.
Counties.
State and local planning districts.

Corrections Standard 8.8

Community-Based Programs

Legislation should be enacted immediately authorizing the chief executive officer of the correctional agency with the

consent of the committing court or the paroling authority to extend the limits of confinement of a committed offender so the offender can participate in a wide variety of community-based programs. Such legislation should include these provisions:

1. Authorization for the following programs:

a. Foster homes and group homes, primarily for juvenile and youthful offenders.

b. Prerelease guidance centers and half-way houses.

c. Work-release programs providing that rates of pay and other conditions of employment are similar to those of free employees.

d. Community-based vocational training programs, either public or private.

e. Participation in academic programs in the community.

f. Utilization of community medical, social rehabilitation, vocational rehabilitation, or similar resources.

g. Furloughs of short duration to visit relatives and family, contact prospective employers, or for any other reason consistent with the public interest.

2. Authorization for the development of community-based residential centers either directly or through contract with governmental agencies or private parties, and authorization to assign offenders to such centers while they are participating in community programs.

3. Authorization to cooperate with and contract for a wide range of community resources.

4. Specific exemption for participants in community-based work programs from State-use and other laws restricting employment of offenders or sale of "convict-made" goods.

5. Requirement that the correctional agency promulgate rules and regulations specifying conduct that will result in revocation of community-based privileges and procedures for such revocation. Such procedures should be governed by the same standards as disciplinary proceedings involving a substantial change in status of the offender.

Commentary

See Standard 8.9.

Corrections Standard 8.9

Jail Release Programs

Every jurisdiction operating locally based correctional facilities and programs for convicted adults should immediately develop release programs drawing community leadership, social agencies, and business interest into action with the criminal justice system.

1. Since release programs rely heavily on the participant's self-discipline and personal responsibility, the offender should be involved as a member of the program planning team.

2. Release programs have special potential for utilizing specialized community services to meet offenders' needs. This capability avoids the necessity of service duplication within corrections.

3. Weekend visits and home furloughs could be available to eligible individuals.

4. Work release should be made available to persons in all offense categories who do not present a serious threat to others.

5. The offender in a work-release program should be paid at prevailing wages. The individual and the work-release agency may agree to allocation of earnings to cover subsistence, transportation cost, compensation to victims, family support payments, and spending money. The work-release agency should maintain strict accounting procedures open to inspection by the client and others.

6. Educational or study release should be available to all inmates (pretrial and convicted) who do not present a serious threat to others. Arrangements with the local school district and nearby colleges should allow participation at any level required (literacy training, adult basic education, high school or general educational development equivalency, and college level).

7. Arrangements should be made to encourage offender participation in local civic and social groups. Particular emphasis should be given to involving the offender in public education and the community in corrections efforts.

Commentary

Although new jails have been built in South Dakota and some on a regional basis, the lack of programs and services to either pretrial detainees or people serving sentences remains a major problem and criticism. One of the most dismaying aspects of these new facilities is that the administrators have not planned for or made available any programs for the people detained. The state has new jails operating under old standards. This situation is appalling in light of recent trends in correctional policies which indicate that people held in jails not only need many services, but also may be entitled to them as legal rights.

The new regional jails and the ones in the larger population areas of the state should be required to have education, legal, medical, and recreation services available to all people detained in the facility. Work and educational release should be utilized for a larger number of detained people, particularly for pretrial detainees.

Once again the answer to the problem of providing services to prisoners may lie in developing community-based correctional programs. Community-based corrections by definition would alleviate many of the problems the local jails are experiencing. Dr. Dahlin defines community-based corrections (1971:39-40):

> Community based corrections may be defined as that approach to corrections which takes offender rehabilitation as the goal and full institutionalization of the offender as the last resort. In place of institutionalization this approach relies heavily on the community in four senses.
>
> First, community based corrections uses a variety of options such as probation, halfway houses and work furlough programs to keep the offender as close to the community as possible in the hopes that this will lessen the offender's social isolation and help him build or rebuild his community ties.
>
> Secondly, this approach relies on the resources of the community — vocational, educational, etc. — to assist in reintegrating the offender.
>
> Thirdly, this approach recognizes that for successful rehabilitation to take place, changes may have to occur in the community as well as in the offender and it attempts to further such necessary changes.

Finally, even where institutionalization is necessary, the goal is to enable a man to use his time profitably — to upgrade his education, for example, or to learn a useful skill . . . so that when his term ends, he will be better equipped to make the difficult adjustment back into the community.

Standards 8.8 and 8.9 emphasize the importance of community involvement in the rehabilitation process of prisoners. In order to provide better services to the inmates, community resources should be developed as much as possible.

Implementation

A. Agencies Involved:
Corrections.
Courts.
Police.
Board of Charities and Corrections.
Education system.
Social service agencies.
State Employment Service.

B. Legislation:
Outlined specifically in Standard 8.8.

C. Administrative Actions:
Administrators of the criminal justice system must take the lead in developing community-based corrections alternatives. If a person must be confined, the pains of imprisonment should be reduced to a minimum and necessary health, legal, and social services should be provided for the inmates.

D. Funding:
State, local and federal monies will be needed to develop community resources and to provide offenders with services to which they are entitled.

Corrections Standard 8.10

Local Facility Evaluation and Planning

Jurisdictions evaluating the physical plants of existing local facilities for adults or planning new facilities should be guided by the following considerations:

1. A comprehensive survey and analysis should be made of criminal justice needs and projections in a particular service area.

a. Evaluation of population levels and projections should assume maximum use of pretrial release programs and postadjudication alternatives to incarceration.

b. Diversion of sociomedical problem cases (alcoholics, narcotic addicts, mentally ill, and vagrants) should be provided for.

2. Facility planning, location, and construction should:

a. Develop, maintain, and strengthen offenders' ties with the community. Therefore, convenient access to work, school, family, recreation, professional services, and community activities should be maximized.

b. Increase the likelihood of community acceptance, the availability of contracted programs and purchased professional services, and attractiveness to volunteers, paraprofessionals, and professional staff.

c. Afford easy access to the courts and legal services to facilitate intake screening, presentence investigations, postsentence programming and pretrial detention.

3. A spatial "activity design" should be developed.

a. Planning of sleeping, dining, counseling, visiting, movement, programs, and other functions should be directed at optimizing the conditions of each.

b. Unnecessary distance between staff and resident territories should be eliminated.

c. Transitional spaces should be provided that can be used by "outside" and inmate participants and give a feeling of openness.

4. Security elements and detention provisions should not dominate facility design.

a. Appropriate levels of security should be achieved through a range of unobtrusive measures that avoid the ubiquitous "cage" and "closed" environment.

b. Environmental conditions comparable to normal living should be provided to support development of normal behavior patterns.

c. All inmates should be accommodated in individual rooms arranged in residential clusters of 8 to 24 rooms to achieve separation of accused and sentenced persons, male and female offenders, and varying security levels and to reduce the depersonalization of institutional living.

d. A range of facility types and the quality and kinds of spaces comprising them should be developed to provide for sequential movement of inmates through different programs and physical spaces consistent with their progress.

5. Applicable health, sanitation, space, safety, construction, environmental, and custody codes and regulations must be taken into account.

6. Consideration must be given to resources available and the most efficient use of funds.

a. Expenditures on security hardware should be minimized.

b. Existing community resources should be used for provision of correctional services to the maximum feasible extent.

c. Shared use of facilities with other social agencies not conventionally associated with corrections should be investigated.

d. Facility design should emphasize flexibility and amenability to change in anticipation of fluctuating conditions and needs and to achieve highest return on capital investment.

7. Prisoners should be handled in a manner consistent with humane standards.

a. Use of closed-circuit television and other electronic surveillance is detrimental to program objectives, particularly when used as a substitute for direct staff-resident interaction. Experience in the use of such equipment also has proved unsatisfactory for any purposes other than traffic control or surveillance of institutional areas where inmate's presence is not authorized.

b. Individual residence space should provide sensory stimulation and opportunity for self-expression and personalizing the environment.

8. Existing community facilities should be explored as potential replacement for, or adjuncts to, a proposed facility.

Commentary

The importance of adequate planning before building new jail facilities has been emphasized in previous standards. Standard 8.10 reemphasizes that many issues need to be explored and

completely examined before new buildings are constructed for detention purposes.

Although security is a major concern when building any correctional facility, the purpose of the building, the type of inmate to be detained, the available community resources, and the diversion alternatives should all be equally considered in the planning process. Standard 8.10 provides a guideline of what should be considered in the planning process.

Implementation

A. Agencies Involved:

Courts.

Police.

Corrections.

Counties.

Planning districts.

Board of Charities and Corrections.

B. Administrative Actions:

Criminal justice officials should consider the guidelines presented above before investing monies in new programs. Planning should occur before money is spent.

CHAPTER NINE

PROBATION

Corrections Standard 9.1

Services to Probationers

Each probation system should develop by 1977 a goal-oriented service delivery system that seeks to remove or reduce barriers confronting probationers. The needs of probationers should be identified, priorities established, and resources allocated based on established goals of the probation system.

1. Services provided directly should be limited to activities defined as belonging distinctly to probation. Other needed services should be procured from other agencies that have primary responsibility for them. It is essential that funds be provided for purchase of services.

2. Wherever feasible, the probation system should be organized to deliver to probationers a range of services by a range of staff. Various modules should be used for organizing staff and probationers into workloads or task groups, not caseloads. The modules should include staff teams related to groups of probationers and differentiated programs based on offender typologies.

3. The primary function of the probation officer should be that of community resource manager for probationers.

Commentary

Many types of services may be provided to probationers including individual counseling, group counseling, remedial education, vocational training, job placement, medical care and various kinds of residential care. As the system now exists, probation officers are required to supply all of these services to their clients. Providing such a large variety of services greatly drains the amount of time agents can work with all of their clients.

Ideally, the probation officers should be the link to provide services to their client, i.e., be able to refer a client with employment problems to a specific person at the state or local employment service. The National Advisory Commission states (1973:334):

> To aid the probation officer as a community resource manager, the system must be organized to deliver certain services that properly belong to probation; to secure needed services from those social agencies already charged with responsibility for their provision to all citizens, such as schools, health services, employment, and related services; and to purchase special services needed by probationers.

This reorganization of the probation system and the redefinition of the probation officer's role will result in a more efficient and effective use of resources.

Implementation

A. Agencies Involved:
   Courts.
   State Criminal Justice Commission.
   Department of Social Services.
   Board of Charities and Corrections.
   State Planning Bureau.
   Private service agencies.
   Local units of government.
B. Funding:
   LEAA.
   State appropriations.

Corrections Standard 9.2

Misdemeanant Probation

South Dakota should develop additional probation personnel and resources to assure that the courts may use probation for persons convicted of misdemeanors in all cases for which this disposition may be appropriate. All standards of this report that apply to probation are intended to cover both misdemeanant and felony probation. Other than the possible length of probation terms, there should be no distinction between misdemeanant and felony probation as to organization, personnel, or services.

Commentary

South Dakota does not have a statewide misdemeanant probation program. However, many misdemeanant offenders have the same problems as felony offenders and have a need for the services which probation can provide.

The failure to provide probation staff, funds, and resources to misdemeanants results in needless jailing of these offenders and, in too many cases, their eventual graduation to the ranks of felony offenders. Developing misdemeanant probation programs which can help misdemeanant offenders with their problems may reduce the number of offenders who progress to commit more serious offenses.

Implementation

A. Agencies Involved:
   State Criminal Justice Commission.
   Board of Charities and Corrections.
   Courts.
   Department of Social Services.
   Private agencies.
   Local government units.
   State Planning Bureau.
B. Funding:
   State appropriations.

Corrections Standard 9.3

Probation Resources

South Dakota should develop immediately a comprehensive personnel development and training program to recruit, screen, utilize, train, educate, and evaluate a full range of probation personnel, including volunteers, women, and ex-offenders. The program should range from entry level to top level positions and should include the following:

1. Provision should be made for effective utilization of a range of personnel on a full- or part-time basis by using a systems approach to identify service objectives and by specifying job tasks and range of personnel necessary to meet the

objectives. Jobs should be reexamined periodically to insure that organizational objectives are being met.

2. In addition to probation officers, there should be new career lines in probation, all built into career ladders.

3. Advancement (salary and status) should be along two tracks: service delivery and administration.

4. Educational qualification for probation officers should be graduation from an accredited 4-year college or equivalent training and/or experience.

Commentary

The field of probation is becoming recognized as a legitimate career choice for many men and women in this country. As the need for probation services increases, the need for qualified people to work in the field will also increase.

Since probation provides a variety of services to a large number of clients, people with different skills and backgrounds will be required to compose the work force. The Task Force believes that graduation from an accredited, four year college is a desirable qualification for a probation officer, yet feels there should be enough flexibility within the system to hire qualified people who have equivalent training and/or experience to do the work at hand.

Probation is becoming a career field and possibilities for advancement in status and salary should be built into the system. This advancement may be contingent upon the probation officer's furthering his/her education and/or training.

Implementation

A. Agencies Involved:
Bureau of Personnel.
Courts.

B. Funding:
State appropriations.
LEAA.

Corrections Standard 9.4

Probation

Each sentencing court immediately should revise its policies, procedures, and practices concerning probation, and where necessary, enabling legislation should be enacted, as follows:

1. A sentence to probation should be for a specific term not exceeding the maximum sentence authorized by law, except that probation for misdemeanants may be for a period not exceeding one year.

2. The court should be authorized to impose such conditions as are necessary to provide a benefit to the offender and protection to the public safety. The court also should be authorized to modify or enlarge the conditions of probation at any time prior to expiration or termination of sentence. The conditions imposed in an individual case should be tailored to meet the needs of the defendant and society, and mechanical imposition of uniform conditions on all defendants should be avoided.

3. The offenders should be provided with a written statement of the conditions imposed and should be granted an explanation of such conditions. The offenders should be authorized to request clarification of any condition from the sentencing judge. The offenders should also be authorized on their own initiative to petition the sentencing judge for a modification of the conditions imposed.

4. Procedures should be adopted authorizing the revocation of a sentence of probation for violation of specific conditions imposed, such procedures to include:

a. Authorization for the prompt confinement of probationers who exhibit behavior that is a serious threat to themselves or others and for allowing probationers suspected of violations of a less serious nature to remain in the community until further proceedings are completed.

b. A requirement that for those probationers who are arrested for violation of probation, a preliminary hearing be held promptly by a neutral official other than their probation officer to determine whether there is probable cause to believe the probationers violated their probation. At this hearing the probationers should be accorded the following rights:

(1) To be given notice of the hearing and of the alleged violations.

(2) To be heard and to present evidence.

(3) To confront and cross-examine adverse witnesses unless there is substantial evidence that the witness will be placed in danger of serious harm by so testifying.

(4) To be represented by counsel and to have counsel appointed for the offenders if indigent.

(5) To have the decisionmaker state the reasons for the decision and the evidence relied on.

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

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

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

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

e. A requirement that at the probation revocation hearing the probationers should have notice of the alleged violation, access to official records regarding their case, the right to be represented by counsel including the right to appoint counsel if they are indigent, the right to subpoena witnesses in their own behalf, the right to confront and cross-examine witnesses against them.

f. Authorization for the court, upon finding a violation of conditions of probation, to continue the existing sentence with or without modification, to enlarge the conditions, or to impose any other sentence that was available to the court at the time of initial sentencing. In resentencing a probation violator, the following rules should be applicable:

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

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

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

5. Probation should not be revoked for the commission of a new crime until the offender has been tried and convicted of that crime. At this time criteria and procedures governing initial sentencing decisions should govern resentencing decisions.

Commentary

The rate of imprisonment in the United States, which takes great pride, in orations, in its protection of liberty and freedom, is considerably higher than the rate in any other industrial nation. (Rector, 1975) This county has reached the stage where imprisonment is neither socially nor economically feasible as a punitive sanction for the great majority of sentenced persons. New avenues of handling these people should be developed and probation, with its emphasis on assisting the offender to adjust to the free community and supervising that process, offers greater hope for success and fewer chances for human misery.

Probation is a major sentencing alternative in its own right. As a sentencing alternative, probation should be carefully and fairly administered. Probation terms should not exceed the maximum terms set by the criminal code; the conditions imposed on a probationer should be tailored to meet the needs of the individual and society, and revocation procedures should include safeguards for the probationer's rights.

When probationers go before the sentencing court to determine whether their probations should be revoked, the offenders have the right to notice of the alleged violation, access to official records regarding the case, the right to be represented by counsel, including the right to appointed counsel if they are indigent, the right to subpoena witnesses in their own behalfs, and the right to confront and cross-examine witnesses against them.

Where revocation is not contemplated, as in the case of violation of minor conditions, more informal procedures may be followed by the judge or probation officer in an attempt to correct the problem.

Implementation

A. Agencies Involved:
   Courts.
   Police.
   Corrections.
   Counties.
   Trial Lawyer's Association.

B. Funding:
   Money must be available to pay for counsel for indigent offenders.

CHAPTER TEN

MAJOR INSTITUTIONS

Corrections Standard 10.1

Modification of Existing Institutions

The correctional agency administering State institutions for juvenile or adult offenders should undertake immediately a 5-year program of reexamining existing institutions to minimize the deleterious effects of excessive regimentation and harmful physical environments imposed by physical plants.

1. A collaborative planning effort should be made to determine the legitimate role of each institution in the correctional system.

2. The physical environments of adult institutions to be retained should be modified to achieve these objectives:

   a. Provision of privacy and personal space.

   b. Minimization of noise.

   c. Reduction on sensory deprivation.

   d. Reduction in size of inmate activity spaces to facilitate constructive inmate-staff relationships.

   e. Provision of adequate utility services.

3. Plant modification of retained institutions should also be undertaken to provide larger, more dignified, and more informal visiting facilities; spaces for formal and informal individual and group counseling, education and vocational training, workshops, recreational facilities, and medical and hospital facilities; and such additional program spaces as may fit the identified purposes of the institution.

4. A reexamination of the purposes and physical facilities of each existing institution should be undertaken at least every 5 years, in connection with continuing long-range planning for the entire corrections system.

Commentary

As part of the long range planning process of the correctional system, the state's penal institutions should be reexamined and reevaluated to determine if they are fulfilling their stated purposes and to assess their physical conditions. If necessary, the facilities should be modernized to provide better living conditions for the prisoners and to improve the educational and vocational training areas.

The use of such facilities should be reexamined with a view toward reducing commitment rates and increasing parole release dates. Community-based correctional alternatives should be utilized to the greatest possible extent.

Implementation

A. Agencies Involved:
   Corrections.
   Board of Charities and Corrections.
   State Planning Bureau.

B. Administrative Actions:
   Correctional administrators should reanalyze the role of institutions, keeping in mind the goal of reducing institutionalization as much as possible. There should be an emphasis on planning for any necessary changes.

C. Funding:
   Money may be needed to refurbish and modernize the institution. State appropriations and LEAA may be a source of funds.

Corrections Standard 10.2

Education and Vocational Training

Each institution for juveniles or adults should reexamine immediately its educational and vocational training programs to insure that they meet standards that will individualize education and training. These programs should be geared directly to the reintegration of the offender into the community. It is recognized that techniques and practices for juveniles may be somewhat different from those required for adults, but the principles are similar. Usually the programs for juveniles and youths are more adequately equipped and staffed, but this distinction should not continue. It is assumed that intensive efforts will be made to upgrade adult institutions and that juvenile institutions will be phased out in favor of community programs and facilities.

1. Each institution should have a comprehensive, continuous educational program for inmates.

   a. The educational department of the institution should establish a system of accountability to include:

      (1) An annual internal evaluation of achievement data to measure the effectiveness of the instruction program against stated performance objectives.

      (2) An appraisal comparable to an accreditation process, employing community representatives, educational department staff, and inmate students to evaluate the system against specific objectives. This appraisal should be repeated at least every 3 years.

   b. The educational curriculum should be developed with inmate involvement. Individualized and personalized programming should be provided.

   c. The educational department should have at least one learning laboratory for basic skill instruction. Occupational education should be correlated with basic academic subjects.

   d. In addition to meeting State certification requirements, teachers should have additional course work in social education, reading instruction, and abnormal psychology.

   e. Each educational department should make arrangements for education programs at local colleges where possible, using educational opportunities programs, work-study programs for continuing education, and work-furlough programs.

   f. Each educational department should have a guidance counselor (preferably a certified school psychologist). School records of juveniles should be available to these persons at the time of commitment.

   g. Social and coping skills should be part of the educational curriculum, particularly consumer and family life education.

2. Each institution should have prevocational and vocational training programs to enhance the offender's marketable skills.

   a. The vocational training program should be part of a reintegrative continuum, which includes determination of needs, establishment of program objectives, vocational training, and assimilation into the labor market.

   b. The vocational training curriculum should be designed in short, intensive training modules.

c. Individual prescriptions for vocational training programs should include integration of academic work, remedial reading and math, high school graduation, and strong emphasis on the socialization of the individual as well as development of trade skills and knowledge.

d. Vocational programs for offenders should be intended to meet their individual needs and not the needs of the instructor or the institution. Individual programs should be developed in cooperation with each inmate.

e. An incentive pay scale should be a part of all training programs for inmates.

f. Vocational programs should be selected on the basis of the following factors related to increasing offenders' marketable skills.

(1) Vocational needs analysis of the inmate population.

(2) Job market analysis of existing or emerging occupations.

(3) Job performance or specification analysis, including skills and knowledge needed to acquire the occupation.

g. Vocational education and training programs should be made relevant to the employment world.

(1) Programs of study about the work world and job readiness should be included in prevocational or orientation courses.

(2) Work sampling and tool technology programs should be completed before assignment to a training program.

(3) Use of vocational skill clusters, which provide the student with the opportunity to obtain basic skills and knowledge for job entry into several related occupations, should be incorporated into vocational training programs.

h. All vocational training programs should have a set of measurable behavioral objectives appropriate to the program. These objectives should comprise a portion of the instructor's performance evaluation.

i. Vocational instructors should be licensed or credentialed under rules and regulations for public education in the State or jurisdiction.

j. Active inservice instructor training programs should provide vocational staff with information on the latest trends, methods, and innovations in their fields.

k. Class size should be based on a ratio of 12 students to 1 teacher.

l. Equipment should require the same range and level of skills to operate as that used by private industry.

m. Trades advisory councils should involve labor and management to assist and advise in the ongoing growth and development of the vocational program.

n. Private industry should be encouraged to establish training programs within the residential facility and to commit certain numbers of jobs to graduates from these training programs.

o. The institution should seek active cooperative programs and community resources in vocational fields with community colleges, federally funded projects such as Job Corps, Neighborhood Youth Corps, and Manpower Development Training Act programs, and private community action groups.

p. On-the-job training and work release or work furloughs should be used to the fullest extent possible.

q. An active job placement program should be established to help residents find employment related to skills training received.

3. Features applicable both to educational and vocational training programs should include the following:

a. Emphasis should be placed on programmed instruction, which allows maximum flexibility in scheduling, enables students to proceed at their own pace, gives immediate feedback, and permits individualized instruction.

b. A variety of instructional materials — including audio tapes, teaching machines, books, computers, and television— should be used to stimulate individual motivation and interest.

c. Selected offenders should participate in instructional roles.

d. Community resources should be fully utilized.

e. Correspondence courses should be incorporated into educational and vocational training programs to make available to inmates specialized instruction that cannot be obtained in the institution or the community.

f. Credit should be awarded for educational and vocational programs equivalent to or the same as that associated with these programs in the free world.

Commentary

Correctional education and training has the special mission of upgrading the capacity of people found at varying points in the criminal justice system to cope more effectively (i.e., in legal and socially acceptable ways) with life's economic and social requirements. One of the major challenges confronting correctional educators is structuring an educational system which takes into account the wide range of individual differences in ages, levels of prior experience, aptitudes, interests, and learning style whose only common denominator is "serving time." (McCollum, 1973:7).

However, since the majority of prisoners are undereducated (do not have high school or even grade school diplomas), educational programs are of utmost importance within the institution. The educational programs need to be individualized and the levels of education need to range from the first grade through college courses. In addition to just the basic education skills (reading, writing, arithmetic), the curriculum should provide social and coping skills, particularly in the areas of consumer and family life education.

Many prisoners are not only undereducated but also lack trade skills or a means to support themselves in the free world. Therefore, vocational training programs are as important as educational ones.

In order to be effective, vocational programs should (1) parallel the demands of the outside job market, (2) have modern tools and equipment, (3) have an advisory council composed of people involved in the particular vocational areas in the business world to keep the programs up-to-date, and (4) be open to as many inmates as possible.

The educational and vocational programs offered in prison may provide the inmate with new skills, but these will be for naught, if upon release, the inmate cannot obtain a job. To help alleviate this problem, an active job placement program needs to be developed. Ex-offenders will have extra problems in obtaining jobs, and at least one full-time person should be designated to work to find employment for these people. Without a job or means of support, the chances are very high

that the ex-offender will commit another crime and be reincarcerated.

Implementation

A. Agencies Involved:
Correctional institutions.
South Dakota educational system.
South Dakota Vocational Board.
State and local employment agencies.

B. Administrative Actions:
Correctional administrators should emphasize the importance of educational and vocational programs within the institution.

C. Funding:
Adequate monies should be available to maintain and upgrade educational and vocational programs within prisons State money should be appropriated and where appropriate, LEAA and other federal monies should be utilized.

Corrections Standard 10.3

Special Offender Types

Each correctional agency operating major institutions, and each institution, should reexamine immediately its policies and procedures, and programs for the handling of special problem offenders — the addict, the recalcitrant offender, the emotionally disturbed, and those associated with organized crime.

Commentary

Correctional Administrators are constantly faced with inmates who do not properly belong in their facility because of social, mental or medical reasons. Drug addicts, alcoholics, and psychotics cannot be properly treated within the prison setting, but are often sentenced to these places. Whenever possible, correctional administrators should try to have these people placed in other programs and facilities which have a better chance of helping these people.

Implementation

A. Agencies Involved:
Correctional agencies.

Corrections Standard 10.4

Women in Major Institutions

State correctional agencies operating institutions to which women offenders are committed should reexamine immediately its policies, procedures, and programs for women offenders, and make such adjustments as may be indicated to make these policies, procedures, and programs more relevant to the problems and needs of women.

1. Facilities for women offenders should be considered an integral part of the overall corrections system, rather than an isolated activity or the responsibility of an unrelated agency.

2. Comprehensive evaluation of the woman offender should be developed through research. The State should determine differences in the needs between male and female offenders and implement differential programming.

3. Appropriate vocational training programs should be implemented. Vocational programs that promote dependency and exist solely for administrative ease should be abolished. A comprehensive research effort should be initiated to determine the aptitudes and abilities of the female institutional population. This information should be coordinated with labor statistics predicting job availability. From data so obtained, creative vocational training should be developed which will provide a woman with skills necessary to allow independence.

4. Classification systems should be investigated to determine their applicability to the female offender. If necessary, systems should be modified or completely restructured to provide information necessary for an adequate program.

5. Adequate diversionary methods for female offenders should be implemented. Community programs should be available to women. Special attempts should be made to create alternative programs within community centers and halfway houses or other arrangements.

6. State correctional agencies with such small numbers of women inmates as to make adequate facilities and programming uneconomical should make every effort to find alternatives to imprisonment for them, including parole and local residential facilities. For those women inmates for whom such alternatives cannot be employed, contractual arrangements should be made with nearby States with more adequate facilities and programs.

Commentary

The problem of female offenders has reached critical proportions. The neglect that has characterized female corrections becomes more alarming and more visible in light of the rapidly changing role of women in our society. (NAC, 1973:379).

Since women's institutions generally have a very small population as compared to men's, the same types of benefits and services are not offered to women. Female prisoners are in need of educational, vocational, counseling, and recreational programs to the same extent as males, but often are not adequately provided with these services. Similarly, diversionary programs need to be developed for women. Work release, halfway houses, and other community resources should be explored as alternatives to prison for female inmates.

Implementation

A. Agencies Involved:
Corrections.
Board of Charities and Corrections.

B. Funding:
Funds should be appropriated to upgrade the women's correctional facility and provide the same vocational and educational opportunities as are available to male prisoners.

Corrections Standard 10.5

Recreation Programs

Each institution should develop and implement immediately policies and practices for the provision of recreation activities

as an important resource for changing behavior patterns of offenders.

1. Every institution should have a full-time trained and qualified recreation director with responsibility for the total recreation program of that facility. The director also should be responsible for integration of the program with the total planning for the offender.

2. Program planning for every offender should include specific information concerning interests and capabilities related to leisure-time activities.

3. Recreation should provide ongoing interaction with the community while the offender is incarcerated. This can be accomplished by bringing volunteers and community members into the institution and taking offenders into the community for recreational activities. Institutional restriction in policy and practice which bars use of community recreational resources should be relaxed to the maximum extent possible.

4. The range of recreational activities to be made available to inmates should be broad in order to meet a wide range of interests and talents and stimulate the development of the constructive use of leisure time that can be followed when the offender is reintegrated into the community. Recreational activities to be offered inmates should include music, athletics, painting, writing, drama, handcrafts, and similar pursuits that reflect the legitimate leisure-time activities of free citizens.

Commentary

Correctional administrators recognize the importance of recreational programs within the prison setting. Recreation functions to dull the monotony of prison life, to help certain individuals gain self confidence, to facilitate social interaction, and to improve the physical fitness of the inmates. But as the educational and vocational programs need to be adjusted to the individual, so do recreation programs. Therefore, a wide range of activities must be provided, and the inmate must be allowed to have some input in deciding in which programs he/she will participate.

Whenever possible, the community should be encouraged to participate in prison recreational programs. This interaction between the community and the prison could take the form of sports competition or a mere spectator role.

Implementation

A. Funding:

Recreational programs are of major importance in a prison setting and function to relieve tension and physical restlessness. Therefore, these programs should be adequately funded at all times in both adult and juvenile facilities.

Corrections Standard 10.6

Counseling Programs

Each institution should begin to develop planned, organized, ongoing counseling programs.

1. Three levels of counseling programs should be provided:

a. Individual for self-discovery in a one-to-one relationship.

b. Small group, for self-discovery in an intimate group setting with open communication.

c. Large group, for self-discovery as a member of a living unit community with responsibility for the welfare of that community.

2. Institutional organization should support counseling programs by coordinating group living, education, work, and recreational programs to maintain an overall supportive climate. This should be accomplished through a participative management approach.

3. Each institution should have a full-time counseling supervisor responsible for developing and maintaining an overall institutional program through training and supervising staff and volunteers. A bachelor's degree with training in social work, group work, and counseling psychology should be required. Each unit should have at least one qualified counselor to train and supervise non-professional staff. Trained ex-offenders and paraprofessionals with well-defined roles should be used.

4. Counseling within institutions should be given high priority in resources and time.

Commentary

Effective counseling can provide an inmate the impetus to change his/her life style by helping that person to develop skills to deal with his/her personal problems. However, not all people respond to the same kind of counseling situation, nor are all institutional settings conducive to all counseling approaches. Therefore, each correctional facility, adult or juvenile, should provide counseling programs appropriate to their facility and inmate population. Usually, a combination of individual and group counseling techniques will be necessary to fulfill the needs of the prison population.

Implementation

A. Agencies Involved:
Corrections.

B. Funding:
The correction's budget should provide for an adequate number of counselors.

Corrections Standard 10.7

Prison Labor and Industries

Each correctional agency and each institution operating industrial and labor programs should take steps immediately to reoganize their programs to support the reintegrative purpose of correctional institutions.

1. Prison industries should be diversified and job specifications defined to fit work assignments to offenders needs as determined by release planning.

2. All work should form part of a designed training program with provisions for:

a. Involving the offenders in the decision concerning their assignment.

b. Giving the offenders the opportunity to achieve on a productive job to further their confidence in their ability to work.

c. Assisting the offenders to learn and develop their skills in a number of job areas.

d. Instilling good working habits by providing incentives.

3. Joint bodies consisting of institution management, in-

mates, labor organization, and industry should be responsible for planning and implementing a work program useful to the offender, efficient, and closely related to skills in demand outside the prison.

4. Training modules integrated into a total training plan for individual offenders should be provided. Such plans must be periodically monitored and flexible enough to provide for modifications in line with individuals' needs.

5. Where job training needs cannot be met within the institution, placement in private industry on work-furlough programs should be implemented consistent with security needs.

Commentary

The National Advisory Commission states (1973:387):

> Work in prisons serves a variety of purposes that often are in conflict with each other. Its functions have been to punish and keep the committed offender busy, to promote discipline, to maintain the institution, to defray some of the operating costs of the prison, and to provide training and wages for the offender. Unfortunately, the job training function has not had the highest priority.

Wherever possible, prison labor should be approached with the idea of providing the inmate with a useful work skill. Even janitorial work has technical aspects which if communicated to the inmate, could provide him/her with a job skill upon release. Each work experience should be expanded as much as possible to fit into other educational programs within the institution in order to increase the inmate's chance of finding employment upon release.

Implementation

A. Agencies Involved:
   Corrections.
   Community representatives.

B. Administrative Actions:
   Correctional administrators should focus on the benefit of prison labor to the inmate and not solely on the prison's benefit from inmate labor.

CHAPTER ELEVEN

PAROLE

Corrections Standard 11.1

Organization of Paroling Authorities

South Dakota, should by 1977, establish parole decisionmaking bodies for adult and juvenile offenders that are independent of correctional institutions. These boards may be administratively part of an overall statewide correctional services agency, but they should be autonomous in their decisionmaking authority and separate from field services.

Commentary

South Dakota's Board of Pardons and Paroles is the parole decisionmaking body of the state. The board is composed of three people; the assistant attorney general, one elector appointed by the Governor, and the other elector appointed by the Supreme Court. The board of pardons and paroles is administered under the direction and supervision of the division of corrections, but retains the quasi-judicial, quasi-legislative, advisory, other non-administrative and special budgetary functions otherwise vested in it and exercises those functions independently of the director of corrections. (SDCL 23-52-1.1).

At this time there is no juvenile parole from the state training school. The Court retains the authority to release a juvenile from the training school. (SDCL 26-8-49).

Implementation

A. Agencies Involved:
Board of Pardons and Parole.
Board of Charities and Corrections.
Courts.

B. Legislation:
SDCL 26-8-49 would have to be repealed in order to allow the Board of Pardons and Paroles to have jurisdiction over juveniles held at the state training school.

C. Funding:
Appropriations would be necessary to pay for the travel of the Board of Pardons and Paroles to the juvenile institution.

Corrections Standard 11.2

The Parole Hearing

The Board of Pardons and Paroles should immediately develop policies for parole release hearings that include opportunities for personal and adequate participation by the inmates concerned; procedural guidelines to insure proper, fair, and thorough consideration of every case; prompt decisions and personal notification of decisions to inmates; and provision of accurate records of deliberations and conclusions.

A proper parole grant process should have the following characteristics:

1. Hearings should be scheduled with inmates within one year after they are received in an institution. Inmates should appear personally at hearings.

2. At these hearings, decisions should be directed toward the quality and pertinence of program objectives agreed upon by the inmate and the institution staff.

3. Board representatives should monitor and approve programs that can have the effect of releasing the inmate without further board hearings.

4. Each jurisdiction should have a statutory requirement, patterned after the Model Penal Code, under which offenders must be released on parole when first eligible unless certain specific conditions exist.

5. When a release date is not agreed upon, a further hearing date within one year should be set.

6. Inmates should be notified of any decision directly and personally by the board or its representative.

7. Parole procedures should permit disclosure of information on which the hearing examiner bases his/her decisions. Sensitive information may be withheld, but in such cases nondisclosure should be noted in the record so that subsequent reviewers will know what information was not available to the offender.

8. Parole procedures should permit representation of offenders under appropriate conditions, if required. Such representation should conform generally to Standard 1.2 Access to Legal Services.

9. Parole hearings for juveniles should be held at a minimum once a month at the appropriate juvenile facility.

Commentary

The Board of Pardons and Paroles meets at least once a month at the penitentiary in Sioux Falls. At this time, the Board considers the cases of those inmates eligible for parole. The parole grant hearing should allow the inmates an opportunity to present their cases and the decision to grant or deny parole should be based as much as possible on objective criteria. The Board should notify the inmate in person of its decision.

Since the length of the stay and the programs at the training school differ from those at the state penitentiary the parole board will need to adopt separate policies for the two institutions. If possible, the parole board or its representative should meet more than once a month at the training school in order to coincide with that institution's scheduling.

Implementation

A. Agencies Involved:
Board of Pardons and Paroles.
Correctional agencies.
Courts.
Private agencies.

Corrections Standard 11.3

Revocation Hearings

The Board of Pardons and Paroles should immediately develop and implement a system of revocation procedures to permit the prompt confinement of parolees exhibiting behavior that poses a serious threat to others. At the same time, it should provide careful controls, methods of fact-finding, and possible alternatives to keep as many offenders as possible in

the community. Return to the institution should be used as a last resort, even when a factual basis for revocation can be demonstrated.

1. Warrants to arrest and hold alleged parole violators should be issued and signed by parole board members. Tight control should be developed over the process of issuing such warrants. They should never be issued unless there is sufficient evidence of probable serious violation. In some instances, there may be a need to detain alleged parole violators. In general, however, detention is not required and is to be discouraged. Any parolee who is detained should be granted a prompt preliminary hearing. Administrative arrest and detention should never be used simply to permit investigation of possible violations.

2. Parolees alleged to have committed a new crime but without other violations of conditions sufficient to require parole revocation should be eligible for bail or other release pending the outcome of the new charges, as determined by the court.

3. A preliminary hearing conducted by an individual not previously directly involved in the case should be held promptly on all alleged parole violations, including convictions of new crimes, in or near the community in which the violation occurred unless waived by the parolees after due notification of their rights. The purpose should be to determine whether there is probable cause or reasonable grounds to believe that the arrested parolees have committed acts that would constitute a violation of parole conditions and a determination of the value question of whether the case should be carried further, even if probable cause exists. The parolees should be given notice that the hearing will take place and of what parole violations have been alleged. They should have the right to present evidence, to confront and cross-examine witnesses, and to be represented by counsel.

The person who conducts the hearing should make a summary of what transpired at the hearing and the information used to determine whether probable cause existed to hold the parolees for the final decision of the parole board on revocation. If the evidence is insufficient to support a further hearing, or if it is otherwise determined that revocation would not be desirable, the offenders should be released to the community immediately.

4. At parole revocation hearings, the parolees should have written notice of the alleged infractions of the rules or conditions; access to official records regarding their case; the right to be represented by counsel, including the right to appointed counsel if they are indigent; the opportunity to be heard in person; the right to subpoena witnesses in their own behalf; and the right to cross-examine witnesses or otherwise to challenge allegations or evidence held by the State. Hearing examiners should be empowered to hear and decide parole revocation cases under policies established by the parole board. Parole should not be revoked unless there is substantial evidence of a violation of one of the conditions of parole. The hearing examiner should provide a written statement of findings, the reasons for the decision, and the evidence relied upon.

5. The Board of Pardons and Paroles should develop alternatives to parole revocation, such as warnings, short-time local confinement, special conditions of future parole, variations in intensity of supervision or surveillance, fines, and referral to other community resources. Such alternative measure should be utilized as often as is practicable.

6. If return to a correctional institution is warranted, the offenders should be scheduled for subsequent appearances for parole considerations when appropriate. There should be no automatic prohibition against reparole of parole violators.

Commentary

The issues of parole revocation are typically drawn around four areas: how a parolee is taken and held in custody, when and where he/she is heard, what procedures are employed at revocation hearings, and what the nature of the disposition imposed is. (NAC, 1973:426).

Recently, this whole area of parole revocation has been the subject of much litigation and the Supreme Court has ruled that the parolee is entitled to a number of rights upon being charged with the violation of parole conditions. These include rights to a preliminary hearing to determine probable cause, to be held at or near the site of the alleged violation, to representation in specific cases, to disclosure of information, to witnesses, to cross-examination, and to a written statement of findings, the reason for the decision, and the evidence relied upon.

Should a parolee be found guilty of a parole violation, community programs and/or additional restrictions and warnings should be used as much as possible instead of a return to prison.

Implementation

A. Agencies Involved:
Correctional agencies.
Courts.
Police.
Board of Pardons and Paroles.

Corrections Standard 11.4

Community Services for Parolees

South Dakota should begin immediately to develop a diverse range of programs to meet the needs of parolees. These services should be drawn to the greatest extent possible from community programs available to all citizens, with parole staff providing linkage between services and the parolees needing or desiring them.

1. Stringent review procedures should be adopted, so that parolees not requiring supervision are released from supervision immediately and those requiring minimal attention are placed in minimum supervision caseloads.

2. Parole officers should be selected and trained to fulfill the role of community resource manager.

3. Parole staff should participate fully in developing coordinated delivery systems of human services.

4. Funds should be made available for parolees. Parole staff should have authority to waive repayment to fit the individual case.

5. State funds should be available to offenders, so that some mechanism similar to unemployment benefits may be available to inmates at the time of their release, in order to tide them over until they find a job.

6. South Dakota should use, as much as possible, a requirement that offenders have a visible means of support before authorizing their release on parole.

7. Parole and State employment staffs should develop effective communication systems at the local level. Joint meetings and training sessions should be undertaken.

8. Each parole agency should have one or more persons attached to the central office to act as liaison with major program agencies, such as the Office of Economic Opportunity, Office of Vocational Rehabilitation, and Department of Labor.

9. Institutional vocational training tied directly to specific subsequent job placements should be supported.

10. Parole boards should encourage institutions to maintain effective quality control over programs.

11. Small community-based group homes should be available to parole staff for prerelease programs, for crises, and as a substitute to recommitment to an institution in appropriately reviewed cases of parole violation.

12. Funds should be made available to parole staffs to purchase needed community resources for parolees.

Commentary

Inmates face a number of problems when they are initially placed on parole. Traditionally, the parole officer has been responsible for helping the parolee to deal with the issues at hand by playing the roles of employment counselor, legal advisor, marital counselor, educational counselor and many other roles. Fulfilling all of these roles for their clients is much too demanding on parole officers.

In order to provide better services to parolees, parole officers should redirect their efforts toward finding and using existing community resources. A number of advantages accrue: better and more relevant services usually can be obtained; less stigma is attached to services offered by noncorrectional agencies, and more flexibility is provided when services offered by noncorrectional agencies are not entrenched in the organizational structure of a correctional agency. (NAC, 1973:431).

One of the major problems facing new parolees is the lack of funds needed to reestablish themselves in the free community. Some form of unemployment compensation should be provided for released offenders so that they can adequately handle the financial demands made upon them. Similarly, some form of loan fund should be available to the new parolee. The high correlation between parole failure and the amount of money an offender has during the first months of release make it clear that these investments would be sound ones. (NAC, 1973:431).

Implementation

A. Agencies Involved:
   Board of Charities and Corrections.
   Division of Corrections.
   Board of Pardons and Paroles.
   State and local employment agencies.

B. Legislation'

   Legislation would be necessary to allow for a form of unemployment compensation for newly released inmates. The purpose of the inmates' loan fund should be expanded.

C. Funding:
   State appropriations.
   Inmate fund.

Corrections Standard 11.5

Measures of Control

South Dakota should take immediate action to reduce parole rules to an absolute minimum, retaining only those critical in the individual case, and to provide for effective means of enforcing the conditions established.

1. After considering suggestions from correctional staff and preferences of the individual, the parole board should establish in each case the specific parole conditions appropriate for the individual offender.

2. Parole staff should be able to request the board to amend rules to fit the needs of each case and should be empowered to require the parolee to obey any such rule when put in writing, pending the final action of the parole board.

3. Parole officers should develop close liaisons with police agencies, so that any formal arrests necessary can be made by police. Parole officers, therefore, would not need to be armed.

Commentary

Conditions governing the conduct of parolees is an integral part of parole. The purpose of these conditions should be to provide the parolee with guidelines for living a crime free life, and therefore, should be as specific as possible and reasonably related to the individual case.

The parolee should understand both the meaning and reasons for the parole conditions imposed. If the number of conditions is limited to those deemed absolutely necessary, the parolee and parole officer will be able to establish a more workable relationship because both parties will know and understand the rules in the case.

In the majority of cases, parole officers should not be armed. However, if parole officers do carry arms, they should be properly trained.

Implementation

A. Agencies Involved:
   Board of Pardons and Paroles.
   Division of Corrections.
   Police.

Corrections Standard 11.6

Resources for Parole

By 1977, South Dakota should develop a comprehensive personnel and training program which would make it possible to recruit persons with a wide variety of skills, including significant numbers of minority group members and volunteers, and use them effectively in parole programs.

Commentary

The resources for parole should consist of persons with a variety of skills and aptitudes. People with different levels of educational attainment and background experiences should be recruited to fulfill the needs of the parole agency. Career ladders should be established to permit opportunities for advancement for the parole personnel.

Resources which have not been sufficiently tapped are volunteers, ex-offenders and other minority groups. Recruitment of these minorities should be increased, and adequate training should be provided to these new employees in order to increase their effectiveness.

Implementation

A. Agencies Involved:
Bureau of Personnel.
Division of Corrections.
Criminal Justice Training Center.

Corrections Standard 11.7

Pardon Legislation

South Dakota should enact legislation detailing the procedures (1) governing the application by an offender for the exercise of pardon powers, and (2) for exercise of the pardon powers.

Commentary

South Dakota has already met this standard. The relevant legislation can be found in SDCL 23-59-1.

Corrections Standard 11.8

Regional Cooperation

South Dakota should continue to ratify the following interstate agreements:

1. Uniform Law for out-of-state Parole Supervision (SDCL 23-62-1).

2. Interstate Compact on Juveniles (SDCL 26-12).

3. Interstate agreement on Detainees (SDCL 23-24A).

4. Interstate Compact on Mental Health (SDCL 27-29).

In addition, statutory authority should be given to the chief executive officer of the correctional agency to enter into agreements with local jurisdictions, other States, and the Federal Government for cooperative correctional activities.

Commentary

It is a common occurance for people from one state to become involved with the criminal justice system of another state. Therefore, it is necessary for States to have interstate agreements on how to handle offenders. By cooperating, the states can try to develop the best rehabilitative program for the individual.

Implementation

South Dakota is currently meeting the standard.

CHAPTER TWELVE

ORGANIZATION AND ADMINISTRATION

Corrections Standard 12.1

Unifying Correctional Programs

South Dakota should enact legislation and the necessary constitutional changes to unify all correctional programs and facilities within the state. Programs for adult, juvenile, and youthful offenders that should be within the unified agency include:

1. Services for persons awaiting trial.

2. Probation supervision.

3. Institutional confinement.

4. Community-based programs, whether prior to or during institutional confinement.

5. Parole and other aftercare programs.

6. All programs for misdemeanants including probation, confinement, community-based programs, and parole.

The legislation also should authorize the correctional agency to perform the following functions:

1. Planning of diverse correctional facilities.

2. Development and implementation of training programs for correctional personnel.

3. Development and implementation of an information-gathering and research system.

4. Evaluation and assessment of the effectiveness of its functions.

5. Periodic reporting to governmental officials including the legislature and the executive branch.

6. Development and implementation of correctional programs, including academic and vocational training and guidance, productive work, religious and recreational activity, counseling and psychotherapy services, organizational activity, and other such programs that will benefit offenders.

7. Contracts for the use of nondepartmental and private resources in correctional programming.

The standard should be regarded as a statement of principle applicable to most State jurisdictions. It is recognized that exceptions may exist, because of local conditions or history, where juvenile and adult corrections or pretrial and postconviction correctional services may operate effectively on a separated basis.

Commentary

The topic of unified corrections has been hotly argued within the State of South Dakota. The Corrections Task Force discussed this subject in depth and upon polling the nineteen members of the committee, ten voted to accept standard 12.1, and nine voted to reject this standard.

The members who rejected the standard felt that probation services should remain under the jurisdiction of the courts for the following reasons:

1. Probation would be more responsive to the courts.

2. The relationship of probation staff to the courts creates an automatic feedback mechanism on the effectiveness of dispositions.

3. The courts will have greater awareness of the resources needed. (NAC, 1973:332).

4. The court can place more faith and trust in their own staff than in members of an outside agency.

5. The unified court system within South Dakota has the necessary skills and resources to administer probation services.

The Task Force members who accepted the standard felt that South Dakota's existing correctional system is much too fragmented to provide effective and efficient services to offenders. The fragmentation of the system leads to a duplication of effort among parole officers, probation staff, and youth services workers. In addition, there is not a smooth continuum of services starting from the post arrest stage on through release from a correctional institution; a person being processed through the correctional system bounces from one agency to another as different stages are passed. Unification of all correctional programs will allow the coordination of essentially interdependent programs, more effective utilization of scarce human resources, and development of more effective, professionally operated programs across the spectrum of corrections. (NAC, 1973:561).

Implementation

A. Agencies Involved:
   State Criminal Justice Commission.
   Local units of government.
   State Planning Bureau.
   Courts.
   Corrections.
   Police.
   Board of Charities and Corrections.
   Division of Corrections.
   Department of Social Services
   Private correctional agencies.

B. Legislation:
   This standard may require a constitutional amendment, therefore it will require at least 3 years before full implementation. Specific legislation needed is outlined in the standard.

C. Funding:
   LEAA.
   State appropriations.
   Local governmental budgets.

Corrections Standard 12.2

Professional Correctional Management

The corrections system and each corrections agency should begin immediately to train a management staff that can provide, at minimum, the following system capabilities:

1. Managerial attitude and administrative procedures permitting some employee input on how to proceed for setting goals and producing effective rehabilitation programs. Each employee's responsibilities and areas of input should be clearly delineated. A feedback system should be developed so that both management and line staff can have a clear picture where each one stands in relation to the stated goals of the agency.

2. A management philosophy encouraging delegation of work-related authority to the employee level and acceptance of employee decisions. The unit manager should implement

this philosophy where appropriate, recognizing that such diffusion of authority does not mean managerial abdication but rather that decisions can be made by the persons most involved and thus presumably best qualified.

3. Administrative flexibility to organize employees into teams or groups, recognizing that individuals involved in small working units become concerned with helping their teammates and achieving common goals.

4. Desire and administrative capacity to eliminate consciously as many as possible of the visible distinctions between employee categories, thereby shifting organizational emphasis from an authority or status orientation to a goal orientation.

Commentary

Within recent years, the field of corrections has been the focus of public scrutiny and criticism. Demands for improvements and changes within the correctional system have emanated from the judiciary, offenders, employees, legislatures, and the general public. In order to deal with these demands, the corrections system and individual correctional agencies need to develop a management staff which is flexible, open to new ideas, and capable of initiating changes.

The management staff should encourage the employees to participate in making decisions about their respective areas of work. Similarly a feedback system should be established between management and line staff for the purpose of improving two-way communications. Open communication lines between managers and line staff can help eliminate misunderstandings and can bring conflicts out into the open where they can be discussed and possibly solved.

Implementation

A. Agencies Involved:
Department of Social Services; Division of Corrections.
Supreme Court of South Dakota.
Board of Charities and Corrections.
Correctional facilities and programs (local, private, tribal).

B. Legislation:
Legislation is necessary to expand the present management and supervisory training programs to include positions in all components of the correctional system. The appropriations committee should be encouraged to allocate funds to the correctional agencies for these training programs.

C. Funding:
Each corrections agency is responsible for trying to find funding for this training.

Corrections Standard 12.3

Planning and Organization

The corrections system and each corrections agency should begin immediately to develop an operational, integrated process of long-, intermediate-, and short-range planning for administrative and operation functions. This should include:

1. An established procedure open to employees for establishing and reviewing organizational goals and objectives at least annually.

2. A research capability for adequately identifying the key social, economic, and functional influences impinging on that agency and for predicting the future impact of each influence.

3. The capability to monitor, at least annually, progress toward previously specified objectives.

4. An administrative capability for properly assessing the future support services required for effective implementation of formulated plans.

These functions should be confined in one organizational unit responsible to the administrative head of the organization but drawing heavily on objectives, plans, and information from each organizational subunit.

Each agency should have an operating cost accounting system by July 1977 which should include the following capabilities:

a. Classification of all offender functions and activities in terms of specific action programs.

b. Allocation of costs to specific action programs.

c. Continual analysis of programs to assist in future planning.

Commentary

The corrections system and each corrections agency need to develop planning units in order to effectively handle social, economic, and functional changes that are continually taking place. The planning unit should provide procedures for reviewing organizational goals and objectives, identifying the outside and inside influences affecting the organization, and calculating the necessary changes needed for effective implementation of formulated plans.

Although each individual agency, where appropriate, should have a planning unit, there should be a coordinating body through which all agencies involved could obtain information on what other agencies are doing. The sharing of information among agencies is of tremendous importance and should be encouraged. The Division of Law Enforcement Assistance should act as the coordinating body.

Implementation

A. Agencies Involved:
Division of Law Enforcement Assistance.
Department of Social Services; Division of Corrections.
Supreme Court of South Dakota.
Board of Charities and Corrections.
Correctional facilities and programs (local, private, tribal).

B. Legislation:
Enabling legislation is necessary to allow agencies involved in the correctional field to participate in the State cost-accounting system.

C. Administrative Actions:
The administrators must be aware of the need for personnel to act as planners and researchers. Similarly, top administrative personnel must recognize the need for sharing information generated within their organization with other correctional agencies. A coordinated effort among agencies is needed.

D. Funding:
The Personnel System must provide funding for research and development staff within the correctional system and individual correctional agencies. Planning personnel must be a specified item in the unit budget.

Corrections Standard 12.4

Employee-Management Relations

The corrections system and each corrections agency should begin immediately to develop the capability to relate effectively to and negotiate with employees and offenders. This labor-offender-management relations capability should consist at minimum, of the following elements:

1. All management levels should receive in-depth management training designed to reduce interpersonal friction and employee-offender alienation. Such training specifically should include methods of conflict resolution, psychology, group dynamics, human relations, interpersonal communication, motivation of employees, and relations with minority and disadvantaged groups.

2. All nonmanagement personnel in direct, continuing contact with offenders should receive training in psychology, basic counseling, group dynamics, human relations, interpersonal communication, motivation with emphasis on indirect offender rehabilitation, and relations with minority groups and the disadvantaged.

3. All system personnel, including executives and supervisors, should be evaluated, in part, on their interpersonal competence and human sensitivity.

4. Managers should receive basic training in unions and employee organizations. Specialized training in this area should be made available to a selected manager.

5. Top management should have carefully developed and detailed procedures for responding immediately and effectively to problems that may develop in the labor-management or inmate-management relations. These should include specific assignment of responsibility and precise delegation of authority for action, sequenced steps for resolving grievances and adverse actions, and an appeal procedure from agency decisions.

Commentary

In most organizations, the quality of employee-management relations influence all other functions of the organization. Correctional institutions and agencies like most organizations, must be concerned with employee-management relations. For this reason, correctional managers should receive training not only in the area of human relations, but also in the areas of unions and other employee organizations. Since the subjects of unions and employee organizations are highly technical in the legal sense, it is not feasible or desirable to have all managers receive intensive training in these areas. However, specialized training in union matters should be made available to selected managers and/or administrators.

Top correctional managers should be prepared at all times to respond immediately and effectively to all labor-inmate management problems. In addition, a procedure for resolving grievances should be clearly established and this system should be utilized whenever possible to settle management-inmate-employee disagreements.

Implementation

A. Agencies Involved:
Department of Social Services; Division of Corrections.
Supreme Court of South Dakota.
Board of Charities and Corrections.
Correctional facilities and programs (local, private, tribal)

B. Funding:
Appropriations Committee.
Agency budgets.
LEAA.
Title XX of the Social Security Act, as amended in 1974.

Corrections Standard 12.5

Work Stoppages and Job Actions

Correctional administrators should immediately make preparations to be able to deal with any concerted work stoppage or job action by correctional employees. Such planning should have the principles outlined in Standard 12.4 as its primary components. In addition, further steps may be necessary to insure that the public, other correctional staff, or inmates are not endangered or denied necessary services because of a work stoppage.

1. South Dakota should enact legislation by 1978 that specifically prohibits correctional employees from participating in any concerted work stoppage or job action.

2. Every correctional agency should establish formal written policy prohibiting employees from engaging in any concerted work stoppage. Such policy should specify the alternatives available to employees for resolving grievances. It should delineate internal disciplinary actions that may result from participation in concerted work stoppages.

3. Every correctional agency should develop a plan which will provide for continuing correctional operations in the event of a concerted employee work stoppage.

Commentary

Correctional administrators should make preparations to deal with any concerted work stoppage or job action by correctional employees. To keep employees from participating in a work stoppage, the administration should set out clear procedures available to employees to resolve their grievances. This procedure should be written down and all employees should be familiar with it. If adequate and fair grievance procedures are made available to the employees, and at the same time, the administration is seriously committed to alleviating these grievances, there should be no need for employees to participate in work stoppages or job actions.

Implementation

A. Agencies Involved:
Department of Social Services; Division of Corrections.
Supreme Court of South Dakota.
Board of Charities and Corrections.
Correctional facilities and programs (local, private, tribal).

B. Legislation:
Legislation should be enacted by 1978 that specifically prohibits correctional employees from participating in any concerted work stoppage or job action.

C. Administrative Actions:
The administrators of the agencies should have a plan on file on how to deal with any concerted work stoppage or job action. The administration is also responsible for printing an employee manual which clearly outlines grievance procedures available to the employee.

CHAPTER THIRTEEN

RESOURCES FOR CORRECTIONS

Corrections Standard 13.1

Recruitment

The corrections system and each corrections agency should take immediate and affirmative action to recruit and employ capable and qualified people including ex-offenders, minorities, women and the physically handicapped.

Commentary

In the past the corrections system has not tapped employee resources other than men who met preset height and weight requirements, and passed questionable personality and intelligence tests. Now it is widely recognized that ex-offenders, minorities, women, and the physically handicapped not only have a legal right to be hired as correctional personnel, but also have many talents to contribute to an effective correctional program. Therefore, it is the responsibility of the correctional system and each corrections agency to actively recruit qualified personnel from these other resources.

Implementation

No implementation strategy. The agencies are legally bound to implement this standard.

Corrections Standard 13.2

Utilization of Volunteers

The corrections system and each corrections agency immediately should begin to recruit and use volunteers from all ranks of life as a valuable additional resource in correctional programs and operations, as follows:

1. Volunteers should be recruited from the ranks of minority groups, the poor, ex-offenders who can serve as success models, and professionals who can bring special expertise to the field.

2. Training should be provided volunteers to give them an understanding of the needs and lifestyles common among offenders and to acquaint them with the objectives and problems of corrections.

3. A paid volunteer coordinator should be provided for efficient program operation where appropriate.

4. Administrators should plan for and bring about full participation of volunteers in their programs; volunteers should be included in organizational development efforts.

5. Insurance plans should be available to protect the volunteer from any mishaps experienced during participation in the program.

6. Rewards and honorary recognition should be given to volunteers making exceptional contribution to an agency.

Commentary

Volunteers play an important role in the field of corrections and should be utilized as much as possible. One major reason why voluntary efforts should be expanded is that correctional agencies have too long been isolated from the mainstream of community activity. The direct contact of the volunteer with the correctional system provides a means of countering this situation. (President's Commission, 1967:104).

Although volunteers have tremendous resources to offer to correctional personnel and inmates, an indiscriminate use of volunteers can be dangerous to the health and welfare of both the institution and the offenders. The Joint Commissoin on Correctional Manpower and Training recognizes three basic elements necessary for an effective volunteer program: purposeful recruitment, suitable training, and adequate supervision. (1969a:42).

When appropriate, the volunteers should receive rewards and honorary recognition for their efforts. Since there is always an element of risk, some insurance provision should be made for the volunteer.

Implementation

A. Agencies Involved:
All correctional agencies.

B. Legislation:
SDCL 6.2-1-5.1 (1971) provides workman's compensation to officially recognized volunteers who are injured while carrying out their duties. However, as to the issue of liability of state and local governments to outside parties for acts of volunteer personnel, specific legislation would be necessary to provide coverage.

C. Administrative Actions:
Correctional administrators should encourage greater utilization of volunteers. They should provide volunteers with adequate training and supervision. An ongoing evaluation of the use of volunteers should be developed.

D. Funding:
Agency budgets should provide for volunteer programs. LEAA should be considered as a source of funds for training volunteers.

Corrections Standard 13.3

Personnel Practices for Retaining Staff

The corrections system and each corrections agency should immediately reexamine and revise personnel practices to create a favorable organizational climate and eliminate legitimate causes of employee dissatisfaction in order to retain capable staff. Policies should be developed that would provide:

1. Salaries for all personnel that are competitive with other parts of the criminal justice system as well as with comparable occupation groups of the private sector of the local economy. An annual cost-of-living adjustment should be mandatory.

2. Opportunities for staff advancement within the system. The system also should be opened to provide opportunities for lateral entry and promotional mobility within jurisdictions and across jurisdictional lines.

3. Elimination of excessive and unnecessary paperwork and chains of command that are too rigidly structured and bureaucratic in function, with the objective of facilitating communication and decisionmaking so as to encourage innovation and initiative.

4. Appropriate recognition for jobs well done.

5. Workload distribution and schedules based on flexible staffing arrangements. Size of the workload should be only one determinant. Also to be included should be such others as nature of cases, team assignments, and the needs of offenders and the community, and geographic location.

6. A criminal justice career pension system to include investment in an annuity and equity system for each correctional worker. The system should permit movement within elements of the criminal justice system and from one corrections agency to another without loss of benefits.

Commentary

The corrections system and individual corrections agencies need to improve their personnel practices in order to retain qualified personnel. Increased salaries, opportunities for advancement, decreased amounts of paperwork, recognition for jobs well done, and an adequate career pension system are all areas which need attention and improvement.

A system which would provide for lateral entry and promotional mobility within and without agencies and across jurisdictional lines is highly desirable. This system would not only be a means of allowing staff to advance into different positions but also could conceivably increase cooperation and communication among the various correctional agencies. The pension system should be compatible with this lateral entry system by providing the same conditions to all members of the criminal justice system.

Implementation

A. Agencies Involved:
Bureau of Personnel.
Supreme Court of South Dakota.
State Retirement Board.
Correctional agencies.
Bureau of Budget.
Legislative Research Council.

B. Legislation:
Class B retirement should be implemented to cover the criminal justice system.

C. Administrative Actions:
The administrators of the various correctional agencies are responsible for encouraging lateral entry within and without their agencies to help eliminate stagnation and to promote new ideas and input into the organization.

D. Funding:
The legislature should appropriate enough funds to make the correctional workers' salaries competitive with other parts of the criminal justice system as well as with comparable occupational groups of the private sector of the local economy. An annual cost-of-living adjustment should be made which is based upon the federal consumer price index.

Corrections Standard 13.4

Participatory Management

Correctional agencies where appropriate should adopt a program of participatory management in which everyone involved — managers, staff, and offenders — shares in identifying problems, finding mutually agreeable solutions, setting goals and objectives, defining new roles for participants, and evaluating the effectiveness of these processes.

This program should include the following:

1. Training and development sessions to prepare managers, staff, and offenders for their new roles in organizational development.

2. An ongoing evaluation process to determine progress toward participatory management and role changes of managers, staff, and offenders.

3. A procedure for the participation of other elements of the criminal justice system in long-range planning for the correctional system.

4. A change of staff utilization from traditional roles to those in keeping with new management and correctional concepts.

Commentary

The aim of participatory management is to give all persons in the organization a stake in its direction, operation, and outcome. Although this approach can not be used indiscriminately in all correctional agencies, correctional administrators should try to implement it as much as possible because utilizing this approach increases the openness of communications within the organization. Problems are identified and mutually agreeable solutions are found. This management approach recognizes the importance of every employee, thus increasing personal enthusiasm and satisfaction in the organization.

This approach cannot be implemented overnight. Training is necessary for all staff and managers to prepare them for a participatory management approach.

Implementation

A. Agencies Involved:
Correctional agencies.
The Criminal Justice System.
Educational institutions.

B. Administrative Actions:
Correctional administrators should encourage the adoption of this standard in order to create a more effective and open organization.

Corrections Standard 13.5

Coordinated Plan for Criminal Justice Education and Training

South Dakota should establish by July 1977 a State plan for coordinating criminal justice education to assure a sound academic continuum from an associate of arts through graduate studies in criminal justice, to allocate education resources to sections of the State with defined needs, and to work toward proper placement of persons completing these programs.

1. The State Board of Regents should formulate and implement the plan.

2. Educational leaders, State planners, and criminal justice staff members should meet to chart current and future statewide distribution and location of academic programs, based on proven needs and resources.

3. Award of Law Enforcement Education Program funds should be based on a sound educational plan. Additional funding through the State legislative process is necessary to maintain the calibre and scope of the program.

4. Educational funds are specifically needed in the criminal justice system for:

a. faculty recruitment and retention;

b. research and knowledge-building programs to increase correctional content in the appropriate disciplines.

c. fellowships and stipends for promising students and those already employed in the correctional field who wish to return to school for additional training; and

d. sustained support for internships and field placement programs developed within correctional agencies to provide both practical training opportunities and liaison between the correctional field and university life.

5. Preservice graduates of criminal justice education programs should be assisted in finding proper employment.

The State correctional system should ensure that proper incentives are provided for participation in higher education programs.

a. Inservice graduates of criminal justice education programs should be aided in proper job advancement or reassignment.

b. Rewards should be provided to encourage inservice staff to pursue these educational opportunities.

Commentary

A state plan for criminal justice education needs to be developed. The correctional system requires the assistance of higher education programs to enhance the desirability of corrections as a career choice, to prepare students for employment in the field, and to provide ongoing educational opportunities for those already employed in some form of correctional work.

Before a complete educational plan can be developed, corrections like all other human services fields, must reexamine the tasks to be performed and set its educational standards in terms of specific functions. (Joint Commission, 1969a:28) The educational needs of the employees in all criminal justice agencies should be extensively assessed and then, programs to meet these needs should be developed. By using systematic and comprehensive planning, relevant and useful educational programs can be implemented.

More funds are needed for retaining faculty, research, fellowships, work-study programs, etc. In addition to this, an incentive program to encourage participation in higher education programs needs to be developed. Without some kind of rewards, correctional employees will not be motivated to pursue their education.

Implementation

A. Agencies Involved:
   All colleges offering criminal justice courses.
   Board of Regents.
   Personnel Policy Board.
   Criminal Justice Training Center.
   Criminal Justice System.

B. Legislation:
   Legislation is necessary to develop an incentive system to encourage criminal justice personnel to pursue higher education programs. Stipend and fellowship programs need to be developed.

C. Administrative Actions:
   The Administration should continue their efforts to have credit granted for workshops in the correctional field.

D. Funding:
   The Appropriations Committee should allocate funds to support these criminal justice educational programs since LEEP funds are declining and the calibre and scope of the existing programs are threatened. Title XX of the Social Security Act, as amended in 1974 should be explored for the purpose of funds in this area.

Corrections Standard 13.6

Intern and Work-Study Programs

The corrections system and each correctional agency should immediately begin to plan, support and implement by July 1977 internship and work-study programs to attract students to corrections as a career and improve the relationship between educational institutions and the field of practice. These programs should include the following:

1. Recruitment of ex-offenders, minority groups, women and socially concerned students.

2. Careful linking between the academic component, work assignments, and practical experiences for the students.

3. Collaborative planning for program objectives and execution agreeable to university faculty, student interns, and agency staff.

4. Evaluation of each program by all components involved in the program.

5. Realistic pay by the participating agency to the student intern.

6. Followup with participating students to encourage entrance into correctional work.

Commentary

As part of the criminal justice educational plan, internships, should be included. Internships can be valuable to both the host agency and the student involved. However, an effective internship program requires (1) an explicit definition of the role the intern is to play in the agency; (2) an enumeration of the responsibilities the intern must assume; (3) capable and committed supervision of the intern; and (4) coordination and cooperation between the academic institution and the host agency. Without specific guidelines, the internship program can flounder and not provide any valuable experiences to either the intern or the host agency.

In addition to establishing specific guidelines, the participating agencies should make every effort to pay the intern a realistic amount for the services which he/she renders to the agency. Payment to the intern for services will increase the commitment of both the intern and the agency to do the best job possible. The agency must also take into consideration that the intern must pay for his/her living expenses while participating in the intern program.

Implementation

A. Agencies Involved:
   Educational institutions.
   Bureau of Indian Affairs.
   Budget Bureau.
   Legislative Research Council.
   Correctional agencies.

B. Administrative Actions:

The agencies must assume the responsibilities of financing, supervising, and evaluating the intern.

C. Funding:

The legislature and agency budgets should provide funds for a correctional intern program.

Corrections Standard 13.7

Staff Development

The corrections system and each correctional agency should immediately plan and implement a staff development program that prepares and sustains staff members.

1. Qualified trainers should develop and direct the program.

2. Training should be the responsibility of management and provide staff with skills and knowledge to fulfill organizational goals and objectives.

3. To the fullest extent possible, training should include all members of the organization, including the clients as resource people.

4. Training should be conducted at the organization site and also in community settings reflecting the context of crime and community resources.

a. All top and middle managers should have at least 40 hours a year of executive development training, including training in the operations of police, court, prosecution, and defense attorneys.

b. All new staff members should have at least 80 hours additional training during their probationary employment period at the agency.

c. All staff members, after their first year, should have at least 40 hours of additional formal (structured) training a year to keep them abreast of the changing nature of their work and introduce them to current issues affecting corrections.

d. Each staff member within the first year of his/her employment should have opportunities to visit other components of the criminal justice system for the express purpose of receiving formal training in how that particular element of the system operates and how it relates to his/her field of work.

5. Evaluation of all training should be a continuous, ongoing process. Techniques to measure the effectiveness of training programs should be developed and utilized.

6. A Corrections Training Officer should be employed full-time to develop a training curriculum, to coordinate training programs throughout the corrections system, to develop evaluation techniques and criteria for the training programs, and to be a resource person to correctional employees. This person should be located in the Criminal Justice Training Center in Pierre, South Dakota.

7. Financial support for staff development should continue from the Law Enforcement Assistance Administration, but State and local correctional agencies must assume support as rapidly as possible.

8. Trainers should cooperate with their counterparts in the private sector and draw resources from higher education.

9. Sabbatical leaves should be granted for correctional personnel to teach or attend courses in colleges and universities. Qualified correctional personnel should be encouraged and granted permission to teach college courses.

Commentary

Staff development is of utmost importance to South Dakota's correctional system. At this time, training is piecemeal and fragmented. A coordinated, well developed training program is needed for correctional employees.

Employees should receive training, followed by continuous training throughout the year. It is important that employees in one segment of the criminal justice system be allowed to visit other elements of the system in order to learn how one element relates to the other. By doing this, lines of communication will be opened among the fragmented components of the criminal justice system.

In order to develop a good training program, a full-time trainer is needed. This person should be located in the Criminal Justice Training Center in Pierre. By being located there, this person would act as a coordinator of different training programs, developing new programs where necessary, providing evaluation of existing training sessions, and being a general resource person to the correctional administrators. This type of person is needed desperately in South Dakota to help overcome the training deficits in the field of corrections.

Implementation

A. Agencies Involved:

Educational agencies.
Correctional agencies.
Legislative Research Council.
Board of Regents.
Bureau of Personnel.
Criminal Justice Training Center.

B. Legislation:

Legislation is necessary to allow qualified correctional employees to teach courses at the educational institutions. Legislation is needed to develop training requirements necessary for correctional workers.

C. Administrative Actions:

The corrections system and the corrections agencies should see that staff training is completed. This includes individual correctional agencies and the Board of Charities and Corrections.

D. Funding:

The legislature should appropriate money for training. This should be a priority item in the budget. The individual agencies should also make training a priority item in their budgets.

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community crime prevention

CHAPTER ONE

CITIZEN INVOLVEMENT AND GOVERNMENT RESPONSIVENESS IN THE DELIVERY OF SERVICES

Crime Prevention Recommendation 1.1

Resource Allocation

The Task Force recommends that resources for each local unit of government be allocated on the basis of need. Equitable distribution of resources does not necessarily mean the expenditure of equal amounts of money in each area; it means, rather, the expenditure of sufficient sums to maintain equally effective services in all areas of the jurisdiction. Local governments should be given the flexibility to allocate funds as needed.

Commentary

Local government is expected to provide services and operate community facilities to meet the needs of the entire population. However, each community may have unique problems which require more allocations in one area than another. Local officials should have the authority to designate where resources will be expended, keeping in mind that the total population should receive equal services.

Implementation

A. Agencies Involved:
Local government.
Counties.

Crime Prevention Recommendation 1.2

Public Right-To-Know Laws

1. Access to Information: The Task Force recommends that South Dakota law protect the public's "right-to-know" by protecting the citizens' right to open and easy access to state and local government regulations, audits, minutes and meetings, and all other information necessary for meaningful citizen involvement in state and local governmental processes and affairs. State and local governmental officials should demonstrate their willingness to comply to the letter and spirit of the law.

Right-to-know legislation should provide that all governmental information be available to the public except for such information that invades upon an individual's privacy or other constitutional guarantees.

2. Notice of and Access to Public Proceedings: The Task Force recommends that the following be required of state and local government units:

a. All regular meetings and subcommittee meetings should be open to the public; except for the possibility of two limited executive sessions per year for dealing with personnel problems.

b. The public and news media should be notified of significant agency or department meetings. Notices should also be posted prominently.

3. Dissemination of Information: All elected and administrative officials should be responsible for the dissemination of public information upon request.

Commentary

The National Advisory Commission states (1973:42):

> Secrecy and good government are basically incompatible concepts. With a few exceptions, the public has the right to know everything that happens. Restrictions on this right are primarily in three areas: (1) Personnel matters — personal information in the hiring, firing, demoting, or promoting of employees; (2) matters that, if discussed in public, could benefit a private party (e.g. land acquisition); (3) welfare and public assistance matters, where Federal requirements prohibit publicity. Outside of these areas, local and state government should make every effort to inform the public and encourage citizen participation in its deliberations and processes.

In order to participate, the public must know in advance when, where and why meetings are going to be held. State and local officials should be responsible for notifying the public of any significant meetings which will take place.

Implementation

A. Agencies Involved:
State and local governments.
B. Legislation:
As outlined in the recommendation.

Crime Prevention Recommendation 1.3

Mass Media

The Task Force recommends that the media and television stations within the state actively encourage and provide more and better time slots for viewing such shows.

Commentary

Television and radio are primary information sources for most people in the state. At this time, the quality of information the media is providing to the public is highly questionable. Although the media stations must allocate time for public information programs, these shows are often poorly organized and presented in a slipshod manner.

The Task Force believes that the media should be responsible for improving the quality of public information programs. The media should survey the communities to determine what issues are important to the citizens. Based upon this analysis, public information programs should be presented in effective formats with adequate technical assistance during prime viewing hours.

Implementation

A. Agencies Involved:
Mass media agencies.
Community representative.

Crime Prevention Recommendation 1.4

Public Hearings

The Task Force recommends that public hearings be held on issues of citywide and neighborhood interest, so that government officials may receive citizen input on the real concerns of the community.

1. Subject Matter: Hearings should be scheduled to consider such issues as the city budget, setting of priorities for allocating city resources, public housing and urban renewal site selection, zoning changes, location of park and public works facilities, and neighborhood security.

2. Timing: Prior to official designation of projects and priorities, citizens should have the opportunity to determine the projects most suitable to them, and to make their views known through public hearings. Once a project has been designated, it is important that public hearings be held during various stages of project development. In some cases this may be in the preplanning stages, but in all cases it should occur during the planning process.

3. Convenience: To ease transportation problems and encourage maximum participation, hearings should be convened in a facility as close as possible to the affected population, e.g., in neighborhood schools, community centers, churches, or other local facilities. Hearings should be scheduled when most of the affected citizens are available (usually evenings and weekends).

4. Official Interest: The principal elected and administrative officials should conduct the hearings so that there is an exchange of first-hand, accurate information between the public and those who have authority to make decisions.

Commentary

Citizens should have an opportunity to determine priorities and to consider the impact projects will have on their community. Many times officials believe that certain projects should be undertaken, yet the public neither wants them nor responds to them. To insure proper citizen involvement, meetings should be scheduled in convenient neighborhood locations and at times when most residents can attend. Meetings should be well publicized. (NAC, 1973: 44).

Implementation

A. Agencies Involved:
Local government officials.

Crime Prevention Recommendation 1.5

Citizen Input

The Task Force recommends that a review of the State government processes be undertaken with a view towards assessing the ability of average citizen input into the governmental process. Specific study topics should include:

1. The use, structure, frequency and purposes of executive sessions by boards and commissions.

2. The submission of legislative proposals prior to the convention of the legislature.

3. The length of legislative sessions.

4. The committee structure and staffing of committees of the legislature.

5. Requiremments for public notice of meetings of boards and commissions.

6. Other topics as appropriate.

Commentary

If government is to be made truly responsive and responsible, citizen participation in governmental processes is necessary. The Task Force was concerned that the average citizen did not have adequate opportunity for input into the legislature because of the short duration of the session and the erratic scheduling of topics before the various committees of the House and Senate. The Task Force proposes the alternatives above as possible solutions to the lack of opportunity for citizen input and recommends that additional alternatives be explored.

Implementation

A. Agencies Involved:
South Dakota Legislature.

B. Administrative Actions:
Members of the State Legislature should initiate plans to provide citizens with a better vehicle for input into South Dakota's legislative process.

Crime Prevention Recommendation 1.6

Citizen Information

The Task Force recommends that a central office of information be established in cities of over 12,000 people or in a centrally located small town in a county that has no city of 12,000 or more. This information office should be set up and financed by private and governmental agencies. It should be located in some neutral site whereby it has the trust of citizens using the office and the trust of governmental and private agencies which would be responding to the information that is sought.

Commentary

The National Advisory Commission states (1973: 49):

Citizens who come into contact with the machinery of government are often intimidated and confused by the complex bureaucracy which exists. Many citizens find the government so confusing that they are unable to locate or identify the department that could help them. The difficulty is compounded when the person is uneducated, has a language barrier, or is elderly. Citizens who do reach the correct department often have to make repeated follow-up calls before they obtain a satisfactory resolution to their problems. A central office, staffed with employees who are knowledgeable about local governmental structures and services, can provide the attention citizens are entitled to receive.

A centralized information system can provide a single source which a citizen may contact to solve his or her problem by being referred to the appropriate government office. This type of direct service can help reduce the public's frustration with governmental bureaucracy.

Implementation

See Recommendation 1.7

Crime Prevention Recommendation 1.7

Rumor Control

The Task Force recommends that in off-reservation communities, a rumor control center be established by private and governmental agencies. The purpose of the rumor control center would be to handle everyday human relation situations as well as crisis control events.

Commentary

Many of the tensions between the reservations and off-reservation communities are often generated by rumors and other misinformation. By establishing rumor control centers in these conflict areas, frustrations and tensions could be alleviated by the center's providing accurate information to all concerned parties.

Implementation

A. Funding:

Local and private agencies should be explored for the possibility of funding information and rumor control centers.

CHAPTER TWO

PROGRAMS FOR DRUG ABUSE TREATMENT AND PREVENTION

Crime Prevention Recommendation 2.1

Priorities For Dealing With Drug Abuse

1. Creation of Drug Abuse Health Professionals.

There is a need to develop a training system which teaches drug abuse professionals the physical and psychological needs of the drug abusing population. People working with the physically and psychologically addicted need the ability to help that person cope with those pressures which brought on the drug abuse.

Emphasis needs to be placed on the fact that in most cases the MSW degree, or the fact that a person may be an ex-alcoholic or drug abuser, does not necessarily prepare that person to work in chemical abuse programs. Through special training, a person may become a more effective drug abuse health professional.

2. Combinations and Expansions of Existing Programs.

Existing mental health and alcohol programs need to be expanded to include drug users. Existing staff will need to be trained to work with drug abusers, and new staff may be added to the programs.

Local health care programs must eventually be reorganized into umbrella health agencies which will encompass mental health, alcoholism and drug abuse programs. This coordination of services will provide a total health system to its clients. Maximum effort should be exerted to see that health care takes place as close as possible to the local level.

At the state level, the highest priority should be placed on tht combination of the Divisions of Alcohol and Drug Abuse into a single chemical dependency division.

3. Health Education.

In order to insure that young people have a sufficient base of knowledge to make personal decisions in regard to their health, it is necessary to develop a total health curriculum within the school system. This curriculum should include knowledge of both the psychological and physical needs of the student, along with coping skills, alternative life styles, relaxation techniques, inter-personal communication skills, listening techniques, value clarification and decision making.

Local health programs should work cooperatively with the school system to develop and implement the health curriculum within the school.

The community umbrella health agencies should also provide health education for adults including the same topics presented to the youths in school. This education may improve the relationship between adults and youth.

In addition to supplying educational information to the schools and local community, the umbrella health service should be a strong referral source to the school and the community for people with emotional or chemical dependency problems.

4. Greater Emphasis on the Development of Alternative Programs to Incarceration.

Emphasis needs to be placed on providing programs for those people who are involved in non-violent crimes or crimes against self. There is a need for strong legislation which insures the personal rights of the individual and mandatory referral of the chemical dependent person out of the criminal justice system into a health care program which can provide for intervention, such as counseling, treatment, rehabilitation or any other alternative program which could provide a substitute for the drug use.

5. Development of Alternative Programs and Residential Theraputic Communities.

At the community level, there is the need to develop programs to serve as alternatives to drug abuse. These programs should teach people, especially youth, that there are forms of personal pursuit other than drugs, such as recreational activities. Community programs should strive to maximize the socialization skills of both adults and youths, thereby reducing their need for drug abuse.

Residential homes which are affiliated with other health facilities should be developed to handle people with drug abuse problems. These homes need to attend to the physical and psychological needs of the client, including a strong health emphasis on areas such as dental care, venereal disease, family planning, child care, and physical training. Vocational job skills should be provided in cooperation with other agencies.

6. Need to Develop a Strong Health and Criminal Justice Linkage System.

There is a need to organize a clear, understandable system of referral and linkage not only between health programs, but also between the judicial and health systems to allow for maximum cooperation. The potential client should be aware of the linkages between the systems and of the subsequent services which are available.

7. The Avoidance of the Creation of Chemotherapy Approaches to Chemical Abuse Treatment.

Chemotherapy or drug substitution programs should be avoided as they tend to be expensive, non-terminating programs which use avoidance as a way of dealing with the real problems of chemical abuse. The nature of our state drug abuse problems allows for more sophisticated and comprehensive approaches.

8. Development of Health Planning and Comprehensive Approaches to Chemical Abuse.

Communities across the state need to be involved in developing chemical abuse programs. There is a need for local people to develop a sufficient knowledge base and interest to participate in sub-state planning so that they may provide input into the state and federal government in the development of strong comprehensive approaches and fiscal policies to deal with chemical abuse. Single state and local plans for alcohol, drug abuse and mental health need to be developed.

9. Need to Establish Strong Public Guidance for Law Enforcement to Follow in Dealing with Chemical Abuse.

Enforcement of the drug laws place the police in an uncomfortable, ambivalent position. One segment criticizes the police for treating drug abusers too harshly, while another faction condemns the police for being too lenient in enforcing the drug laws. There needs to be a statewide policy developed which provides guidance to law enforcement people when they encounter drug violations. Emphasis should be placed on the police officer's responsibility in dealing with the individual's use of and addiction to drugs.

A policy which focuses on intra-state and inter-state traffic of drugs should be developed.

An educational program which focuses on chemical abuse

and the use of alternative programs for drug abusers should be instituted and presented to judges and State's attorneys.

10. Coordination of Reservation and Off-Reservation Chemical Abuse Programs.

A policy for cooperation between Indian and non-Indian chemical dependency programs must be developed to allow for maximum fiscal and social support. Care must be taken to see that chemical dependency programs for American Indians who live off reservations are developed.

Legislation is needed to address the problems of those who are involved in non-traditional chemical abuse such as in the sniffing and huffing of paint, glue and other substances.

Commentary

South Dakota's drug problem does not compare in magnitude to the drug scene in other states, but it is serious enough to warrant attention. The preceeding ten priorities map out some of the areas which the Task Force feels are important.

One pressing problem within the state is the lack of resources and programs to treat drug abusers. Not only do programs need to be developed, but a professional staff also needs to be trained to work with alcohol and drug violators. This lack of staff and programs may be partially overcome by expanding local health programs into umbrella health agencies which would encompass alcohol and drug programs and mental health services.

It is possible that drug abuse can be prevented through comprehensive education. However, the topics of drug use and abuse should be incorporated into a total health curriculum which is first introduced in the lowest grades and continued throughout the school years. Knowledge of how the body functions and the effects that drugs can have upon the body may provide the student with an objective basis for making a decision about using drugs.

Another source of prevention of drug abuse lies in providing the potential drug user or abuser with other avenues of recreation, achievement and satisfaction. Many times drug abuse arises out of boredom and from the lack of opportunities for the individual to express him or herself in acceptable ways. Therefore, the community should develop various programs designed to meet the needs of its population.

South Dakota's drug program will improve: if the criminal justice system and the health system start working cooperatively on drug cases; if residential treatment centers are developed; if the police are provided with guidelines on enforcing the drug laws; if reservation and off-reservation chemical abuse programs work together cooperatively; and if comprehensive state and local plans are developed to attack the drug problem in the State. South Dakota must start working on all the areas which the Task Force has outlined in order to control and mitigate the drug problem.

Implementation

A. Agencies Involved:
South Dakota educational system.
State and local mental health agencies.
State and local health agencies.
Division of Alocholism.
Office of Drugs and Substance Control.
Police.
Courts.
Corrections.

CHAPTER THREE

PROGRAMS FOR EMPLOYMENT

Crime Prevention Recommendation 3.1

Expansion of Job Opportunities for Youth

The Task Force recommends that employers and unions institute or accelerate efforts to expand job or membership opportunities to youths, minority group members, and all offenders. These efforts should include the elimination of arbitrary personnel selection criteria and exclusionary policies based on such factors as minimum age requirements and bonding procedures.

Employers and unions should also support actions to remove unnecessary or outdated State and Federal labor restrictions on employing young people. Finally, employers should institute or expand training programs to sensitize management and supervisors to the special problems young people, offenders, or minority group members may bring to their jobs.

Commentary

See Recommendation 3.2

Crime Prevention Recommendation 3.2

After School and Summer Employment

The Task Force recommends that each community broaden its after-school and summer employment programs for youth, including the 14 and 15 year olds who may have been excluded from such programs in the past. These programs may be sponsored by governmental or private groups, but should include such elements as recruitment from a variety of community resources and a sufficient reservoir of job possibilities. The youth involved should have the benefit of an adequate orientation period with pay, and an equitable wage.

Local child labor regulations must be changed wherever possible to broaden employment opportunities for youth. Non-hazardous jobs with real career potential should be the goal of any legislation in this area.

Commentary

The present high unemployment rate makes obtaining a job difficult for many people, both young and old in this country. However, youths, minority group members, and all types of offenders have many more obstacles to overcome before finding meaningful employment. Once these people do obtain a job, their adjustment to the working world often is slower because of their background and past experiences.

The Uniform Crime Reports indicate that the juvenile crime rate is rising. Some of this increased crime can be traced back to the excessive amounts of free time that many of our youths have on their hands. Without after school jobs or summer employment our young people don't have the opportunity to learn how to take responsibility and to act in an adult manner. Boredom can and often does lead to delinquency.

The local community, State and federal governments should study the special employment problems facing young people, minority groups, and offenders and try to develop programs to alleviate these conditions.

Implementation

A. Agencies Involved:
   Public and private business enterprises.
   State educational system.
   Community representatives.

B. Funding:
   Local, state and federal funding sources should be explored for the purpose of ceating employment opportunities for juveniles, minority group members and ex-offenders.

Crime Prevention Recommendation 3.3

Pretrial Intervention Programs

The Task Force encourages the State legislature, State Criminal Justice Commission, local governmental units, the Court system, Department of Labor, and the Department of Social Services to work together to develop an integrated pretrial intervention program for the State of South Dakota. The state and local governments should share the funding of these programs; property taxes should not be considered as a source of funding.

Commentary

Pretrial intervention programs are new innovations in the correctional system. Both juveniles and adults may participate in these programs. The basis of the majority of pretrial intervention programs is composed of: (1) formalized eligibility criteria; (2) required participation in counseling, educational or vocational services, and other self-help programs, and (3) dismissal of formal criminal charges if the person successfully completes the pretrial intervention program.

The American Bar Association discusses in greater depth the pretrial diversion concept. (1974:1)

> The pretrial diversion concept typically calls for stopping the prosecution clock on less serious or first felony complaints before or after arrest and prior to the arraignment stage, although there is no indication that more serious alleged offenders could not be successfully diverted. Those selected for the program are offered counseling, career development, education, and supportive treatment services. If the participant responds for a measurable period (e.g. 3-6 months) either the court or the prosecutor or both, depending on the authorization of the project, are asked to approve dismissal of the case prior to trial and adjudication. If the participant fails to meet program obligations, prosecution is resumed on the referral criminal charge. There are of course, many variations on this basic theme as to the scope and procedures in the pretrial intervention sequence.
>
> Today, it is estimated that at least 35 major urban areas have active pretrial intervention (PTI) programs served by full-time, funded staffs (professionals and paraprofessionals) receiving full court and prosecutor cooperation, and providing assistance to more than 10,000 diverted defendants an-

nually. In addition, the pretrial intervention programs have thus far reported consistently better results with "graduates" than defendants handled by normal prosecution procedures. Participant recidivism (rearrest) rates are lower; job placement and stability results are better.

Implementation

A. Agencies Involved:
As outlined in the recommendation.

Crime Prevention Recommendation 3.4

Removing Employment Barriers

The Task Force recommends that legislation be enacted to prohibit all potential employers from receiving an applicant's police or criminal records after they have been sealed and that South Dakota should enact effective statutes regarding the sealing of criminal records under certain conditions. These statutes should require that those with arrest or conviction records be informed of their right to apply for sealing of those records.

In addition, Civil Service requirements should state that no person may be automatically barred from taking a Civil Service test because of a criminal corrections record. Finally, South Dakota does have and should continue to legislate requirements for the confidentiality of juvenile records.

Commentary

Offenders and ex-offenders find it extremely difficult to obtain gainful employment once they have been processed through our criminal justice system. Theoretically, the person who breaks the law repays his or her debt to society by being imprisoned, paying a fine, or being restricted to some degree for a specified period of time. In reality, the majority of offenders never shake the stigma of being an offender and their records follow them around to reinforce the stigma.

If an offender can not obtain a job because of a criminal record, and therefore has no means of support, it is not surprising that this person returns to a life of crime. Therefore, provision should be made so that an ex-offender may have his/her record sealed after a specified amount of time and under certain circumstances. These records will be available to law enforcement agencies, but not to potential employers. With employment barriers significantly reduced, offenders will have the opportunity to become more easily reintegrated into the community.

Implementation

A. Legislation:
Legislation is needed to provide for the sealing and/or expungement of criminal records. Another alternative to sealing or expunging the records would be to improve and to clarify the process by which an offender may obtain an exemplary pardon.

Crime Prevention Recommendation 3.5

Work Release Programs

The Task Force recommends that any federal public employment programs should contain a category or title which would provide a work-release program for convicts. This program would provide funds for a particular work release inmate and would also allow the inmate to carry a grant with him/her to a new employer from the institution for a specified period of time.

Commentary

One of the major problems facing inmates is the lack of opportunity to obtain saleable skills to support themselves when released from the institution. Similarly, on many occasions an inmate may possess a skill and be ready for parole, but will not be paroled because he/she does not have a specific job to go to on the outside. If an inmate could carry funding into a job for a specified period of time, the employer would be much more willing to hire the inmate. By obtaining a steady job, the inmate would be much closer to being reintegrated into the community and would become self-supporting.

Implementation

A. Agencies Involved:
Corrections.
Community representatives.
Federal employment programs.

Crime Prevention Recommendation 3.6

Community-Based Corrections

The Task Force recognizes the need for local community alternatives to incarceration for both juveniles and adults so that these offenders may be more easily reintegrated into the community. The legislature should provide funds for community-based correctional programs.

Commentary

South Dakota does need to develop alternatives for dealing with juvenile and adult criminal offenders. At this time, judges have a limited number of community alternatives to consider when sentencing juvenile and adult offenders and are forced to send the violator to the penitentiary or state training school.

The Task Force believes that if an offender can be retrained in some type of community-based program, instead of the state institutions, that person has a better chance of being accepted back into the community. This reintegration of the offender into the community may lead to a reduction in the number of crimes committed by that person.

Implementation

A. Agencies Involved:
Corrections.
Courts.
Police.
Social service agencies.
Employment agencies.
B. Funds:
State appropriations.
LEAA.

CHAPTER FOUR

PROGRAMS FOR EDUCATION

Crime Prevention Recommendation 4.1

The Home as a Learning Environment

The Task Force recommends that educational authorities propose and adopt experimental pilot projects to encourage parents to become trained in innovative education and teaching methods in order to provide support for public educational programs.

A variety of methods and procedures could be adopted to obtain this goal. Among these are the following:

1. Programs designed to determine the most effective utilization of the adult population in general in educational projects. A logical departure point for such projects would be to increase the level of active involvement of selected neighborhood parents in formal school operations. A carefully designed program of this sort would also benefit preschool children in the home.
2. The development of short-term and follow-through programs by teacher training institutions to prepare parents for instructing their children. These programs should include modern family living courses.
3. The joint development by parents and school staffs of techniques and methods for using the home as a learning environment.
4. School district and State educational programs to train parents to use situations and materials in the home as a means of reinforcing the efforts of formal schooling.
5. Provision of instructional materials by school districts for use in home-teaching programs.
6. The expansion of programs to train and use the adult community in general as aides, assistants, and tutors in regular school classrooms.

Commentary

See Recomendation 4.2

Crime Prevention Recommendation 4.2

The School as a Model of Justice

The Commission recommends that school authorities adopt policies and practices to insure that schools and classrooms reflect the best examples of justice and democracy in their organization and operation, and in the rules and regulations governing student conduct.

School authorities should adopt policies and practices which insure:

1. Parental involvement and participation;
2. Respect for pupil self-esteem;
3. Administration support of innovation;
4. Teacher accountability; and
5. Student input into the government and policies of the school.

Commentary

School plays a major role in socializing our young people and has a tremendous influence on the kind of citizens they become. Many of our elementary and secondary schools are less than models of justice and are in fact very authoritarian and arbitrary. This type of environment is not conducive to learning and does not prepare the child to go out into the world as a responsible citizen. To become a responsible citizen, the young people need to make decisions about their lives and to have input into the world that surrounds them, i.e. the school.

The family is another major socializer in a young person's life. To make the world of school and family more congruent, parents could be used as advisory boards, tutors, classroom aides, chaperones, etc. Teachers and parents should work together in educating our young people.

The schools should begin to reexamine their policies and practices in order to make the educational environment more democratic and conducive to learning.

Implementation

A. Agencies Involved:
South Dakota educational system.
Parents and Teachers Associations.

Crime Prevention Recommendation 4.3

Literacy

The Task Force recommends that by 1982, all elementary schools institute programs guaranteeing that every student who does not have a severe mental, emotional, or physical handicap will have acquired functional literacy in English before leaving elementary school (usually grade 6) and that special literacy programs will be provided for those handicapped individuals who cannot succeed in the regular program.

A variety of methods and procedures could be established to meet this goal. Such methods and procedures could include the following:

1. Training of teachers in methods and techniques demonstrated as successful in exemplary programs involving students with low literacy prognosis;
2. Training and employment of parents and other community persons as aides, assistants, and tutors in elementary school classrooms;
3. Replacement of subjective grading systems by objective systems, of self-evaluation for teachers and objective measures of methods and strategies used;
4. Provision of privately contracted tutorial assistance for handicapped or otherwise disadvantaged students;
5. Redistribution of resources to support greater input in the earlier years of young people's education; and
6. Decentralized control of district finances to provide certain discretionary funds to site principals and neighborhood parent advisory committees for programs directed to the special needs of the students.

Commentary

See Recommendation 4.4

Crime Prevention Recommendation 4.4
Improving Language Skills

The Task Force recommends that schools provide special services to students who come from environments in which English is not the dominant language, or who use a language in which marked dialectal differences from the prevailing version of the English language represent an impediment to effective learning.

A variety of methods and procedures could be established to meet this goal. Among these are the following:

1. Bilingual instructors, aides, assistants, and other school employees;

2. Instruction in both English and the second language;

3. Active recognition of the customs and traditions of all cultures represented at the school;

4. Hiring school staff from all racial, ethnic, and cultural backgrounds; and

5. Special efforts to involve parents of students with bicultural backgrounds.

Commentary

If one were to test the literacy level of the inmates in jails and prisons within our country, one would find that a large majority of those tested would not be able to read or write above the sixth grade level. Similarly, many juveniles who are still in school, including college, are only semi-literate. The number of children who pass through our school systems and never learn to read and write, but are pushed on through the grades by teachers for various reasons is appalling. Many of these children have serious, undiscovered learning disabilities which may cause them to do poorly in school or to fail completely. It has been demonstrated that failure in school is one major factor which influences deviant and criminal behavior.

Therefore, the schools need to start seriously attacking this problem of illiteracy by training teachers to recognize learning disability problems, using parents as tutors, contracting for special services, and treating the children on an individual basis.

Similarly, bilingual students should receive special attention. If possible bilingual teachers should be employed. The goal of the school should not be to force the child to stop using his/her native language, but for him/her to become competent in the English language.

Implementation

A. Agencies Involved:
South Dakota educational system.
Parent and Teacher Associations.

B. Funding:
Funds will be necessary to improve the curriculum in elementary schools in order to insure that children will have acquired functional literacy in English before leaving school. Where necessary, bilingual teachers should be employed.

Crime Prevention Recommendation 4.5
Career Education

The Task Force recommends that South Dakota State Laws require elementary and secondary schools to participate to some extent in the career education program and that all available media methods be used to promote career education. The Task Force does not support the concept of specialization in a single career cluster occupation during the 10th and 11th grades.

Commentary

See Recommendation 4.7

Crime Prevention Recommendation 4.6
Supportive Services

The Task Force recommends that the schools provide programs for more effective supportive services — health, legal, placement, counseling, and guidance — to facilitate the positive growth and development of students.

A variety of methods and procedures could be established to meet this goal. Among these are the following:

1. Greater emphasis on counseling and human development services in the primary and middle grades;

2. Personnel who understand the needs and problems of students, including minority and disadvantaged students;

3. An advocate for students in all situations where legitimate rights are threatened and genuine needs are not being met;

4. The legal means whereby personnel who are otherwise qualified but lack official credentials or licenses may be employed as human development specialists, counselors, and advocates with school children of all ages. The State and local governments should fund training programs which would allow these people without credentials to become professionals.

Commentary

See Recommendation 4.7

Crime Prevention Recommendation 4.7
Alternative Educational Experiences

The Task Force recommends that schools provide alternative programs of education. These programs should be based on:

1. An acknowledgment that a considerable number of students do not learn in ways or through experiences that are suitable for the majority of individuals.

2. A recognition that services previously provided through the criminal justice system for students considered errant or uneducable should be returned to the schools as an educational responsibility.

A variety of methods and procedures could be established to meet this goal. Among these are the following:

a. Early identification of those students for whom all or parts of the regular school program are inappropriate; and

b. Design of alternative experiences that are compatible with the individual learning objectives of each student identified as a potential client for these services, including:

(1) Shortening the program through high school to 11 years;

(2) Recasting the administrative format, organization,

rules of operation, and governance of the 10th and 11th grades to approximate the operation of junior colleges;

(3) Crisis intervention centers to head off potential involvement of students with the law;

(4) Juvenile delinquency prevention and dropout prevention programs;

(5) Private performance contracts to educational firms; and

(6) Use of State-owned facilities and resources to substitute for regular school settings.

Commentary

Reality based curriculum, supportive services, and alternative learning experiences are attempts to make the educational experience more relevant to our young people. The school plays a major role in socializing our youth and, depending upon the circumstances, influences students in a positive or negative direction.

In an attempt to make the school system more interesting and meaningful to the students, schools have been developing "Career Education" programs.

> The fundamental concept of career education is that all types of educational experiences, curriculum, instruction, and counselling should involve preparation for economic independence, personal fulfillment, and appreciation for the dignity of work. It seeks to give meaning to all education by relating its contents to the job world. Under career education, every student should leave the school system with a valuable skill — a minimum of an entry-level job skill upon leaving at or before the end of high school, or a more advanced skill if continuing his/her education in a technologically or academically oriented post-secondary institution. (Hoyt et al, 1972: 2)

South Dakota does have a career education program which is headquartered in Watertown. The program was initiated December 18, 1972 and is funded until September 12, 1976. It serves as a pilot program for South Dakota and is also a model for statewide implementation of the career education concept. This program is designed to serve all school districts in the state over a three year period. Two major objectives of the program are (1) to help all public and private schools in South Dakota implement career education programs, and (2) to provide every student in the state with an opportunity to develop self-awareness, a favorable attitude toward work, and develop and practice career decision-making skills.

Since the Watertown project has been operating, all schools within South Dakota have been contacted and given an opportunity to participate in the program. Only around 40 percent of the schools have chosen to so do. The Task Force recommends that all elementary and secondary schools in South Dakota be required to participate to some extent in the career education programs which are available through the Watertown project. All students in South Dakota should have an opportunity to take part in a career education program, regardless of their geographical location.

In conjunction with the career education program, counseling services should be improved and alternative educational experiences should be made available to the student who cannot adjust to the classroom setting. The schools should have the option and resources to contract for services for particular students who have specific problems. The school curriculum should become much less rigid and mold itself to the needs of the students in order to provide a more meaningful educational experience.

Implementation

A. Agencies Involved:
South Dakota educational system.
Parents and Teachers Associations.
Community representatives.
Watertown Career Education Program.

B. Legislation:
Legislation is necessary to make participation in career education programs mandatory for elementary and secondary schools.

Crime Prevention Recommendation 4.8

Use of Public and School Facilities for Community Programs

The Task Force recommends that school and other public facilities be made available to the entire community as centers for human resource and adult education programs.

A variety of methods and procedures could be established to meet this goal. Among these are the following:

1. Scheduling of facilities on a 12-month, 7-day-a-week basis on a contractual arrangement;

2. Elimination or amendment of archaic statutory or other legal prohibitions regarding use of school and public facilities; and

3. Extended use of cafeteria, libraries, vehicles, equipment, and buildings by parents, community groups, and agencies.

Commentary

Many schools, national guard armories and other public buildings remain vacant and unused for significant time periods during the year. These buildings should be utilized to a much greater extent and in service of the total community. Recreation facilities and classroom space should be available to both youth and adults for numerous projects, club meetings, and other extracurricular activities.

It does cost money to keep these facilities open for longer periods of time, but if necessary, contractual arrangements could be made between the owners of the facilities and the community to assure the proper upkeep of the building.

Implementation

A. Agencies Involved:
Local officials.
School Board members.
Community representatives.

Crime Prevention Recommendation 4.9

Teacher Training, Certification and Accountability

The Task Force recommends that school authorities take affirmative action to achieve more realistic training and re-

tention policies for the professionals and paraprofessionals they employ.

A variety of methods and procedures could be established to meet this goal. Among these are the following:

1. Teacher training based on building competency through experience;

2. Latitude for districts to base certified employment on the basis of performance criteria alone;

3. Inservice training of professional staff to include specific understanding of district, program, and community goals and objectives; and

4. Latitude for districts to hire other professionals and paraprofessionals on basis of competency to perform specialized tasks, including the teaching of subject matters.

Commentary

Basic to any significant educational reform is a radical change in the ways in which this country trains, certifies, and employs teachers. Although around 300,000 teachers are graduated from colleges and universities each year, most are neither adequately prepared in a liberal education nor technically prepared to teach. (NAC, 1973:171) One of the major problems with teacher's education is that there is a disproportionate dependence upon course work which is often outdated and irrelevant, rather than actual practice or internship. Teachers need more and better practice teaching, not less.

Teacher employment and retention must be based on criteria of competency. If teachers of reading cannot, for reasons within their control, teach students to read, they should not be in the classroom, tenure laws notwithstanding. Tenure should be separated from employment. No school district should be forced to hire or to retain any teacher who does not give documented service.

Implementation

A. Agencies Involved:
South Dakota education system.
Community representatives.
Local governments.

CHAPTER FIVE

PROGRAMS FOR RECREATION AND RELIGION

Crime Prevention Recommendation 5.1

Use of Recreation to Prevent Delinquency

The Task Force recommends that recreation be recognized as an integral part of the intervention strategy aimed at preventing delinquency. The State Crime Commission should authorize LEAA grants to support recreational programs that have characteristics outlined in the following fifteen points. Programs that can be funded by the Bureau of Outdoor Recreation should be excluded.

1. Recreation programs should be created or expanded to serve the total youth community, with particular attention devoted to special needs arising from poor family relationships, school failure, limited opportunities, and strong social pressures to participate in gang behavior.

2. Activities that involve risk-taking and excitement and have particular appeal to youth should be a recognized part of any program that attempts to reach and involve young people.

3. Municipal recreation programs should assume responsibility for all youth in the community, emphasizing outreach services involving roving recreation workers in order to recruit youths who might otherwise not be reached and for whom recreation opportunities may provide a deterrent to delinqency.

4. New mechanisms for tolerance of disruptive behavior should be added to existing recreation programs and activities so as not to exclude and label youths who exhibit disruptive behavior.

5. Counseling services should be made available, either as part of the recreation program or on a referral basis to allied agencies in the community, for youths who require additional attention.

6. Recreation programs should allow participants to decide what type of recreation they desire.

7. Recreation as a prevention strategy should involve more than giving youth something to do; it should provide job training and placement, education, and other services.

8. Individual needs rather than mass group programs should be considered in recreation planning.

9. Communities should be encouraged, through special funding, to develop their own recreation programs with appropriate guidance from recreation advisers.

10. Personnel selected as recreation leaders should have intelligent and realistic points of view concerning the goals of recreation and its potential to help socialize youth and prevent delinquency.

11. Recreation leaders should be required to learn preventive and constructive methods of dealing with disruptive behavior, and they should recognize that individuals can satisfy their recreational needs in many environments. Leaders should assume responsibility for mobilizing resources and helping people find personally satisfying experiences suited to their individual needs.

12. Decision-making, planning, and organization for recreation services should be shared with those for whom the programs are intended.

13. Continual evaluation to determine whether youth are being diverted from delinquent acts should be a part of all recreation programs.

14. Parents should be encouraged to participate in leisure activities with their children.

15. Maximum use should be made of existing recreational facilities — in the afternoons and evenings, on weekends, and throughout the summer. Where existing recreational facilities are inadequate, other community agencies should be encouraged to provide facilities at minimal cost, or at no cost where feasible.

Commentary

Recreation is a valuable outlet for both juveniles and adults. Although it has not been proven conclusively that recreation programs prevent delinquency, these programs can have a positive effect on a young person's life.

Public recreation programs often fail because too much competition and skill is required (only the best athletes can play); a need for fees; not enough participation; lack of youth involvement in planning the program; too "boy slanted"; lack of choices; too little family involvement; lack of year-around scheduling; not enough continuity; and inadequately trained staff who do not understand youth. (NAC, 1973: 177)

Therefore, any recreation programs which are proposed should be evaluated against the criteria listed in the standard to help insure success of the program.

Implementation

As outlined in the recommendation.

Crime Prevention Recommendation 5.2

Programs for Religion

The Task Force encourages Criminal Justice personnel to continue to utilize the fine services offered by the religious communities. The Task Force finds it inappropriate to make any further religious recommendation.

Commentary

The Task Force agrees that the church is a key factor in the community. At the present time, the different churches do aid the criminal justice system at all levels and in different ways. The Task Force acknowledges the fine services the religious community provides and encourages the people within the criminal justice system to continue using their services.

However, the Task Force feels that the doctrine of separation of church and state prohibits the Task Force from making any specific criminal justice recommendations to the religious communities..

Implementation

A. Administrative Action:

Criminal Justice personnel should continue to use the services offered by religious communities.

CHAPTER SIX

PROGRAMS FOR REDUCTION OF CRIMINAL OPPORTUNITY

Crime Prevention Recommendation 6.1

Street Lighting Programs for High Crime Areas

The Task Force recommends that units of local government consider the establishment of improved street lighting programs in high crime areas. The needs and wishes of the community should be a determining factor from the outset and public officials should carefully evaluate the experiences of other jurisdictions before initiating their own programs.

Commentary

See recommendation 6.4

Crime Prevention Recommendation 6.2

Shoplifting Prevention Programs

The Task Force recommends that all retail establishments take immediate and effective measures to prevent shoplifting. Management personnel and merchants should evaluate techniques being used elsewhere and select those most appropriate.

Commentary

See recommendation 6.4

Crime Prevention Recommendation 6.3

Crime Prevention and Law Enforcement Agencies

The Task Force recommends that every law enforcement agency actively work with and inform interested citizens of measures that can be taken to protect themselves, their families, and their property.

Commentary

See recommendation 6.4

Crime Prevention Recommendation 6.4

Bicycle Registration

The State should develop a statewide registration system for all new multi-speed bicycles sold in South Dakota. All new bicycles sold in South Dakota must come with an engraved serial number which is placed on the bicycle by the manufacturer.

Commentary

The rising crime rate concerns everybody in both rural and urban areas throughout the country. Like other states, South Dakota is experiencing an increase in its crime rate. Therefore, specific programs to reduce the incidence of crime in South Dakota are definitely needed.

One of the major keys to crime prevention rests in educating the public on the problems of crime and how to prevent crime against their own person and property. Minnesota devised a statewide crime prevention education program called the Minnesota Crime Watch Program. The immediate objectives to be pursued by this project included:

> Increasing citizen awareness of the problems of crime in a community; educating and training citizens in specific measures they can take to prevent crimes from occurring to their person and property; involving organized citizen and youth groups in crime prevention activities; and securing long-range changes through legislation and community planning for security designed to improve the crime prevention capabilities of Minnesota residents. (Governor's Commission on Crime Prevention and Control, 1975:2)

The Minnesota program is centrally administered through an office on the state level but works in cooperation with the local police and sheriff's departments. Local police are given special training and materials on crime prevention techniques and are encouraged to go out into the community and disseminate this information to as many citizens as possible. In addition to using the local police departments to educate the citizens, the Minnesota Crime Watch Program developed and is continuing an extensive mass media campaign in an attempt to impress upon the public the importance of their role in preventing crime in the communities. This advertising campaign includes using television commercials, newspaper ads, radio spots, billboards at sports events and other high attendance activities, and even "shorts" before movies.

This education program has been well received by the citizens of Minnesota. One example of the success of the Minnesota Crime Watch program can be seen when comparing the burglary rates of those people who have participated in the program and those who have not. Those citizens who took the advice of the police and marked all of their possessions with an identifying number experienced 12% fewer burglary incidences than those people who did not mark their property. Likewise, those people who were the victims of a burglary but had marked their property, eventually recovered their possessions in a large majority of cases.

South Dakota could benefit by establishing a similar crime prevention education program for its citizens. The South Dakota Crime Commission should give high priority to developing a crime prevention program. This educational effort should cover topics such as streetlighting, shoplifting prevention techniques, farm and ranch thefts, care and use of firearms, and methods to protect persons and property from crime.

It is possible that South Dakota might want to join in a multi-state crime prevention education program. By using a multi-state approach, materials and ideas could be exchanged and the expenses shared.

The National Advisory Commission states (1973: 202):

> Combating crime is not solely the responsibility of law enforcement agencies. Crime reduction can come about only if the community, criminal justice personnel, and individ-

uals work together. Law enforcement agencies have a responsibility to inform citizens of ways to protect themselves, their homes, and their families. Such programs, however, will have little effect unless citizens take such elementary precautions as locking their doors and windows, or reporting suspicious or criminal activities in their neighborhoods.

This is where a statewide crime prevention education program could be most effective and is most needed.

Implementation

As outlined in recommendations.

CHAPTER SEVEN
CONFLICTS OF INTEREST

Crime Prevention Standard 7.1
Ethics Code

South Dakota should adopt provisions for an Ethics Code that embodies the substantive rules of ethical guidance for public officials and employees in State and local governments. The code should contain but not be limited to the following:

1. Public officials shall conduct themselves in a manner that reflects creditably upon the office they serve. Public officials shall not use their office to gain special privileges and benefits.

2. Public officials shall refrain from acting in their official capacities when their independence of judgment would be adversely affected by personal interests or duties. Officials shall disqualify themselves from official action when their independence of judgment is impaired by the existence of conflicting interests or duties.

3. Public officials shall refrain from accepting gifts, favors, services, or promises of future employment that could possibly relate to or influence the performance of their official duties.

4. Public officials shall refrain from serving in representative capacities or offering any overt or covert assistance to any persons or businesses for any matter such persons or businesses have before a government agency or commission. This precludes representation by an official of any business or partnership with which the official is closely associated. This provision does not include the rendering of routine assistance to constituents. The provision shall continue to apply for 1 year after public officials leave office.

Commentary

Common Cause (1972) defines public officials as "any elected or appointed officials in the executive, legislative, or judicial branch of the state or any subdivision thereof, provided that it shall not include members of advisory boards that have no authority to expend public funds other than reimbursement for personal expense, or to otherwise exercise the power of the State or any political subdivision thereof."

The Community Crime Prevention Task Force has adopted this definition of public official. The Task Force feels an ethics code should be promulgated to give guidance to public officials as they carry out their duties. Provisions of the code should be written with sufficient precision to be applicable to specific situations, yet they should be flexible enough to apply to a broad range of behavior, such as future problems that were not considered at the time a provision was drafted. (NAC,1973:213)

Implementation

A. Agencies Involved:
State Ethics Commission.
Public officials.

Crime Prevention Standard 7.2
Ethics Board

South Dakota should create, by legislative enactment, an Ethics Board to enforce the provisions of the Ethics Code, and should advise public officials and State and local employees covered by the Ethics Code on all ethical matters.

1. The members of the Ethics Board should be chosen from the public at large and should not include any individuals who hold public office. The Governor (the mayor or head of local government for a local government unit) should select the members from a list of individuals submitted by the State Bar Association, civic and professional associations, civil rights groups, minority organizations, and other citizen groups. Appointment of the members should be subject to approval by the State senate or other independent body already empowered to pass upon the fitness of persons nominated for high public office. No more than a simple majority of the members should be of the same political party.

Members should serve in staggered terms, with no individual tenure longer than 5 years. Board members and their staffs should be subject to all laws regulating political activity by State and local employees. Upon the death or dismissal of any board member, the procedure outlined above should be used to select an interim member to serve the remainder of the term.

2. The duties of the Ethics Board should be:

a. To initiate complaints against officials over whom it has jurisdiction when the board has information establishing the possibility of an official's ethical misconduct for purposes of personal gain.

b. To investigate all complaints against officials over whom the board has jurisdiction. Action on such complaints must be initiated within 30 days, and completed within reasonable time.

c. To issue advisory opinions pursuant to personal requests for advice on ethical problems by public officials;

d. To conduct public hearings when the preliminary investigation reveals evidence of an official's misconduct. The hearing will be conducted in a manner that respects all constitutional rights of an individual accused in a criminal trial; and

e. To publish a written statement of the board's findings pursuant to a hearing. If the board concludes that it appears that a public official has violated a criminal law, a copy of the statement should be sent to the government official charged with enforcing criminal laws. If a violation of the Ethics Code is found, a copy of the report of the findings, along with specific recommendations for disciplinary actions, should be sent to the legislature. (If this is a nonlegislative Board, it should be delegated the power to discipline violators of the Ethics Code.) Any finding of the Ethics Board should be issued to the original complainant.

3. The Ethics Board should have the power to subpoena witnesses and documents.

Commentary

See standard 7.3

Crime Prevention Standard 7.3
Criminal Penalties

South Dakota should define as violations of its criminal codes certain situations involving conflicts of interest, and should assign meaningful penalties when such violations constitute a serious and substantial abuse of public office. State criminal codes should include the following minimum provisions:

1. No public official shall use confidential information for the purpose of financial gain to himself/herself or to any other person. This provision shall continue to be applicable for 2 years after an official leaves office.

2. No public official shall accept compensation, gifts, loans, privileges, or other favors from private sources for the performance of tasks within the scope of his/her public office.

3. No public official shall represent another person before a court, or before a government agency or commission, when such client is claiming rights against the government.

4. No public official, and no business in which a public official has a substantial interest (including but not limited to substantial financial investments, directorates, and partnerships) shall enter into a contract with the government or with a business regulated by the government, unless the contract has been awarded through a competitive bidding process with adequate public notice. This provision shall continue to be applicable for 1 year after the official leaves office.

5. No public official or candidate for public office shall fail to file a disclosure statement by the date established by the Ethics Board, and no public official or candidate for public office shall knowingly file a false financial statement.

6. Any official or candidate for public office alleged to be in violation of the above criminal provisions, if tried and convicted, shall be guilty of a felony.

7. Any elected official convicted of any felony shall be removed from office. Any appointed official likewise convicted shall be suspended from his/her duties.

Commentary

The South Dakota Legislature created the State Ethics Commission in its 1975 session. The duties of this commission are to:

1. Promulgate, examine, tabulate, summarize, publish and preserve registrations and campaign fund reports;
2. Receive, examine, tabulate, summarize, publish and preserve registrations and campaign fund reports.
3. Prescribe the form in which the reports are to be made;
4. Investigate on its own initiative campaign practices or potential violation of the South Dakota fair campaign practices code;
5. Issue timely advisory opinions on any matter within its jurisdiction within 30 days;
6. Investigate any sworn complaints and render a timely public opinion within 30 days;
7. Schedule open hearings when necessary;
8. Recommend to the Attorney General for prosecution any violation; and
9. Issue supoenas when necessary to obtain information.

In addition to promulgating a fair campaign practices code (which is discussed further in Chapter Eight) the State Ethics Commission should develop a general ethics code for public officials as outlined in Standard 7.1. To emphasize the importance of this code, penalties for the violation of the ethics code should be established and enforced.

Implementation

A. Agencies Involved:
State Ethics Commission.
Attorney General.

B. Legislation:
Legislation has been enacted to create the State Ethics Commission.

CHAPTER EIGHT

REGULATION OF POLITICAL FINANCES

Crime Prevention Standard 8.1

Disclosing the Role of Money in Politics

All significant receipts and expenditures by every candidate and organization seeking to influence any election should be disclosed periodically before and after elections and between elections in a manner that insures transmission of these disclosures to the public. A registration system for qualifying political committees is necessary. All disclosures should be made to the State Ethics Commission.

Disclosure should be considered as a cornerstone of a larger regulatory scheme. Disclosure should be as accurate and complete as possible, should occur at times when voters can use the information most effectively to judge candidates and parties, should be readily available to those interested, and should be given as wide coverage as possible.

1. Candidates both state-wide and county-wide including judicial and legislative offices and all committees raising or spending an excess of $100 should register and disclose their finances periodically.

2. Disclosure should be required of all candidates and of any substantial party committees, interest groups, and others who participate in elections either directly or by raising and spending money in support of those who participate directly. Any committee raising or spending an excess of $100 and supporting candidates or undertaking parallel campaigning must register information about the composition of the committee and its support activities. Once a committee is registered, it must report periodically until it goes out of existence.

3. Each candidate and committee supporting that candidate should make a full disclosure report of their finances 15 days before any election in order that the public will have ample time to scrutinize these reports. A report should also be required 30 days after each primary and general election. Two semiannual reports should be disclosed to the public in off-election years.

4. Reports should be readily available. Thus they should be filed in the state capitol where they are fully accessible to the media and the public. Duplicates should be filed with an appropriate public official in the county or locality in which any contest below the state-wide level is being held, so that local media, the opposition, and the electorate have ready access to the reports. Further, reports should be available upon request, during regular office hours, in a manner convenient to the public. Photocopying should be available to the public at an expense comparable to the state rate of photocopying.

5. Reports should meet a test of substantial completeness. They should provide all reasonable pertinent information, while at the same time avoiding such bulk and volume as to be difficult to use. Receipts and expenditures in excess of $25 must be itemized; others must be reported in totals and retained on candidate and committee account books, which are subject to inspection audits.

Reports should be cumulative, so that the latest report provides all necessary information for a calendar year or electoral phase such as pre- or post-nomination. Summaries of major categories of receipts and expenditures should be included in the reports.

6. To insure full disclosure, the State Ethics Commission has been created. The Ethics Commission should have and does have the responsibility to:

a. receive, examine, tabulate, summarize, publish, and preserve registrations and campaign fund reports;

b. prescribe the form in which the reports are to be made; and

c. determine how the data in the reports can best be disseminated before and after elections.

The Governor's appointees to the Ethics Commission should include one Democrat, one Republican and one person not registered with either the Democratic or Republican party.

7. The Ethics Commission should be vested with authority to audit any books kept separately by candidates and committees; it should perform sample audits and should have subpoena powers and all other means necessary to conduct compliance investigations. The Ethics Commission should be provided with investigatory powers.

8. If the Ethics Commission determines by majority vote of its full membership that a violation has occurred, they shall recommend the violation to the Attorney General for prosecution. The Attorney General should notify the Ethics Commission within 15 days of receiving a complaint whether he/she intends to take action.

Any interested South Dakota voter may seek judicial recourse when the commission refuses to act upon a complaint.

Commentary

Disclosure of the role of money in politics is a necessary provision for any effective campaign finance law. It is the feeling of the Task Force that all candidates for a state-wide, legislative, judicial, or general purpose county office, and any committees supporting these candidates should be required to disclose any expenditure over $100. Since most state legislators rarely spend more than $500 to be elected, a $100 limit seems to be reasonble.

South Dakota does not provide for the registration of all political committees. In order that the public may be made aware of the supporters of a specific candidate, all political committees raising or spending in excess of $100 should be required to register with the Ethics Commission.

Disclosure should be frequent enough to keep the public informed about the sources and expenditures of money at every stage of a political campaign, especially before and after any primary or general election. Therefore, all candidates and committees should be required to make a full financial report to the Ethics Commission at least 15 days before and 30 days after each general or primary election. In off-election years, candidates and committees should make semiannual financial reports to the Ethics Commission. South Dakota code does not now require candidates to make semiannual financial reports to the Ethics Commission. South Dakota law 12-25-13 (1975) requires disclosure seven days before the election.

To have an effective campaign finance law, it must be consistently and strictly enforced. The Ethics Commission may investigate on its own initiative campaign practices or potential violations and shall investigate any sworn complaints and shall render an opinion within 30 days. In order

to fulfill this function, funding for adequate staff will be necessary.

The Attorney General is responsible for prosecuting violations of the campaign finance law. In order to expedite matters, the Attorney General should be required to notify the Ethics Commission within 15 days of receiving a violation complaint whether or not he/she intends to prosecute. Should the Attorney General refuse to prosecute, any South Dakota voter may seek judicial recourse with the possibility of being awarded reasonable attorney fees and expenses. In contrast to the standard, South Dakota code 12-25A-22 (1975) allows the Attorney General 45 days to respond to the Ethics Commission.

Implementation

A. Agencies Involved:
   State Ethics Commission.
   Attorney General.
   County Auditors.
   Secretary of State.
B. Legislation:
   SDCL 12-25A-1 (1975) would have to be changed to allow the Governor to appoint to the Ethics Commission one person registered with the Democratic party, one person registered with the Republican party, and one person not registered with either of the two parties. Legislation is necessary to require the Attorney General to respond to the Ethics Commission within 15 days of receiving a violation complaint.

Crime Prevention Standard 8.2

Curtailing Conflicts of Interest in Campaign Finance

The South Dakota Ethics Commission should be appropriated sufficient funds to research and propose regulations regarding conflicts of interest, campaign practices, and limitations on political spending in order to improve the campaign finance law in South Dakota.

Commentary

Generally, the less politically important an elective office is, the narrower a candidate's access to broad-based financial support for a campaign is. A candidate may have to depend entirely on his/her own money and a few contributions from friends and associates. In a small population state such as South Dakota, it may be almost impossible to avoid conflicts of interest in campaign financing. Therefore, it is of the utmost importance for the Ethics Commission to be funded to study this area and to determine how South Dakota can best eliminate conflicts of interests in campaign financing.

Implementation

A. Agencies Involved:
   State Ethics Commission.
   Secretary of State.
B. Funding:
   The Legislature should appropriate money to study the problem areas listed.

Crime Prevention Standard 8.3

Prohibiting Corporate and Labor Contributions

State statutes should prohibit corporations, labor unions, and associations from making contributions as an organization to a political candidate or political campaign organization. Violations shall be deemed a felony to the person violating the law, including both the giver of the money and the person receiving the money.

Commentary

At this time, South Dakota allows associations to contribute to political campaigns if the funds are specifically earmarked for this purpose. There are many large and powerful associations within the state of South Dakota which, through their contributions, influence many elections. These associations should be prohibited from making contributions as organizations, as are corporations, partnerships, or business. Such organizations should be free to make suggestions to their members, but contributions should be limited to an individual basis.

Violations of this standard should be deemed a felony. Misdemeanors and fines are easily brushed off by these powerful organizations and harsher penalties are necessary. Both the giver of the illegal contribution and the person receiving it should be subject to prosecution for a felony.

Implementation

A. Agencies Involved:
   Corporations.
   Associations.
B. Legislation:
   The legislature should prohibit the agencies listed above from making contributions to political campaigns. Penalties for violation of the statute should be established.

CHAPTER NINE

GOVERNMENT PROCUREMENT OF GOODS AND SERVICES

The State Procurement Office

Crime Prevention Standard 9.1

The South Dakota State Office of Purchasing and Printing should be responsible for obtaining necessary commodities and services at the maximum value to the state, while providing safeguards against corruption and abuse of the purchasing function.

Commentary

South Dakota has a centralized purchasing office located in Pierre, South Dakota. It is the responsibility of this agency to let State contracts, develop specifications for the commodities utilized, and review certain purchase requests made by the individual State agencies.

Implementation

A. Agencies Involved:
State Office of Purchasing and Printing.

CHAPTER TEN

ZONING, LICENSING, AND TAX ASSESSMENT

Crime Prevention Standard 10.1

Establishing Equitable Public Decision Criteria in Zoning, Licensing, and Tax Assessment

Each jurisdiction should begin immediately the public development of explicit criteria for use by officials in making decisions in the areas of zoning, licensing, and tax assessment. The criteria should have sufficient breadth and precision that: (a) all applicants can be confident of similar evaluation under similar circumstances; (b) public employees are released from the burden of arbitrarily deciding unclear issues and have clear guidelines for when to seek policy-level assistance; and (c) all parties can clearly identify when an application is outside the scope of existing criteria. In general, decision criteria should:

1. Be based on publicly adopted master plans, ordinances, or other stated public goals;
2. State minimum acceptance levels, wherever possible, in quantitative terms;
3. Utilize only the documentation and require only the measures that are related to the substance of the application;
4. Specify the questions to be answered to reach a decision and the weight given to each question; and
5. Indicate clearly those circumstances under which subjective decisions are required by lower-level reviewing officials and those requiring action by policy boards or other senior elected persons; in both cases specific criteria should guide the decision process.

Commentary

Most major decisions in zoning and licensing areas are made by boards composed of well-meaning but technically deficient persons. The boards meet infrequently and have crowded agendas. In order to deal adequately with this situation, jurisdictions that have planning, zoning, licensing or tax assessment responsibilities should endeavor to document, for public use, a compendium of authorized and unauthorized activities in the target areas.

In order to eliminate the confusion surrounding decisions, the criteria should state as clearly as possible the specific factors to be considered in reaching decisions. Wherever possible, decisions should be based on objective measures or items of fact and discretion should be eliminated as much as possible.

Implementation

A. Agencies Involved:
Zoning, licensing, and tax assessment agencies.

B. Administrative Actions:
Agencies should be encouraged to clarify the criteria and procedures utilized when making decisions in the areas of zoning, licensing, and tax assessment.

Crime Prevention Standard 10.2

Establishing Equitable Public Decision Procedures

Jurisdictions should prepare immediately to distribute to the public descriptions of the decision process in each of the target areas. Where necessary, action should be taken to modify those procedures to insure that all applications are reviewed in the order in which they are received and that all applications of the same type are reviewed against the same criteria. To insure fair and equitable treatment the procedures should:

1. Employ publicly established evaluation criteria;
2. Be centrally managed with adequate document control to insure fairness;
3. Operate within publicly specified time frames and processing steps for each category of application;
4. Where appropriate to insure equitable treatment, provide for random assignment of reviewing or inspecting personnel and for the use of standardized review forms;
5. Provide adequate documentation for and utilize regular performance audits by an outside agency; and
6. Clearly and publicly specify complaint and appeal procedures.

A pamphlet should be published specifically outlining these procedures and detailing the exact places or persons one must see to initiate these procedures. This pamphlet should be made readily available to the public.

Commentary

Although equitable public decision procedures are essential, they are of little value unless the public is aware of their existence. When a citizen has a problem with zoning, licensing, or tax assessment, he or she should know immediately where to go to have the problem solved. Publishing a pamphlet which clearly details the people, the telephone numbers, and the locations people should go to when they have a problem is one way of bringing this important information to the public. The pamphlets could be sent to every citizen, or simply be available at public buildings such as the post office or county courthouse.

Implementation

See standard 10.3

Crime Prevention Standard 10.3

Providing for Public Review of Government Decisions

All jurisdictions should take positive steps to publicize pending actions and actions taken in the zoning, licensing, and tax assessment areas.

1. Pending and taken decisions should be summarized, compiled, and distributed to public interest groups, the media, and any citizen requesting such a summary.
2. The summary presentation should be prepared in simple language; it should identify all public officials and private parties involved, contain a description of the re-

sults of the pending or approved action, and describe where further information can be obtained.

Commentary

Helping citizens to understand government operations is an essential responsibility of government. Therefore, actions taken on zoning, licensing, and tax assessment should be made available to the public. To clarify these decisions further, the summary of the action should be written in lay person's language.

Implementation

A. Agencies Involved:
Zoning, licensing, and tax assessment agencies.

B. Administrative Actions:
The agencies listed above are responsible for publishing pamphlets and summaries to inform the public on what is happening in their local and county governments.

C. Funding:
Counties, municipalities, and State government, where appropriate, should allocate money to publish the necessary pamphlets and summaries detailed in the standard.

CHAPTER ELEVEN

COMBATING OFFICIAL CORRUPTION AND ORGANIZED CRIME

Crime Prevention Standard 11.1

Maintaining Integrity in the Local Prosecutor's Office

1. The State of South Dakota should establish districts with a sufficient tax base and having a sufficient work-load to support at least one full-time prosecuting attorney and one full-time public defender.

2. The State Attorney General's office should devise minimum training standards for prosecuting attorneys and public defenders. The salaries of the prosecutors and the public defenders should be sufficient to retain the best qualified personnel, with the costs to be shared by state and local government.

3. Local prosecutors and public defenders should be appointed in such a fashion that allows for local input and state input. Persons selected for positions as prosecuting attorneys and public defenders should serve a definite term of four years in length.

4. All local prosecutors and public defenders should be required to publish and make available annual reports detailing the deployment of personnel and resources during the preceding reporting period. Such reports should disclose the number of cases pending, hours spent in court and before the grand jury, and other details cataloging the number and kinds of cases handled by the prosecutor and their status at the time of reporting. Reports should be available for public inspection.

Commentary

South Dakota covers a vast area but has a very small population. Because of these characteristics, it is difficult for many counties and towns to support full-time prosecutors and public defenders; therefore, part-time prosecutors are retained. Conflicts of interest and corruption are bound to develop under these conditions. To overcome these shortcomings, counties and towns should develop districts with an adequate tax base to support one full-time district attorney and one full-time public defender.

The Task Force would like to emphasize that local areas would have the option of retaining attorneys to supplement the services of the state's attorney or a deputy state's attorney. However, there still would be one full-time prosecutor and public defender for each specified area.

The expense of salaries for these two positions should be shared by state and local government in order that the salaries be sufficient to retain qualified personnel. Similarly, both state and local governments should have input into the appointment process of district attorneys and public defenders.

Training should be made available to these people through the Attorney General's office.

Implementation

A. Agencies Involved:
Attorney General.
State's attorneys.
Public defenders.

B. Administrative Actions:
The Attorney General's office should be encouraged to develop minimum training for prosecuting attorneys and public defenders.

Crime Prevention Standard 11.2

Statewide Capability to Prosecute Corruption

The State of South Dakota has the capability for the investigation and prosecution of corruption. The Attorney General and the Division of Criminal Investigation should be further supported in their efforts to combat corruption in South Dakota.

Commentary

South Dakota is not plagued by organized crime and corruption in government, but that is not to say that this is not a problem area. Through the Attorney General's office and the Division of Criminal Investigation, the power to investigate corruption and to prosecute violators exists.

More staff are being added to work on this area, and consulting services are being made available to all units of state and local government. South Dakota should be prepared to deal with organized crime and should continue to educate its staff in this area.

Implementation

A. Agencies Involved:
Attorney General.
Division of Criminal Investigation.

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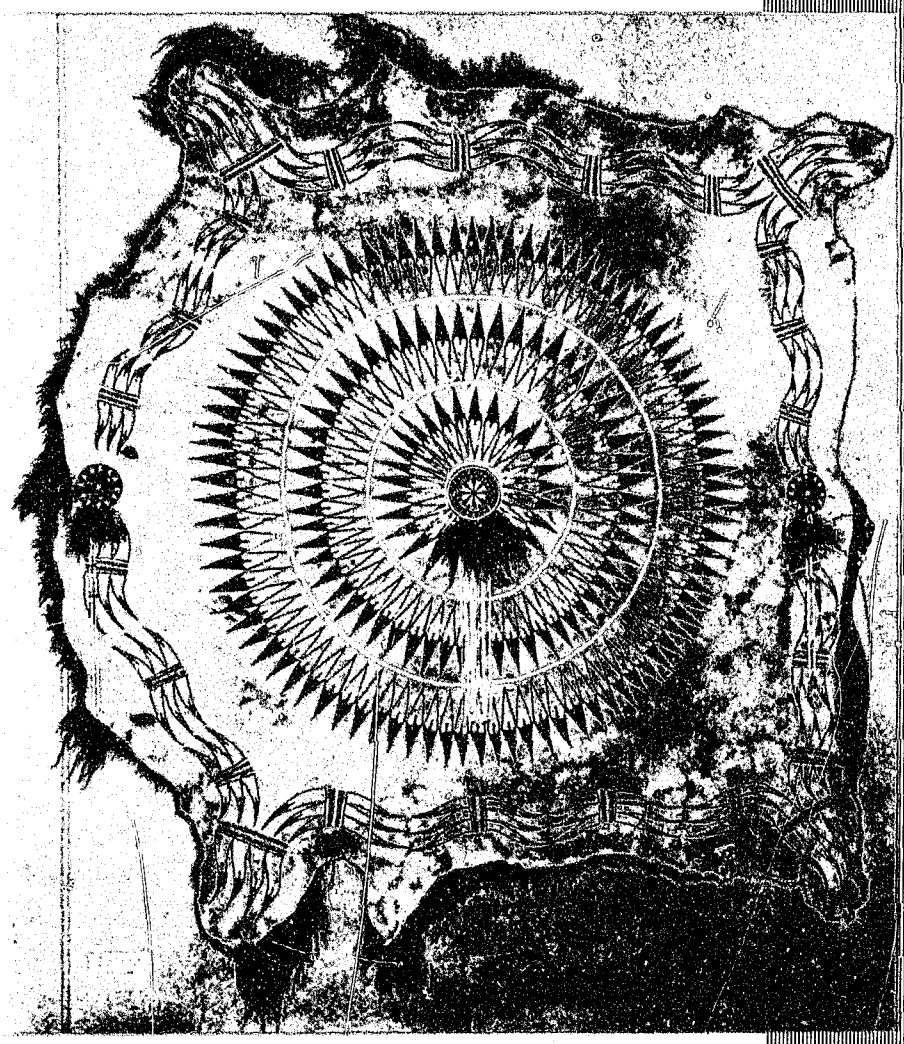

Man's Feathered Circle Design Painted Robe by Herman Red Elk, 1974

reservations

CHAPTER ONE

DEPLOYMENT AND PERSONNEL

Reservations Standard 1.1

Deployment and Personnel

Every Indian police agency, BIA or tribal, immediately should develop a patrol deployment system that is responsive to community demands for police services and consistent with the effective use of the agency's patrol personnel. The deployment system should include collecting and analyzing required data, conducting a workload study, and allocating personnel to patrol assignments within the agency.

1. Every police agency should establish a system for the collection and analysis of patrol deployment data according to area and time.

a. A census tract, reporting area, or permanent grid system should be developed to determine geographical distribution of data; and

b. Seasonal, daily, and hourly variations should be considered in determining chronological distribution of data.

2. Every Indian police agency should conduct a comprehensive workload study to determine the nature and volume of the demands for police services and the time expended on all activities performed by patrol personnel. The workload study should be the first step in developing a deployment data base and should be conducted at least annually thereafter. Information obtained from the workload study should be used:

a. To develop operational objectives for patrol personnel;

b. To establish priorities on the types of activities to be performed by patrol personnel; and

c. To measure the efficiency and effectiveness of the patrol operation in achieving agency goals.

3. Every police agency should implement an allocation system for the geographical and chronological proportionate need distribution of patrol personnel. The allocation system should emphasize agency efforts to reduce crime, increase criminal apprehensions, minimize response time to calls for services, equalize patrol personnel workload, and provide for equal and sufficient protection and patrol of isolated areas. This system should provide for the allocation of personnel to:

a. Districts;

b. Shifts;

c. Days of the week;

d. Patrol Areas; and

e. Relief assignments.

4. Every Indian police agency should establish procedures for the implementation, operation, and periodic evaluation and revision of the agency's deployment procedures. These procedures should include provisions to insure the active participation and willing cooperation of all agency personnel.

Commentary

Because populations served by Indian police are widely scattered across reservation areas, the adequate deployment of police personnel has remained an unresolved problem. Compounding this problem has been the fact that Indian police agencies are expected to perform a variety of functions over and above patrol and investigation, even though these agencies are notoriously understaffed. At the same time Indian police agencies are unable to depend upon a consistent number of personnel from year to year because amounts and types of available funding tend to vary.

In order to remedy this situation it is not sufficient for agencies to cry for additional personnel. The National American Indian Court Judges Association (1974b:) notes that without adequate statistics it is too easy for Indian communities to be told that their needs are based upon isolated examples and that nothing can be done without strong proof (meaning statistical proof) that changes are needed. In recognition of this fact, the standard advocates the systematic collection and analysis of deployment data to be used in determining patrol and personnel needs.

The primary purpose of a deployment study involves making the best use of personnel to increase law enforcement effectiveness. An analysis of deployment data may reveal that a redistribution of personnel or a restructuring of services will compensate for some of the problems created by a shortage of personnel. In order to bring about this type of efficiency, a personnel allocation system should be developed and designed to reduce crime, to increase the apprehension of offenders, to minimize response time, to put personnel workloads into reasonable and equitable proportions, and to supply equal services and protection to persons living in sparsely populated and isolated areas of the reservation. Factors relevant to a determination of deployment effectiveness and needs may include:

1. The amount of police services needed in given areas;
2. The types of police services needed in given areas;
3. The time of day when certain types of services are most often needed;
4. The days of the week when certain types of services are most often needed;
5. The effect of weather conditions and seasonal changes on demands for services;
6. The distribution and length of shifts;
7. The number and geographical distribution of police personnel per shift;
8. The effectiveness of dispatch and communications;
9. The availability of one officer versus two officer patrol cars; and
10. The availability and proximity of back-up support.

The Reservations Task Force recognizes that the goals and standards above and throughout the remainder of this report are advisory in nature.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:

The police chief executive is the person responsible for initiating a plan designed to assess deployment needs. The police chief executive may wish to consult tribal criminal justice planners and other persons who are familiar with law enforcement in order to develop procedures for the collection and analysis of appropriate data and to make recommendations for a deployment system. The police chief executive is also responsible for insuring that the agency collects data in a systematic and standardized manner and that accurate records of this information are maintained. Police agency budget requests should reflect personnel needs, as determined

on the basis of this data collection and analysis. Each police chief executive is also responsible for developing a plan to insure the most effective use of police personnel based upon a concrete study of development on each reservation.

C. Funding:

Limited additional funding may be necessary to carry out a deployment study. Additional funding should also be sought if it is determined that added police personnel are necessary to provide necessary police services and to reach outlying areas.

CHAPTER TWO

SALARIES AND CLASSIFICATION WITHIN BIA AND TRIBAL POLICE AGENCIES

Reservations Standard 2.1

Police Salaries

The BIA and tribal governments should establish and maintain salaries that attract and retain qualified sworn police personnel capable of performing the increasingly complex and demanding functions of police work. The BIA and tribal governments should set minimum entry-level salaries for all police officers. A salary review procedure should be established to insure the automatic annual adjustment of police salaries to reflect the prevailing wages in the local economy and to attract and retain the highest calibre of sworn police personnel.

1. The BIA and tribal governments should establish an entry-level sworn police personnnel salary that enables BIA and tribal police agencies to compete successfully with other employers seeking individuals of the same age, intelligence, abilities, integrity, and education both on and off the reservation. Salaries should be designed to encourage interested and qualified Indian people to consider and pursue careers in Indian law enforcement. To the greatest degree possible, but particularly on reservations where police personnel receive salaries from a number of funding sources, minimum entry-level salaries should be comparable.

2. The BIA and tribal governments should establish a wide salary range within their basic occupational classifications, with the maximum salary sufficient to retain qualified personnel by providing them with the opportunity for significant salary advancement without promotion to supervisory or management positions.

3. The BIA and tribal governments should establish a salary review procedure to insure the automatic adjustment of police salaries to reflect the prevailing wages in the local economy and to meet competition from other employers. The criteria applied in this annual salary review procedure should not be limited to cost of living increases, average earnings in other occupations, or other economic considerations which, applied in isolation, can inhibit effective salary administration.

4. The BIA and tribal governments should establish a sufficient salary separation between job classifications to provide promotional incentives and to retain competent supervisors and managers.

5. The BIA and tribal governments should establish within their salary structures a merit system that rewards demonstrated excellence in the performance of assigned duties.

6. The BIA and tribal governments should establish a minimum entry-level salary for all sworn police personnel. The minimum salary should be based on the qualifications required for employment in the police service, on local economic conditions, and on the recommendations of representatives of local criminal justice elements. It should be reviewed and adjusted annually to reflect prevailing wages for similar services elsewhere.

Commentary

Two considerations have been of primary importance in developing this standard. First, highly qualified individuals will not be attracted to careers in Indian law enforcement unless salaries are adequate. Secondly, it will be difficult if not impossible to implement many of the following standards, especially those regarding qualifications, selection and promotion unless, salary incentives are provided.

Serious concern has been expressed over the law enforcement turnover rate on Indian reservations. Present salaries serve to discourage many qualified applicants who are looking for not just a job, but a career. Because the career incentive is missing from the salary structure, policing becomes just another job. Less qualified applicants are attracted. Turnover results as officers move on to something different or something better. Insufficiently qualified applicants who have applied despite low salaries may leave because they have proven unable to carry out the responsibilities of the police position.

This standard is designed to upgrade the quality of reservation law enforcement by attracting better qualified personnel. Having a larger number of better qualified people from whom to choose will enable Indian police agencies to be more selective in their hiring practices. Better salaries will provide an incentive for young people to explore the possibility of careers in law enforcement. Salaries for law enforcement should be able to compete with salaries offered by private business and other agencies in attracting qualified people.

Another issue of concern is the disparity of salaries for officers of equal rank when such salaries come from a variety of funding sources. This may create morale problems and hiring problems in terms of recruiting the desired calibre of officer to the lower paying position. This situation needs to be rectified.

Because promotions are usually dependent upon openings at a higher level, many patrol officers find that the patrol position is a dead end street in terms of salary and status advancement. Other officers work best at the patrol level and many not want to assume a different position in order to advance. A wide salary range within the basic occupational classification enables an officer with ability to advance in salary while staying at the job he or she does best. It also encourages those who see little likelihood for a higher level opening to continue at the patrol level, thus diminishing turnover. At the same time, salary separations between classifications should attract and reward competent supervisors.

As in any occupation, the police officer's salary may be directly related to individual self-esteem and the degree of job satisfaction. James Q. Wilson, a noted authority on police administration, states that low salaries and allowances may be interpreted by police officers as "evidence of the contempt in which the police are held by the public and the politicians." (National Advisory Commission, 1973a:352). Presently reservation law enforcement must stage an annual struggle for increased compensation. This is done with the knowledge that such compensation will come only as funding is available and after other priorities have been considered.

Implementation of this standard must be prompted by a recognition of the fact that tribal and BIA police perform a wide variety of essential routine and specialized tasks. In addition to patrol and investigation, these include youth work, crime prevention, control of civil disorders and the initial handling and referral of alcoholics. At the same time, police officers must contend with cost of living and other economic changes in the community. In order to insure that salaries are ade-

quate and competitive and that competent officers are retained, the standard recommends an automatic annual review of law enforcement salaries to make adjustments as needed.

Longevity should not be the primary consideration in providing salary increases and incentives. Both BIA and tribal police should use a merit system that not only rewards demonstrated ability but, in turn, serves to retain those who possess this ability.

Implementation

A. Agencies Involved:
Bureau of Indian Affairs.
Tribes.

B. Funding:

BIA: BIA salaries depend upon salary schedules set up by the Civil Service Commission. The BIA, in order to upgrade salaries, can request a reclassification of GS ratings for entry-level officers, which must also be included in the BIA budget request. The budget is reviewed by the Division of Law Enforcement Services and, ultimately, by the Secretary of the Interior. The Office of Budget Management would have to approve the budget request, which would in turn become part of the President's budget that is sent to Congress.

Police agencies that use GS ratings, including the BIA, have broad classifications available. Thus, the BIA satisfies provision A-2 of this standard.

Tribal Police: At Sisseton the Tribal Police would be involved in budget requests, including salary requests, for the department. Requests go to the Tribal Planning Commission for recommendations to the Tribal Council. With approval, the budget is negotiated with the BIA through the Area Special Officer for Law Enforcement. Negotiations would be undertaken with BIA contracting officers. Finalization of the budget is done through the BIA budgetary process.

The Cheyenne River Tribal Police work with the Tribal Planner and in cooperation with the Tribal Accounting Officer to formulate a budget. A salary increase depends upon approval from the Tribal Council.

Tribes that use "Buy-Indian" contracting may adopt GS ratings and a policy of a wide range of steps within each level. It would be the responsibility of the chief of police or the authority in charge of officer classification and salary range to take the initiative for doing this in the writing of the contract. Naturally, this contract would be subject to the approval of the BIA. Tribal police agencies that do not use GS ratings would need to initiate salary range classifications through the police chief or through the chief and body with authority to approve such classifications. Matters regarding tribal officers are ultimately within the authority of the tribal councils.

At Cheyenne River, funding may be obtained through a number of sources, though appropriations are dependent upon approval by the Tribal Council. These funding sources include:

BIA (638) contracts;
LEAA funds;
Tribal programs (CETA, for example);
Tribal funds;
Court funds;
Department of Commerce Title 10 funds under "Manpower"; and
Veterans' benefits.

In addition, a number of tribes receive funding for law enforcement from multiple funding sources. Those who write grants, where a grant is involved, (e.g., the tribal planner) should gauge requests to insure that funding will provide salaries equal to those from other funding sources, as specified in paragraph A-1 of the standard.

Reservations Standard 2.2

Position Classification Plan

The BIA and tribal governments should establish a broad police classification plan based upon the principal of merit. The plan should include a few position classifications but multiple pay-grade levels within each classification to enable the agency's chief executive to exercise flexibility in the assignment of personnel. The plan should also provide, within the basic position classification, sufficient career incentives and opportunities to retain qualified generalists and specialists in nonmanagement positions.

1. Every police agency with more than three levels of classification below the chief executive should consider the adoption of three broad occupational classifications for sworn personnel to permit mobility within each classification and salary advancement without promotion. The three fundamental classifications should include:

a. A patrol officer investigator classification for the generalist and specialist at the basic rank level;

b. A supervisor-manager classification for supervisory and midmanagement personnel; and

c. A command-staff classification for police executives and administrators.

2. Every agency's classification plan should include, within each position classification, several pay grade levels, each of which requires a certain degree of experience, skill, and ability, or which entails the performance of a specialized function. The plan should provide the incentive necessary to encourage personnel with proven professional and technical expertise to remain within the functions they choose, while continuing to provide efficient and effective delivery of police services.

3. Every police agency should provide career paths that allow sworn personnel to progress not only as managers but as generalists and specialists as well. Nonmanagerial career paths should provide the incentive necessary to encourage personnel with proven professional and technical expertise to remain within the functions they chose, while continuing to provide efficient and effective delivery of police services.

a. Nonmanagerial career paths should incorporate progressive career steps for tht generalist and specialist; these steps should be predicated on the completion of appropriate levels of education and training, and the achievement of experience and expertise within a professional technical area.

b. Managerial career paths should also incorporate progressive career steps, predicated on the completion of appropriate levels of education and training and the achievement of management skills necessary to function satisfactorily at the next level of management.

4. Every police agency should insure that the merit principle dominates promotions and assignments. Any existing civil service procedure should apply only to retention in, or promotion to, broad position classifications. Movement between pay-grade levels within such position classifications should remain free from restrictive civil service procedures, but subpect to internal controls to insure placement and corresponding pay on the basis of merit.

a. Every classification plan that encourages the practices of a "spoils system," or in which the advancement of personnel is not governed by the merit principle, should be corrected or abolished.

b. Every agency should insure that no civil service system imposes any restrictions on the agency's classification plan that would unnecessarily inhibit flexibility in the assignment of personnel or encourage mediocrity in job performance.

5. Length of service should also be taken into consideration for the purpose of salary increases within a position classification.

Commentary

A position classification plan serves a number of functions:

1. It establishes the basis for promotion and advancement by delineating positions and their duties and by establishing levels of supervision;

2. It provides a system where individuals can advance to positions of greater responsibility;

3. It provides for merit rewards on the basis of performance.

Specifically, the standard advocates three broad position classifications. Position classifications that are broad enough to include a variety of functions, for example, the patrol officer-investigator classification, are desirable because they allow the police chief, captain or agency special officer greater flexibility in assigning personnel. Further, it should not be necessary for officers to be promoted before they can perform specialized tasks, especially considering those who perform best and desire to remain at the patrol level rather than assume a supervisory position. Each broad position classification should allow for the specialist as well as the generalist.

The standard advocates a system whereby individuals may advance to higher pay levels within their positions on the basis of merit. Under the present system, officers may become discouraged when they have to wait for position openings at a higher level in order to advance. A belief that there is "no future" in the position does much to contribute to turnover problems in Indian law enforcement. Under the system advocated in Standard 2.2, advancement would be based on appropriate achievement of levels of education and training as well as demonstrated performance. Salary increases would reflect this type of achievement. These career incentives would apply to both generalists, such as patrol officers, and specialists, such as investigators. The system would also apply to police personnel in managerial and supervisory positions. Through this system individuals could advance despite the lack of openings at supervisory levels. Further, individuals who work best at lower levels would be able to remain in the positions they perform best while receiving opportunities for advancement within those positions.

Merit would primarily govern advancement within positions. However, it was the feeling of the Task Force that length of service should also play a part in advancement in order to encourage the retention of officers and reduce turnover.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Council Actions:

Tribes that employ tribal police and utilize a politically elected law and order committee or a committee appointed by the tribal council should probably invest the powers to grade, classify or otherwise award officers in a nonpolitical committee in order to diminish the likelihood that the spoils system will operate. The tribal police chief and appropriate law and order or personnel committee should also develop procedures to insure that advancement is based on merit along with consideration for length of service. The restructuring of this committee will most likely require a change in the tribal code. To insure that the merit system is being followed, codification of that system may be desirable. Otherwise this system may be established administratively in the tribal police agency itself.

C. Administrative Actions:

BIA: The BIA presently has a vehicle for the operation of a merit system through its "step" increases. Initiative for rewarding officers on the basis of merit should come at the agency level through the captain, agency special officer or others in supervisory and administrative positions.

The BIA presently utilizes a position classification plan involving several pay grade levels. It is up to the police chief executive on the agency level to insure that advancement within pay grade levels and throughout the G.S. system is based primarily on merit. Again, however, the Task Force has advocated that length of service be given consideration as well.

Tribal Police: Where tribal police implement a salary range within each position classification, as advocated in the standard, initiative for awards of merit should come from police chiefs. Initial approval for this salary and classification system would need to come from the tribal council as well as any other committee involved in the hiring, pay and classification of law and order personnel.

Where tribal police are employed, it would be up to the tribes to implement a classification system involving several pay grade levels, probably at the initiative of the chief of tribal police and/or appropriate planning bodies dealing with law enforcement. Again, the approval of the tribal council would be necessary.

D. Funding:

Funding the various grade and classification levels would be dependent on those sources described in the previous standard covering "Police Salaries."

CHAPTER THREE

RECRUITMENT, SELECTION AND ADVANCEMENT WITHIN BIA AND TRIBAL POLICE AGENCIES

Reservations Standard 3.1

General Police Recruiting

Every police agency should insure the availability of qualified applicants to fill police officer vacancies by aggressively recruiting applicants when qualified candidates are not readily available.

1. The police agency should administer its own recruitment program. The agency should assign to recruitment activities employees who are thoroughly familiar with the policies and procedures of the agency and with the ideals and practices of professional law enforcement;

2. The police agency should direct recruitment exclusively toward attracting the best qualified candidates. In so doing it:

a. Should require at least a high school education or the equivalent for consideration for initial employment;

b. Efforts should be made to direct hiring toward individuals with education over and above the minimum requirement when possible.

3. Efforts should be made to recruit qualified personnel from outside as well as within the reservation. Conversely residency should not be a prohibiting factor in recruitment. Indian people should be given preference for recruitment purposes. Preference should be given to qualified local Indian people.

4. The police agency should allow for the completion of minor routine requirements, such as obtaining a valid driver's license, after the initial application but before employment.

5. The police agency should evaluate the effectiveness of all recruitment methods continually so that successful methods may be emphasized and unsuccessful ones discarded.

Commentary

The recruitment practices used by an Indian police agency will to a large extent determine the types of candidates who will be available for vacant positions. This recruitment program should have the twofold purpose of upgrading Indian police and of meeting the particular needs of the agency. Because of the agency administrator's police and management experience, the recruiting agency is in the best position to determine its own personnel needs and administer its own recruitment program. The police agency as administrator of its own program should regularly review its recruitment practices in order to insure that recruitment practices are achieving stated objectives.

Despite an officer's police experience, not all officers are well suited to be recruitment officers. The person chosen for this position should be articulate, able to deal comfortably with people and professionally competent in police work. The officer may be asked to speak to high school or community college students, a manpower group or just one individual. The impression the officer makes will be important. Young people who are looking for careers are less likely to be attracted to a BIA or tribal police agency if the recruiting officer is unable to represent that agency in a professional manner.

In order to upgrade the selection of Indian police, recruitment should be directed toward persons who satisfy the requirement of a high school diploma or equivalent. Efforts to recruit persons with higher educational qualifications should also be encouraged. As more Indian men and women attend two and four year colleges the possibility of recruiting persons with above high school education increases. In order to remove barriers to employment and to diminish delays in processing applications, applicants should be allowed to complete minor requirements after applying and before initial employment.

Preference is shown for the recruitment of qualified local Indian people because of their familiarity with the traditions, beliefs and geography of their people. No valid justification seems to exist for denying local applicants the opportunity to stay and to work with their people in a law enforcement capacity. The prospect of leaving their community or tribe may actually discourage qualified Indian applicants. The value of an applicant's familiarity with local habits and customs should not be underestimated. Therefore, prohibitions against hiring local Indian applicants should be discontinued. On the other hand, once it has been determined that no qualified local Indian applicants are available, the police agency should not hesitate to go outside the area in order to seek persons who are qualified. Generally, recruitment efforts should be directed toward hiring qualified Indian people who will be able to understand the culture and the law enforcement needs of the community in which the hiring agency is located.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Council Actions:
Tribal Police: A high school education requirement for police officers will need to be included as an amendment to tribal codes that specify police officer qualifications. In other cases the administrative action of a personnel, law and order or other committee may be all that is necessary to implement such a requirement.

C. Administrative Actions:
The BIA or tribal police agency, through the police chief executive, should be responsible for initiating aggressive recruitment procedures and for selecting appropriate personnel to handle recruitment.

BIA: The BIA should act to remove prohibitions or restrictions against hiring an Indian who is native to or resides within the reservation on which the hiring agency is located.

D. Funding:
A broader recruitment effort may require additional monies from the BIA, tribes or other appropriate sources for the purpose of advertising, interviewing and other related expenses. At the same time an emphasis on the recruitment of qualified local Indian applicants may minimize the funding required when it is not necessary to go beyond the local level.

Reservations Standard 3.2

College Recruiting and Cadet Programs

Attempts should be made to recruit individuals with college educations.

1. The police agency should establish permanent liaison with:

a. Placement officers and career counselors in colleges and universities statewide;

b. Faculty members and heads of departments that provide a curriculum specifically designed to prepare students for the police service.

2. The police agency should implement a police student worker program that provides part-time employment for college students between the ages of 18 and 25 who have shown a sincere interest in a law enforcement career. Police student workers:

a. Should be enrolled college students of at least 18 years of age who should work for the police agency no more than 20 hours per week; during school vacations full-time employment may be appropriate.

b. Should meet the same physical, mental, and character standards required of police officers; appropriate and reasonable exceptions may be made for height and weight in relation to age.

c. Should be assigned duties that prepare them for their future responsibilities as regular police officers; student workers, however, should not have the authority of regular police officers or be authorized to carry firearms.

d. Should, after earning at least an associate's degree, continue in the cadet program until a vacancy occurs on the regular police force. The student should be permitted to apply for regular employment at any time if otherwise qualified.

e. Should continue in the cadet program for the period of time required to earn the associate's degree.

3. The police agency should compete actively with other governmental and private sector employers in recruitment efforts at nearby colleges and universities. The opportunity for a police officer to perform a valuable social service, and the opportunity for a progressive career, should be emphasized in college recruiting.

Commentary

In order to increase the professionalism and quality of its personnel, BIA and tribal police agencies should make every effort to recruit applicants with college educations.

The benefits of inducting personnel with higher levels of academic achievement are appreciable. A 1972 Rand Corporation Study on police performance in New York indicates that college-educated officers are superior performers and the subject of fewer citizen complaints; a 1968 Chicago study reveals that college-educated officers are generally rated higher by supervisors. Ventura, California, which requires a 4-year college education of its recruits, has reported quicker response times, fewer citizen complaints, and a measurable reduction in the crime rate. It seems reasonable to believe that such benefits would be enjoyed throughout the Nation if educational standards for police officers were raised. (National Advisory Commission, 1973a: 327).

One method of recruiting college students would be to list position openings with college placement officers and department heads. This recruitment should not be limited to local community colleges, since Indian students attend colleges throughout the State. Notices to colleges located near reservations elsewhere may also be appropriate. In addition, the police chief executive should take responsibility to make contact with placement officers and various departmental heads to solicit their assistance in encouraging young Indian people to investigate careers in Indian law enforcement. Since the University of South Dakota has an active on-campus and off-campus criminal justice program, this source of assistance should be investigated.

In order to interest young Indian people in law enforcement the standard calls for a cadet program to enable students to work on a part-time basis within BIA and tribal police agencies. This method serves the purpose of maintaining interest in law enforcement after high school, while attracting applicants with college backgrounds. This type of program could help to decrease the rapid turnover experienced by both BIA and tribal police by enabling persons to test their interest in a law enforcement career before they apply.

As outlined in Part 2 of the standard, realistic requirements should be set for persons wishing to enroll in cadet programs. Since the purpose of the cadet program is to attract qualified college students without undermining their studies, part-time cadet programs of no more than 20 hours a week would be appropriate. During the summer months, when a student is not enrolled in classes, a full-time program could be offered.

The standard requires that student cadets meet the same physical standards required of regular police officers, with appropriate adjustments of these requirements to account for differences in age. Since the purpose of the program is to eventually recruit these individuals, it would not be reasonable to accept cadets who would be unable to meet the physical standards required in normal recruitment. A maximum age of 25 will allow participation by persons who were employed or who entered military service prior to college.

Tasks set for police cadets should reflect actual police work. Cadets should not be relegated to mundane or rountine tasks that might destroy their interest in law enforcement. However, for the protection of the cadet and the agency the cadet should not have the authority of a regular police officer or be authorized to carry firearms.

The purpose of the cadet program is to encourage qualified college students to pursue an interest in law enforcement while at the same time completing their degrees. However the completion of a degree would be an unfair requirement for selection, since non-college educated persons are regularly accepted for employment. Therefore, any student who wishes to do so should be permitted to apply for full-time employment with the police agency at any time.

The President's Commission on Law Enforcement and the Administration of Justice (1967b:123-4) has recommended the implementation of cadet programs. According to the Commission cadets can be effectively used to improve police services by relieving sworn officers of lesser duties, engaging in community relations services, working with juveniles, supplementing services in high crime areas and assisting in emergency situations.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:
The implementation of this standard would be the responsibility of the police chief, captain or agency special officer.

The nature of implementation is explained within the context of the standard.

LEAA would probably be a primary funding source for cadet programs with, perhaps, some assistance through internship program monies at colleges and universities. Federal work-study funds might also be available.

Reservations Standard 3.3

Minimum Standards for the Selection of Police Officers

Minimum standards should be set for the selection of police officers at the basic entry level:

1. Minimum standards should set requirements for:

a. Age, with a recommendation that the minimum age for selection be set at 21;

b. Physical health, strength and ability with a recommendation that a physical examination be required before employment and that a person be in good physical condition.

c. Character, with consideration given to the responsibilities of police officers and the need for public trust and confidence in police personnel;

d. Education, with consideration given to the mental skills and knowledge necessary to perform the police function properly.

2. Minimum standards should be set with consideration for compensating factors such as education, language skills, or experience in excess of that required if such factors can overcome minor deficiencies in other requirements.

Commentary

Indian police agencies should set minimum standards for the selection of police officers at the basic entry level. Minimum standards should insure the selection of qualified police personnel in terms of maturity, character and the mental and physical abilities to handle the police role effectively. With minor exceptions, as designated above, all other applicants should be screened out of the selection process.

The first standard advocates a minimum age requirement of 21. Basically, this standard is designed to apply some uniformity to the minimum age requirement. A minimum age above this is generally considered too high, especially in light of the minimum requirement of a high school education. After high school it is difficult to ask individuals to hold their interest past the age of 21, although the implementation of a cadet program may somewhat alleviate this problem.

Good physical health is necessary because of the rigors of police work and should not be underestimated. All departments should require a physical examination before employment to insure that an individual has no conditions that will interfere with the performance of duties. However, caution should be taken in setting height and stature requirements that are considered discriminatory under existing case law. For example, Pennsylvania's unisex height requirement of 5 feet 6 inches was found to be discriminatory against women and minorities in an opinion of the Pennsylvania Attorney General, 2 CCH Empl. Prac. Guide II 5 177 (Op. No. 57, Aug. 9, 1973). The FBI has also abandoned its decades-old height requirement of 5 feet 7 inches.

Careful consideration should be given to the character and reputation of an applicant because police officers are placed in a position of confidence and trust. Indeed the police job often cannot be accomplished unless citizens are willing to cooperate with or confide in police. It is important that the police officer has the type of character that will earn the trust of people and respect for police in general.

Police officers must have the mental ability to perform the police function. In addition to the ability to express him/herself both verbally and in written form, a police officer will be required to understand instructions, make decisions, form logical conclusions from both abstract and concrete information, and deal with all types of persons in stress situations. An officer without the mental ability to handle these functions will undermine general police performance and respect for the agency in the community.

Most of these standards, such as requirements for character or mental ability, should be satisfied by police recruits without exception. However, in some cases a compensating factor may be used to make up for a minor deficiency in a certain area. Language skills, leadership ability or education may be used to compensate for minor deficiencies in physical requirements. The National Advisory Commission Task Force on Police (1973a:335) notes that at least one major metropolitan police department has followed this policy with success since 1971. The agency has employed nearly 100 qualified applicants who would otherwise have been disqualified for minor physical deficiencies. In police agencies that are interested in qualified applicants but have a limited number of interested persons available, minimum standards should not be allowed to arbitrarily disqualify persons who are otherwise qualified for police work without giving consideration to compensating factors.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Council Actions:
Tribal police: Where police selection qualifications are included in tribal codes, these codes may need to be amended by the tribal council. Where qualifications are not codified they could be implemented administratively by the police agency.

C. Administrative Actions:
BIA: Qualification requirements in line with this standard would require implementation through the BIA Division of Law Enforcement Services.
Tribal: Action by the tribal police agency and/or appropriate law and order or personnel committees would be necessary for the implementation of these selection requirements.

Reservations Standard 3.4

The Selection Process

Every BIA and tribal police agency should employ a formal process for the selection of qualified police applicants. This process should include a written test of mental ability or aptitude, an oral interview, a physical examination and a background investigation. Consideration should also be given to the utilization of a psychological examination when possible.

1. Every police agency should measure applicant's mental ability through the use of job-related ability or aptitude tests rather than general aptitude tests. These job-related ability tests should meet the requirements of Federal Equal Employment Opportunity Commission guidelines.

2. Attempts should be made to obtain the services of a qualified psychiatrist or psychologist to conduct psychological testing of police applicants in order to screen out those who have mental disorders or are emotionally unfit for police work.

3. Every police agency should use the results of psychological testing as a positive predictor of later performance within the police service only when scientific research establishes the validity and reliability of such a predictor.

4. Every police agency should conduct an indepth background investigation of every police applicant before employment. The policies and procedures governing these investigations at least should insure that:

a. To the extent practicable, investigations are based upon personal interviews with all persons who have valuable knowledge of the applicant;

b. The rejection of police applicants is job-related; and

c. Police applicants are not disqualified on the basis of arrest records alone, without consideration of circumstances and disposition.

5. Every police agency should insure that no more than 8 weeks pass from the time of initial application to final determination of employability; that applicants are promptly notified of the results of each major step in the selection process, and that the selection process is cost effective.

6. Every police agency should attempt to direct into other temporary employment within the agency qualified police applicants who because of a lack of vacancies cannot be employed immediately in the position for which they have applied.

Commentary

Although certain I.Q. tests and other mental ability tests have been questioned for their relevance to police work, it is important that the police agency have some means to gauge an applicant's aptitude for the position. Mental ability tests should be job related. Care should be taken to select tests that do not disqualify individuals because of cultural or other factors rather than mental ability. Wording and questions should be relevant to Indian law enforcement and should meet the requirtments of the EEOC. 29 C.F.R. 1600. Tests should have proven validity and utility. Unvalidated tests are liable to court action brought by the Department of Justice, while valid tests can prove a useful tool in screening and hiring the best applicants.

In order to screen out applicants who are brutal, unstable or otherwise cannot handle the stress of police work, BIA and tribal police agencies should attempt to utilize the services of qualified psychiatrists or psychologists. Resource persons may be found through public health services, community mental health services and universities in the State and elsewhere. Care should be taken to locate individuals who are familiar with Indian culture and who have tests available which are valid for Indian people and will not screen out applicants on a cultural rather than psychological basis.

Background investigations are another means of screening potentially unstable individuals and of insuring that officers who will inspire public trust and confidence are hired. Though applicants may be generally known in the community, only persons closely acquainted with the individual can provide thorough personal knowledge of that applicant. This investigation may reveal information that the applicant has attempted to conceal. It is equally important to have a variety of impressions of the applicant since a police officer deals with many types of people. However, an applicant should be disqualified only on the basis of factors that will impair the performance of police duties. Applicants should not be disqualified on an arrest record alone until consideration has been given to the case and its disposition.

In order to keep the interest of police applicants and to relieve hardship caused by delay, no more than 8 weeks should pass from the time of application to a determination of employability. The selection process should move from the least costly to the more costly screening steps so that the more costly processes will be expended only on those who are most seriously being considered for employment.

At times a qualified individual will apply for a police position when no positions are available. In order to maintain the person's interest, attempts should be made to put a qualified applicant into a temporary position until an opening does occur. This procedure will also provide the police agency with a resource of qualified applicants.

Implementation

A. Agencies Involved:
Bureau of Indian Affairs.
Tribes.

B. Council Actions:
Changes in tribal codes may be necessary within tribes that codify their selection procedures and criteria.

C. Funding:
Monies may be necessary to fund and strengthen selection procedures where procedures are not presently as rigorous as is prescribed in this standard. Additional funding would be necessary to obtain the services of a psychologist or psychiatrist for psychological screening and to implement the use of mental ability tests. The BIA would be the primary source of funding for its agencies. LEAA or tribal funds would be possible funding sources for tribal police agencies.

Reservations Standard 3.5

Educational Incentives for Police Officers

Every police agency should adopt a formal program of educational incentives to encourage police officers to achieve college-level educations. Colleges and universities, particularly those providing educational programs expressly for police personnel, should schedule classes at a time when police officers can attend.

1. When it does not interfere with the efficient administration of police personnel, duty and shift assignments should be made to accommodate attendance at local colleges; any shift or duty rotation system should also be designed to facilitate college attendance.

2. Financial assistance to defray the expense of books, materials, tuition, and other reasonable expenses should be provided to police officers when:

a. The officer is enrolled in courses or pursuing a degree that will increase, directly or indirectly, the officer's value to the police service; and

b. The officer's job performance is satisfactory.

3. Incentive pay should be provided for the attainment of specified levels of academic achievement. This pay should be in addition to any other salary incentive. It should amount to at least 2.5 percent of the employee's current salary for each 30 semester units of college work completed in pursuance of a degree that will lead, directly or indirectly, to service betterment warranting the expense of the salary incentive.

4. Colleges and universities, particularly those providing educational programs expressly for police personal, should schedule classes at hours and locations that will facilitate the attendance of police officers.

a. Classes should be scheduled for presentation during the daytime and evening hours within the same academic period, semester, or quarter.

b. When appropriate, colleges and universities should present classes at locations other than the main campus so police officers can attend more conveniently.

Commentary

Education incentives are used to encourage police officers to continue their education and training after employment. Without incentives officers may feel that the time, sacrifice and money involved in further education is too great. They may also be discouraged if the employing agency does not seem to appreciate their efforts. Educational incentives provide a type of reward that may be necessary to motivate officers to continue their education. By offering incentives the police agency shows it is behind these efforts on the part of its officers.

Officers who would be interested in pursuing further education may be discouraged because of the cost involved. The employing agency should support the officer's educational efforts by absorbing the costs of studies that are related to the officer's educational police performance either directly or indirectly. This practice has been advocated by police professionals throughout the country. The Law Enforcement Assistance Administration has set aside funds for this purpose.

Courses should not be allowed to interfere with the performance of duties. Only persons whose performance is satisfactory should be allowed to participate in educational incentives. On the other hand in order to show its support of this program, the police agency should make every effort to schedule duties and shifts to enable eligible officers to attend classes. Assurances should be made that these accommodations will continue until the completion of the course. Arbitrary rotation of duty shifts makes attendance difficult and should be abandoned if possible.

The practice of offering salary incentives for police officers is coming into common practice throughout the nation. For example, Florida has instituted a program of salary incentives for the completion of college work. Salary incentives for police officers serve, first, to motivate officers to pursue further education and, secondly, to attract persons who have earned college credits. Having acknowledged the value of higher education for police officers, the implementation of a program of educational incentives is recommended for Indian police agencies that wish to upgrade the quality and professionalism of their personnel. The standard advocates a minimum incentive increase of 2.5 percent of the employee's current salary for each 30 semester units completed in areas that will lead, directly or indirectly, to the enhancement of an officer's job performance. Thus, an officer who receives a salary of $8,500 would be raised to a minimum annual salary of $8,712.50 after the completion of 30 semester units. Consideration could also be given to similar incentives for further training.

In some cases the initiation of an incentive plan could create personnel problems if new recruits with higher levels of education earn more than veteran officers with less education. Relief may be found through implementing appropriate modifications to the plan. For example, an agency could make the incentive pay applicable to the new recruits only after they have reached the top pay step for that rank, or grant seniority credit to veteran officers temporarily while permitting them to attend school and to qualify for the extra pay. (National Advisory Commission, 1973a:374).

Implementation

A. Agencies Involved:
BIA/tribal police agencies.
Bureau of Indian Affairs.
Tribes.

B. Administrative Actions:

Police agencies would be responsible for implementating incentive programs and approving duty and shift rotations that would allow for class attendance. Since this program would require additional funding, the approval of the appropriate funding agency would also be necessary. Initial approval for such a program on the tribal level would probably come from the tribal government in consultation with tribal criminal justice planners, while BIA approval and implementation would be required at the federal level.

C. Funding:

Appropriate funding sources may vary. Necessary monies for tribal police could be obtained from the tribes if monies were available. The BIA would probably use its own salary funding resources. Monies for the costs of training and education could possibly be obtained through the Law Enforcement Education Program (LEEP) which offers loans and grants for the continued education of inservice law enforcement and other criminal justice personnel.

Reservations Standard 3.6

Personnel Development for Promotion and Advancement

Every Indian police agency should adopt a policy of promoting to higher ranks and advancing to higher pay grades only those personnel who successfully demonstrate their ability to assume the responsibilities and perform the duties of the position to which they will be promoted or advanced. Personnel who have the potential to assume increased responsibility should be identified and given duties and training that will lead to full development of that potential.

1. Every Indian police agency should screen all personnel in order to identify their individual potential and to guide them toward achieving their full potential. Every employee should

be developed to full potential as an effective patrol officer, a competent detective, a supervisor or manager, or as a specialist capable of handling any of the other tasks within the police agency. This screening should consist of one or more of the following:

a. Assessment of past job performance and demonstrated initiative in the pursuit of self-development;

b. Oral interviews; and

c. Job-related mental ability tests.

2. Every Indian police agency should offer programs of education, training, and experience designed to develop the potential of every employee who wishes to participate. These development programs should be based on the potential identified through the screening process and the specific development needs of the employee. These programs should consist of one or more of the following:

a. College seminars and courses;

b. Directed reading;

c. In-house and out-of-house training classes;

d. Job rotation;

e. Internships; and

f. The occasional opportunity to perform the duties of the position for which an individual is being developed.

3. Personnel who choose to pursue a course of self development rather than participate in the agency-sponsored development program should be allowed to compete for promotion and advancement.

Commentary

The overriding considerations in this standard are, first, to advance to higher positions only those most qualified for advancement and, secondly, to encourage and to develop those who have shown both the potential and desire for advancement to higher positions. Because advancement opportunities and higher level positions are limited, the agency should not waste time with individuals who show neither the ability nor the interest for promotion. Care should be taken to avoid promoting persons to a level at which they can no longer perform their duties effectively. Thus promotion should not be based on years of service or experience alone. Officers should be encouraged to pursue their potential at the level at which they best qualify, whether it be patrol, investigation or specialist. Pay incentives at every level will facilitate ad-advancement within the patrol officer level for those who perform best as generalists and will discourage individuals who do not have the necessary ability from seeking higher positions for the salary alone.

The agency should first determine the potential of its officers through an evaluation of past job performance, interviews and mental ability tests which are related to a given position. All of these evaluation criteria are necessary since objective tests alone cannot fully gauge a person's potential. Initiative, tact, good judgement and leadership are necessary qualities which cannot be readily measured on paper. According to the National Advisory Commission on Criminal Justice Standards and Goals (1973a:424), I.Q., personality and other psychological tests are considered to be unreliable indicators of an individual's potential.

Once the officer's potential has been identified, efforts should be made by the agency to encourage this potential through programs described in the standard, including relevant self-development pursuits. Care should be taken to insure that self-development programs are relevant to the position being sought.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:
Certain administrative actions would be necessary. These are evident within the context of the standard.

C. Funding:
Funding may be required for training purposes. The BIA, LEAA or tribes would be primary funding sources. LEEP (Law Enforcement Education Program) funds could be used to permit officers to attend college courses.

Reservations Standard 3.7

Formal Personnel Development Activities

Every Indian police agency should implement formal programs of personnel development. Such programs should be designed to further the employee's professional growth and increase the employee's capacity for a present or future role within the agency.

1. Every Indian police agency should allow all sworn personnel to participate voluntarily in formal police personnel development activties while on duty and at full pay. Such activities may include:

a. In-house or out-of-house classroom training directed toward the development of personal, vocational, conceptual, or managerial skills;

b. Internships with other police, criminal justice, government, or private organizations that can contribute significantly to the professional development of the intern;

c. The assumption of the position, responsibility, and authority of an immediate superior when such assignment would contribute significantly to the professional development of the subordinate;

d. Employee participation in administrative duties and reporting that would not ordinarily be the employee's responsibility but would contribute significantly to the employee's professional development.

e. Provision of leaves of absence with or without pay to allow the achievement of academic objectives that contribute significantly to the employee's professional growth and capacity for current and future assignments. Leaves of absence with pay should be provided for short-term training objectives.

2. Selective and individualized rotation of incumbent personnel should be implemented to develop generalist and specialist expertise or specifically to prepare personnel for promotion and advancement. The movement of incumbent personnel should take into account individual needs for specific work experiences, individual potential and willingness to participate, and agency needs for the development of personnel as well as the potential for a cost-effective return on the investment of time and energy.

3. Every Indian police agency should encourage personnel to pursue development on their own time, as well as on agency time, by attending college courses and seminars and through suggested reading.

4. Every police agency should fulfill its responsibility to develop personnel by seeking adequate funding for personnel development activities. In so doing, the police agency should consider the availability of financial assistance outside the normal budgetary process.

Commentary

In conjunction with Standard 3.6, which establishes the rationale for and responsibility of the police agency in implementing programs for personnel development, Standard 3.7 specifies a number of alternative personnel development programs that should be made available, including in-house or out-of-house classroom training, internships with other agencies, temporary assumption of supervisor and administrative duties to gain experience in these areas, and provisions for leaves of absence to attend college and various training courses. Where possible, persons who take long-term leaves of absence for educational purposes should receive salaries during these leaves of absence. However pay should always be provided during the attainment of short-term educational objectives since this would be considered as on-duty activity.

Personnel rotation is valuable for both the generalist and the specialist because it gives the officer a perspective on the needs and operation of the entire agency. However, rotation should be made most effective by fulfilling individual needs with specific work experience, such as placing a patrol officer in a dispatcher's position temporarily to enable him or her to understand the agency's communications network.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.
Criminal justice planners.

B. Administrative Actions:

This standard could be implemented administratively through initiation by the police chief, captain or agency special officer.

C. Funding:

Presently it is standard policy to provide full duty pay while personnel are on short-term training leave. Longer leaves of absence with pay to achieve academic objectives would be dependent upon funding available through LEAA or the BIA. LEEP funds would be part of the funding available for short or long-term educational expenses. Tribal planners should be involved in seeking additional funding sources or providing alternative activities for personnel development in cooperation with the police chief executive.

Reservations Standard 3.8

Personnel Evaluation for Promotion and Advancement

Every Indian police agency should begin a periodic evaluation of all personnel in terms of their potential to fill positions of greater responsibility. The selection of personnel for promotion and advancement should be based on criteria that relate specifically to the responsibilities and duties of the higher position.

1. Every agency periodically should evaluate the potential of every employee to perform at the next higher level of responsibility.

a. This evaluation should form a part of the regular performance evaluation that should be completed at least semiannually.

b. Specific data concerning every employee's job performance, training, education, and experience should support the periodic evaluation for promotion and advancement.

2. Every police agency should use job analysis in the development of job related tests and other criteria for the selection of personnel for promotion and advancement. Selection devices should consist of one or more of the following:

a. Assessment of past job performance, performance in the individualized development program, and demonstrated initiative in the pursuit of self development;

b. Oral interviews; and

c. Job related mental aptitude tests.

3. Every police agency should consider only experience and achievement related to the duties of the position for which the individual is being considered.

4. No agency should use any psychological test as a screening device or evaluation tool in the promotion and advancement process until scientific research confirms a reliable relationship between personality and actual performance.

5. Every agency should require that personnel demonstrate the ability to assume greater responsibility prior to promotion or advancement and should continue to observe employee performance closely during a probationary period of at least 6 months from the date of promotion or advancement.

Commentary

Periodic evaluations to ascertain the advancement potential of all police personnel serve two functions. These evaluations enable police administrators to locate for development purposes those individuals who show particular promise. They also help to identify the duties and positions for which an individual may be qualified.

Employees should be evaluated on a regular basis. The standard recommends that an evaluation be conducted every 6 months. At this time both formal development and self-development pursuits should be recognized. A person should be evaluated on the basis of the target position. Evaluation should be documented.

Promotional examinations are not complete guides for advancement. They may measure knowledge but not the individuals' abilities to perform effectively in target positions. Length of service, experience, training and education are not valid indicators in and of themselves for the same reason. It should be recognized that the skills needed for a promotion to a particular position may not parallel those acquired through education or experience.

However, assessment of past job performance and performance in a development program, such as adult education or in-service training, will help identify potential and initiative. Other criteria for selection and advancement should include oral interviews and job related mental aptitude tests. However, care should be taken that tests are applicable, valid and do not discriminate. See EEOC guidelines, 19 C.F.R. 1600.

Agencies will have a natural inclination to reward officers of long service with promotions. Yet service in itself does not imply an ability to handle a new position. Care should

be taken not to advance a person to a level where the officer is no longer capable of handling the job effectively. Experience and achievement should only be considered when they relate to the target position.

Psychological tests may be used at the entry level to eliminate those who are unsuited to the rigors of police work. However, no particular personality traits have been connected with advanced police positions. When an employee is seeking promotion no further psychological testing should be done unless the test has been established as both valid and relevant.

Occasionally an individual may not be suited to an advanced position despite preliminary indications. In this case the agency should have the option to ask an individual to step down. In order to insure than an officer will be able to handle the advanced position, the officer should undergo a probationary period of 6 moths.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.
B. Administrative Actions:
Each Indian police agency has the responsibility for implementing this standard. A specific administrative decision may be involved in establishing a probationary period after advancement.

Reservations Standard 3.9

Administration of Promotion and Advancement

The appropriate or delegated authority, by assuming administrative control of the promotion and advancement system, should insure that only the best qualified personnel are promoted or advanced to positions of greater authority and responsibility in higher pay grades and ranks. Agencies that have not developed competent personnel to assume positions of higher authority should seek qualified personnel from outside the agency rather than promote or advance personnel who are not ready to assume positions of greater responsibility.

1. The appropriate or delegated authority should oversee all phases of the agency's promotion and advancement system including the testing of personnel and the appointing of personnel to positions of greater responsibility. The appropriate or delegated authority should make use of the services of a central personnel agency when that personnel agency is competent to develop and administer tests and is responsive to the needs of the police agency.

2. The appropriate or delegated authority should consider recruiting personnel for lateral entry at any level from outside the agency when it is necessary to do so in order to obtain the services of an individual who is qualified for a position or assignment.

Commentary

At both the tribal and BIA levels, a central personnel agency or body other than the police chief executive may have responsibility for the advancement or promotion of police personnel. The National Advisory Commission Task Force on Police (1973a:437) opposes this type of system, reasoning that, "The police chief executive must have the authority to staff and manage his agency, because ultimate responsibility for police effectiveness resides with him."

The Reservations Task Force takes a different position, advocating that the option remain for an outside agency to retain ultimate responsibility, although such responsibility could be delegated to the police chief, captain or agency special officer.

According to Standard 3.9 the appropriate authority, either an outside supervisory body or the police chief executive, should take full responsibility for obtaining the best qualified personnel for advancement. In some cases the agency may need to go outside its ranks in order to obtain personnel with sufficient qualifications for advanced positions. In this case the lateral entry of personnel should be encouraged.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.
Bureau of Indian Affairs.
Tribes.
B. Administrative Actions
BIA: Advancement and promotion may need to be processed at the area rather than the agency level. The personnel department may be involved.

Tribal Police: Within the Sisseton-Wahpeton Sioux Tribal Police Department recommendations for advancement and promotion are made by the Chief of Tribal Police to the Tribal Personnel Committee. At Cheyenne River the Chief of Tribal Police may make a recommendation to the tribe, which has ultimate authority in these matters.

Reservations Standard 3.10

Foundation for Internal Discipline

Every Indian police agency should formalize policies, procedures, and rules in written form for the administration of internal discipline. The internal discipline system should be based upon essential due process to include fair notice and hearing but should not be bound by formal procedures or proceedings such as are used in criminal trials.

1. Every police agency immediately should establish formal written procedures for the administration of internal discipline. An appropriate summary of those procedures should be made public.

2. Where possible the police chief executive should have ultimate responsibility for the administration of internal discipline. The police chief executive's recommendation should be given primary weight in situations requiring a decision concerning the discipline, removal or retainment of a police employee.

3. Every employee at the time of employment should be given written rules for conduct and appearance. They should be stated in brief, understandable language.

In addition to other rules that may be drafted with assistance from employee participants, one prohibiting a general classification of misconduct, traditionally known as "conduct unbecoming an officer" should be included. This rule should prohibit conduct that may tend to reflect unfavorably upon the employee or the agency.

4. The policies, procedures, and rules governing employee conduct and the administration of discipline should be strengthened by incorporating them into training programs and promotional examinations.

Commentary

A police agency's internal discipline system is only valid and effective if it inspires the confidence and respect of police officers and the public alike.

Many smaller agencies have not written formal procedures for internal discipline. They have neglected informing their officers and the public of the standards and criteria under which an officer's conduct will be evaluated. Thus officers and the public may be left with a confused and uncertain picture of the police discipline system. As the standard implies, written rules and procedures for internal discipline and procedures that follow the tenets of fairness and due process are necessary if police and the public are to have any faith in the agency's internal discipline system.

It is preferable that the tribal police chief, the BIA captain or the agency special officer have ultimate responsibility for internal discipline, since the police chief executive is ultimately answerable for employee misconduct. Eastman and Eastman (1971:203) state that for this not to be the case renders the police chief "impotent as a commanding officer." However, under existing systems the police chief executive should have primary input into decisions regarding the discipline, removal or retention of a police employee. Efforts should be made to develop systems which will strengthen the police chief executive's control and authority in this area.

Internal discipline should be based on a solid foundation governed by rules of conduct. An employee has the right to know the conduct expectations of the agency if he or she is to be governed by them. Only if based on written rules will an internal discipline system be valid. Employee participation in drafting these rules will help to foster their acceptance.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.
Bureau of Indian Affairs.
Tribes.

B. Council Actions:
A codification change in the Cheyenne River Sioux Tribal Code would be necessary. This change would regard the administration of internal discipline under provision 2 of the standard.

C. Administrative Actions:
Administrative decisions would involve the implementation of due process in the internal discipline system, the implementation of a general prohibition in agency guidelines known as "conduct unbecoming an officer," and the decision to employ promotional examinations which would include agency policies, procedures and rules governing employee conduct.

Reservations Standard 3.11

Entry-Level Physical Examinations

Every police agency should require all applicants for police officer positions to undergo thorough entry-level physical examinations to insure detection of conditions that might prevent maximum performance under rigorous physical or mental stress. An attempt at an assessment of psychological stability should be made during the background investigation.

1. Every agency should furnish and require, as a condition of employment, that each applicant pass a thorough physical examination. This examination should:

a. Be designed to detect conditions that are likely to cause nonjob-related illnesses, inefficiency, unnecessary industrial accidents, and premature retirement; and

b. Be conducted under the supervision of a licensed competent physician.

Commentary

Police work taxes the mental and physical abilities of its officers. Hazardous or stressful situations are a constant. Sometimes only moments are available to make a decision and to take action. The agency must provide personnel who are in all ways capable of handling these situations.

Although discriminatory physical requirements should be abandoned, officers must be in good health and able to perform their duties under varied conditions. The testimony of an applicant to this effect is not enough. Good health should be proven at the initial employment level and should be certified by a licensed, competent physician. In addition the agency must consider the need to protect itself from liability by assuring that it will not be held responsible for prior physical conditions or accidents or diseases arising out of these.

The use of a psychological examination for prospective applicants has been discussed elsewhere. Until such an examination is economically feasible and until a valid, unbiased method of examination can be located, the agency should seek some other suitable means for determining the applicant's psychological stability. Information relevant to making this determination should be gathered through interviews and the applicant's background investigation.

Implementation

A. Agencies Involved:
Bureau of Indian Affairs.
Tribes.

B. Council Actions:
Among tribes that codify police entrance requirements, a change or addition to the tribal code may be necessary in order to implement these standards.

C. Administrative Actions:
An administrative decision to implement these entrance requirements would be needed at the BIA area or agency level and at the tribal levels.

CHAPTER FOUR

POLICE TRAINING

Reservations Standard 4.1

Preparatory Training

Every BIA and tribal police agency should take immediate steps to provide training for every police employee within the first year after employment. All police employees should be encouraged to pursue further training.

1. The BIA and tribal governments should require that every sworn police employee satisfactorily complete a minimum of 200 hours of basic police training. In addition to basic police subjects, this training should include:

a. Instruction in tribal and federal law, psychology, and sociology specifically related to interpersonal communications, the police role, and the community the police employee will serve;

b. Assigned activities away from the training academy to enable the employee to gain specific insight into the community, law and order system, and local government;

c. Remedial training for individuals who are deficient in their training performance but who, in the opinion of the training staff and employing agency, demonstrate potential for satisfactory performance; and

d. Additional training by the employing agency in its policies and procedures, if basic police training is not administered by that agency.

2. During the first year of employment with a police agency, and in addition to the minimum basic police training, every police agency should provide full-time sworn police employees with additional formal training, coached field training, and supervised field experience through methods that include at least:

a. Field training with a sworn police employee;

b. Rotation in field assignments to expose the employee to varying operational and community experiences;

c. Documentation of employee performance in specific field experiences to assist in evaluating the employee and to provide feedback on training effectiveness;

d. Officers should be encouraged to make use of self-paced training materials, such as correspondence courses, to assist the employee in acquiring additional job knowledge and in preparing for subsequent formal training; and

e. Periodic meetings between the employee and the employee supervisor to identify additional training needs and to provide feedback on training program effectiveness.

3. Every police agency should provide all unsworn police employees with sufficient training to enable them to perform satisfactorily their specific assignments and to provide them with a general knowledge of the police role and the organization of the police agency.

4. Every police agency should provide all police employees newly assigned to a specialized task the specific training they need to enable them to perform their tasks acceptably.

5. Every police agency should provide sufficient training to enable every newly promoted employee to perform the intended assignment satisfactorily.

Commentary

Police work requires both technical and behavioral skills. Most individuals, before assuming the duties of a police officer, do not have sufficient skills to enable them to handle the police role. A look at some of the knowledge a police officer must have gives an idea of the difficulties of the task. The officer must understand criminal law, courtroom procedure, rules of evidence, traffic regulations and department policy to name a few. In one day an officer may handle a firearm and administer first aid, deal with an angry motorist or a frightened parent, investigate an accident or investigate a burglary. Preferably officers should be trained for these functions prior to employment. However, recognizing that law enforcement personnel needs are often immediate and that the availability of personnel is frequently limited, it is difficult at times for reservations' police agencies to hire officers and then delay putting them to work until a training class is available. As a result Standard 4.1 advocates, as a minimum standard, that every police employee should receive the designated training within one year of employment. This training has been set at a minimum of 200 hours in accordance with the new state training program which is available to Indian police and has been used by the Sisseton-Wahpeton Sioux Tribe.

Police employees, in addition to standard training, should receive training in both tribal and federal law as well as instruction in areas that will help them to relate to the people in their communities, understand the police role and understand community needs in relation to this role. Instruction may have to be provided by the individual department rather than the training academy. In order to increase cultural and community awareness and bring training out of the classroom into reality, field training should supplement classroom instruction.

Individuals may have the potential to be good officers but may need extra training in particular skills. A good officer should not be lost because of a deficiency in one area if the officer has the required skills in other areas. Although large resources cannot be devoted to remedial training, the National Advisory Commission Task Force on Police (1973a:396) notes three areas where remedial services would be effective; personal problems, communication obstacles, and low training performance. Because recruitment, selection and training are expensive, they should not be wasted by dismissing a potential officer who might be assisted by remedial guidance and training. On the other hand, it is important that careful attention be given to noting deficiencies and that an accurate evaluation be made once it is believed that the individual has overcome these deficiencies. Remedial training may have to be included as part of inservice training.

In addition each police agency should instruct every police employee on its policies and procedures. The Michigan Law Enforcement Officers Training Council recommends that local training include agency rules, regulations, policies, forms and reporting procedures, local judicial procedures, local government, local ordinances, agency emergency plans and local awareness. (National Advisory Commmission, 1973a:396).

Part of this familiarizing process will be facilitated when agencies comply with other portions of the standard, including coached field training and rotation. Some agencies provide training and certification of a training coach, i.e., New York City and Dade County, Florida. Smaller departments

should at least utilize the more experienced and capable officers for this purpose. Rotation will offer familiarity with all facets of police work and the department and help familiarize the officer with the community.

It is not enough to hire what the agency feels is a qualified individual, provide training and hope for the best. Follow-up is necessary and is one of the easiest portions of the standard to be implemented. Further training needs can be isolated for special attention.

When an agency puts a person in a police uniform, it puts its reputation and the welfare of many individuals on the line. It is the responsibility of the police agency to provide the training that an officer needs, not only at the outset, but continually as new functions and tasks must be performed.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.
Bureau of Indian Affairs.
Tribes.

B. Administrative Actions:

The police agency chief, captain or agency special officer should assume primary responsibility for insuring that this training is made available and that training requirements are satisfied.

Training requirements should be made a part of official police agency policy. This would be the responsibility of the police chief, captain or agency special officer and any appropriate supervisor or supervisory body.

C. Funding:

Funding for training purposes should be included as part of the police agency's budget or obtained through the BIA and LEAA.

Reservations Standard 4.2

Public Relations and Communications Training

Every Indian police agency should develop and improve the interpersonal communications skills of all officers. These skills are essential to the productive exchange of information and opinions between the police, other elements of the law and order system, and the public; their use helps officers to perform their tasks more effectively.

1. Police officers should be encouraged to attend district council meetings in order to obtain some input from the community for a better understanding of community needs as well as some public input about that which the community feels is the proper role of law enforcement in that community.

2. Indian police agencies should bring in consultants who are familiar with the culture and needs of the Indian communities to work with police to develop interpersonal communications skills.

3. Every Indian police agency should develop programs such as workshops and seminars that bring officers, other police personnel, Indian court personnel, personnel from other elements of the law and order system, and the public together to discuss the role of the police and participants' attitudes toward that role.

Commentary

Police administrators state that officers are unable to perform their jobs in the most effective manner because of insufficient funding, equipment and personnel. Certainly these are a part of the problem but only a part. Citizen complaints about police attitudes and brutality indicate that additional resources will not solve law enforcement problems until officers learn to cope more effectively with the everyday problems encountered on the street:

> The entire approach of police training must be reappraised and redirected towards an evaluation of the function of the patrol officer as the one who meets the sensitive problems in the first instance and determines to a larger extent whether they shall remain family squabbles and street gatherings or grow into homicides and full-blown riots. The guiding question must be this: How can the patrol officer be more adequately trained to deal with the routine situations which have precipitated the problems police face today? (Vandall, 1971:549).

In order to effect a solution, Indian police officers must increase their awareness of and sensitivity to the needs and sentiments of the people they serve. In addressing this problem, the standard urges officers to attend district council meetings in order to learn the feelings of their communities. A trained consultant who is familiar with the needs and culture of the Indian community should work with police officers in order to help them to develop their sensitivity to various lifestyles and groups as well as their ability to communicate as participants in the community. Indian police should also participate in open seminars with Indian court personnel and other law and order personnel as well as the public in order to establish a better understanding of their impact on and relationship to the community.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:

By memorandum or some other procedure, the police chief, captain or agency special officer should encourage officers to attend district council meetings. The police chief, captain or agency special officer should take primary responsibility to obtain the services of a consultant in interpersonal communications. Assistance in doing so may be obtained from local colleges or other schools, the BIA or relevant Indian organizations. The police chief, captain or agency special officer should also initiate and seek training opportunities and appropriate workshops in interpersonal communications and should encourage or initiate workshops designed to bring the public and the law and order system together for purposes described in this standard.

C. Funding:

Funding may be needed to obtain the services of an interpersonal communications consultant as described above.

Reservations Standard 4.3

Inservice Training

Every police agency should provide for annual and routine training to maintain effective performance throughout every sworn employee's career.

1. Every police agency should provide formal inservice training annually to sworn police employees up to and including chiefs, captains and agency special officers.

This training should be designed to maintain, update, and improve necessary knowledge and skills. Where practicable and beneficial, employees should receive training with persons employed in other parts of the law and order system and local government when there is a common interest and need.

2. It is recommended that the police chief, captain or agency special officer take responsibility to set up inservice training. Every effort should be made to locate and utilize training materials and resource persons both within and outside the community in setting up periodic inservice training programs to meet both routine and specialized training needs. In order to utilize training resources to their fullest and lessen the burden that individual agencies must bear in financing inservice training, efforts should be made to share and combine training resources among police agencies.

3. Every police agency should insure that the information presented during annual and routine training is included, in part, in promotional examinations and that satisfactory completion of training programs is recorded in the police employee's personnel folder in order to encourage active participation in these training programs.

Commentary

The National Advisory Commission (1973a:404) notes that, "Inservice training requires a commitment by the police chief executive to maintain employee effectiveness by providing training to update and improve job knowledge and skills." Subject matter varies, but may include such areas as changes in the law, specialized field procedures, evidence collection, and weapons use. Madison, Wisconsin divides its programs into two sections: the first is for all participants; the second is divided into patrol officer, investigator and supervisor categories. Inservice training is not just for larger departments. All police officers should consistently work to improve and update their skills. The BIA has acknowledged this need by offering short-term courses to local Indian police personnel. When a small department lacks sufficient training resources, inservice requirements may be satisfied by utilizing the facilities and resources of appropriate training programs elsewhere.

In order to diminish the costs of inservice training, the standard encourages agency chief executives to make use of easily accessible resources. These may include audio-visual materials available through the State, the library, a government program or universities. Speakers from local and surrounding communities could be recruited. An individual from the Public Health Service might be asked to offer instruction in first aid. Area lawyers could conduct seminars on changes in the law and criminal procedures. Community colleges and adult education programs could be drawn upon to provide classroom facilities, instructors or other resources. The agency chief executive would be responsible for pursuing these and other resources.

Finally, to encourage participation in further training, participation should be a permanent part of the employee's record and this training should be included in the design of promotional examinations. The inclusion of inservice training records can act as a motivational factor and would impress upon the employee the importance of inservice training.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:
The implementation of promotional examinations that reflect inservice training should come at the initiative of the tribal police chief and the BIA captain or agency special officer, probably with the approval of supervisory authorities.

C. Funding:
Funding should be provided for the purpose of obtaining training resources when they are not available on a loan or volunteer basis. The BIA and LEAA would seem to be the most likely funding sources in this case.

Reservations Standard 4.4

Police Additional Formal Training Requirements

Adequate formal police training should be made available to every sworn police employee.

1. Cooperative design and use of police training programs should be encouraged to satisfy training requirements.

2. Every Indian police agency and department should develop means for bringing necessary training to their employees when it is impractical or inefficient to bring these employees to the nearest training center or academy.

3. Cooperative efforts should be made to share and combine training resources among agencies and departments and to share and communicate common problems and effective solutions.

4. The BIA and tribal governments should encourage police agencies to participate in specialized training offered through academic institutions, governmental agencies, and professional and business organizations.

Commentary

This standard is an assertion of the responsibility of police agencies to bring adequate, formal police training to every sworn police employee. Since the problems of funding and logistics make this a difficult task at times, a great deal of ingenuity and dedication may be needed on the part of the police chief, captain or agency special officer in providing quality training to all police personnel.

In order to accomplish this task, agencies should make efforts to cooperate with other agencies in locating, designing or utilizing training programs and thus meeting training needs. This may involve discussing common training problems, co-designing or sharing training manuals, firms or other materials, sharing information sources, staging joint seminars or cooperatively utilizing skilled personnel for training pur-

poses. An internship exchange program could be part of this cooperative effort.

The agency chief executive has the general responsibility for bringing necessary training to the employee when the employee cannot be sent to training programs elsewhere. This latter approach should be used only on the condition that adequate instruction will be provided.

Training requirements may be satisfied through other available educational programs. The agency police chief executive should investigate and work to encourage the accessibility of police courses near or on reservations through adult education, community colleges and USD, as well as other universities, colleges and vocational schools in the State. Sources for the relevant training of both police and nonpolice personnel may be discovered on a local level. Relevant training obtained in this way would possibly include native language instruction, reading and writing skills, interpersonal communications, problem-solving techniques and first aid. In addition the South Dakota Criminal Justice Training Center offers additional formal law enforcement training courses as does the BIA.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.
Bureau of Indian Affairs.
Tribes.

B. Administrative Actions:

The police chief executive should take primary responsibility to insure that agency personnel are trained. Supervisory bodies, such as the BIA or the tribes, may take responsibility in this matter by authorizing training, authorizing financial support or endorsing this training in the tribal law and order planning process. Additional formal training has previously been offered by the BIA and the State.

The police agency chief executive would also be involved in implementing cooperative training efforts.

C. Funding:

Appropriate funding sources include the BIA, LEAA and the tribes. Cooperative training efforts may not require additional funding, or funding needs may be decreased by sharing costs among two or more police agencies.

CHAPTER FIVE

POLICE RECORDS AND REPORTING PROCEDURES

Reservations Standard 5.1

Police Reporting

Every Indian police agency should establish procedures that will insure simple and efficient reporting of criminal activity, assist in criminal investigations, and provide complete information to other components of the criminal justice system.

1. Every police agency should publish the circumstances which require an officer to complete a report, and should provide printed forms for crime, arrest, and other reports. Such forms should have enough appropriately headed fill-in boxes and companion instructions to assist the officer in obtaining and reporting all necessary information.

a. There should be a forms control procedure which subjects every departmental form to initial approval and periodic review to determine if the form's use is appropriate and the information called for is necessary. This approval and review would be the responsibility of the tribal council or its delegated authority.

b. Field reports should be as simple as possible to complete, and their design should permit systematic collection of summary and management data.

2. Every agency should immediately consider adopting policies that allow reports of misdemeanors and miscellaneous incidents to be accepted by telephone when:

a. No field investigation appears necessary; and

b. The efforts of the patrol force would otherwise be diverted from higher priority duties.

Commentary

The method and accuracy of police reporting are important to a police department in a number of ways. We have already cited the need for accurate and consistent reporting in conjunction with another standard, that concerning the fulfillment of deployment and personnel needs. Unless criminal activity is reported consistently and uniformly, a police department cannot accurately determine the extent and type of criminal activity in its jurisdiction and variations according to locale, age group, sex, time of day, days of the week or seasons of the year. Without such information, a police department cannot obtain an accurate picture of its deployment needs or establish the most effective system to meet those needs.

The accuracy and consistency of an agency's reporting procedures will have an effect on the law enforcement and criminal justice components (tribal, state and federal) with which it must deal. For example, the future of a prosecution will depend in part upon the type and accuracy of the information that has been gathered and reported by the Indian police agency at the time of the incident. The information in the report should be of such quality that the court may depend upon its accuracy and thoroughness.

In order to insure that reporting is accurate and thorough, the department has a number of responsibilities. The department should supply clearly written guidelines for report writing. Instruction in report writing should be thoroughly covered during preparatory training and reviewed during in-service training. It is not enough that an officer knows that a report should be completed. The officer should know when a particular report should be used, how it should be completed, what types of information are necessary or relevant and why a report is needed in each case. In order to make this operation efficient and uniform, standardized report forms should be provided. Forms should be clear and simple. Instructions should be brief. There should be no necessity for lengthy narrative. Fill-ins should be concise and a check-box system should be used where appropriate. A police officer should be spending most of his/her time in patrol and investigation, not in writing reports.

The police agency should conduct a regular review of its reporting procedures to insure that forms are adequate and that officers are filling them out properly. An agency that avoids this task risks losing information that may be valuable or necessary at a later time. A report review process should be established to provide the department with a means for scheduled review and control of all police reports. Outdated or insufficient forms should be revised. The Task Force recommends that the tribal council or its delegated authority insure that this forms review procedure is accomplished on a periodic basis.

Section 2 of the standard recommends the consideration of a telephone reporting procedure when no investigation appears to be necessary or when police would have to be diverted from higher priority duties. Because of a frequent shortage of officers and because of the land area that tribal and BIA police must cover, this system would be helpful on reservations. A telephone reporting procedure would cut travel time, lessen costly delays and enable the agency to utilize its officers more efficiently.

At the same time the community is entitled to prompt, professional service. The public should not be left with a feeling that their calls have been ignored or handled inappropriately. Persons in charge of receiving calls should be trained, sworn police officers with the ability to understand the police function and the nature of an incident and the ability to screen calls and to determine whether or not they are of a non-emergency nature and appropriate for telephone handling. Periodic follow-up should occur to check the accuracy of these determinations.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.
Tribes.

B. Administrative Actions:

The agency police chief, captain or special officer should take the initiative to implement or recommend to supervisors police report form changes as necessary.

The tribal council or its delegated authority would be responsible for developing and implementing a forms control procedure as outlined in the standard.

Implementation of a telephone reporting procedure is also the responsibility of the agency police chief, captain or special officer.

Reservations Standard 5.2

Basic Police Records

Every Indian police agency should immediately establish a records system that collects crime data and records operational activities so crime conditions and the effects of agency operations can be systematically evaluated.

1. Every police agency should develop and maintain a "reportable incident file" based on agency needs that contains documentation on all crimes; essential noncriminal incidents such as missing persons, lost and found property, suicides, and accidental deaths; and, where appropriate, traffic incidents.

2. The BIA and tribal governments should require their police agencies to contribute to, and maintain access in, a summary dossier file naintained by a designated agency. Summary dossier files should contain an FBI fingerprint card, state, tribal and federal individual record sheets, an accurate and up-to-date arrest disposition record, photographs, booking forms, arrest reports, and requests from other agencies for notification of arrest.

Commentary

Police records, such as the reportable incident file, have been called the "official memory" of the police organization. (National Advisory Commission, 1973a: 576). Only through the collection and retention of information on each type of incident reported can the agency determine the effectiveness of its operations, measure workloads, allocate resources and plan budgets. This standard calls attention to the need for BIA and tribal police to keep records of their operational activities. Each agency should have a reportable incident file which documents and provides necessary information concerning incidents handled by the agency. In order to provide a useful data base, information should be reported consistently and uniformly for every incident and handled and filed by an individual who is well-trained in storing and locating information as needed.

The BIA presently completes both monthly and annual reports in which comparisons are made with incidents in both the previous month and the previous year. Such compiling of data on a periodic basis is recommended, as it allows the agency to note changes in incidents reported and can give the agency some idea of its effectiveness in handling some types of crime on a month to month basis. Without periodic tabulations the agency must either undertake an extensive tabulation project when it wishes to obtain data or it must guess at these figures. Neither method is cost effective.

Most agencies maintain summary dossier files. However, many of these are incomplete in terms of identifying data. For example, an agency that does not have fingerprints on a missing suspect must waste time running a fingerprint check through state or federal authorities. If the fingerprints do not match, time has been lost pursuing the wrong suspect. Incomplete dossier files may result in false arrests. Also, when identifying data is incomplete, exchange of information on the tribal, state or federal level is impaired.

Therefore, each dossier file should contain basic identifying data, such as fingerprints and a photograph. Arrest and disposition data are also standard requirements.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:

The police agency at the initiative of the agency chief, captain or special officer should develop a records system, a reportable incident file and summary dossier files.

Administrative changes would be needed only in developing rules of procedure at the agency level for maintaining these files.

C. Funding:

Funding may be needed for fingerprint, record-keeping or photography equipment and for supplemental training in the use of these. The BIA and LEAA should be checked as potential funding resources.

CHAPTER SIX

BIA AND TRIBAL POLICE-COMMUNITY RELATIONS

Reservations Standard 6.1

Public Input into Police Policy

Indian police agencies should provide for more citizen involvement and input to help establish priorities and express ideas about community needs.

1. Public hearings should be held on at least a quarterly basis to obtain citizen involvement. These hearings should be publicized.

2. The chief police officer or a designee should be present at these meetings to receive citizen requests, complaints or suggestions.

3. As a part of the open hearings a police agency should identify its specific response to earlier citizen requests, complaints or suggestions and further publicize these through news media on the reservation.

4. Reservation police agencies should annually review priorities for the allocation of police personnel, equipment and other resources to insure that the allocation corresponds to the expressed present day citizen needs and provides simultaneously for effective law enforcement.

Commentary

Indian police agencies must become responsive to community needs. Too often Indian people feel that police activities do not adequately meet the needs or reflect the best interests of the community. They may also be frustrated by the lack of a meaningful method for making their feelings known and affecting police policies.

However, police cannot meet nor can they know the needs of the community unless some vehicle is developed through which the public can have input into police policy. The public has the right to be heard and the police have an obligation to listen. Law enforcement is mandated by the people only as a direct response to the community's needs for protection and public order. When police are unable, unwilling or micinterpret and thus do not meet the needs of the community, something of the validity of the police function is lost.

According to the standard, public hearings should be held regularly, but at least on a quarterly basis. in order to give citizens a chance to express their ideas, complaints and opinions. It would be for the tribal governments to choose the vehicle for these hearings. Tribal council meetings, district council meetings and regular public meetings specifically for this purpose are among the options. In all cases these meetings and their purposes should be well publicized in advance to allow citizens and participants time to prepare and attend. Hearings may be characterized initially by negativism and poor attendance. Yet experience has shown that when the meetings are supported and continued, attendance increases and more and more constructive ideas and suggestions emerge.

All law and order personnel should be encouraged to participate, since the police function is so closely involved with that of probation, corrections and the tribal court. The standard does specify that the police chief executive or a designee should always be in attendance. However, police-community relations is the responsibility of all agency personnel. Every individual within the agency and every activity or program of the agency does have a bearing on the agency's relationships with the public. Therefore, all police officers and agency personnel should be encouraged to attend,

A crucial component of an agency's relationship with the public is the credibility of the police-community relations approach. This credibility involves the believability and consistency of the agency's efforts to improve its relationship with the public and meet the needs of the community. This standard looks toward efforts which are more than mere public relations. Public relations refers to efforts at image-building without any real intention or willingness on the agency's part to institute some change or disrupt the status quo. The agency should clearly indicate its willingness to make adjustments in response to the needs of the community. In order to do so, the standard prescribes two specific courses of action. First, as a part of the open hearing, the agency should identify the concrete action it has taken in response to earlier complaints or suggestions, and these should be generally explained to inform the public of the results of their input during the earlier meeting. Also, in light of citizen input, the agency should annually review its priorities for the allocation of police resources and make adjustments which seem more in line with the law enforcement and service needs of the community, while at the same time taking care not to impede effective law enforcement.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:

The holding of public hearings is the responsibility of tribal government. However, the police chief executive should encourage the holding of these hearings through input to the law and order committee, the tribal chairperson and/or the tribal council. The police chief executive is directly responsible for police attendance at these meetings and has the responsibility to attend or appoint a designee. The police chief executive should attend in person as much as possible. The police agency should take responsibility for publicizing the nature of these meetings unless this responsibility is assumed by the tribal government or the districts.

The police chief executive should take direct responsibility for implementing policy changes in response to input derived from these meetings and for publicizing these changes. The police chief executive should also take responsibility for the annual review of priorities for the allocation of police resources and for implementing policy changes which would insure that resource allocation corresponds to expressed community needs.

Reservations Standard 6.2

Public Education and the Police Function

Each Indian police agency should educate the public concerning its authority, functions and services. Police agencies should consider the following activities to educate the public regarding police functions and authority:

1. Regular use of the media;

2. Presentation of programs in schools, tribal and social areas;

3. Indian police agencies should also promote an open and cooperative attitude in responding to citizen inquiries and suggestions.

Commentary

Some of the difficulties which impede communication between the police and the public stem from misconceptions or misinformation regarding the activities of the police. Despite the fact that police are so visible and so much a part of everyday life, most people know very little about the limits of police authority, the nature of their activities, the rules that govern police or the pressures, beliefs or organizational constraints which cause them to operate as they do. In order to clarify these points, the police agency has the responsibility to inform the public about its authority, functions and services. The standard suggests that regular use of the media and presentation of programs to schools, tribal organizations or social organizations are two means which the police can use for public information purposes. The media should not be used only to highlight a single police activity or to comment on an individual case. Available media should be used to expose the public to the variety and realities of police activities on the reservation and should provide in-depth information and insight into the nature of police authority and police functions. In addition, the agency should promote a cooperative attitude on the part of officers in answering questions, responding to citizen suggestions and generally helping the community to understand the police role. This cooperation may cut down on citizen complaints, while increasing the practicality and applicability of citizen suggestions.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:

Public education activities should be instigated at the agency level through the police chief executive. The police chief executive should also establish and maintain contact with the media for its contribution to the agency's public education efforts. Certain policy changes may be needed to encourage officers to cooperate with citizens who make inquiries or suggestions. The attitude of the police chief executive and department personnel should support such cooperation.

C. Funding:

Some additional funding may be necessary to implement public education programs and a limited reallocation of personnel resources would have to be made to permit officers to participate in more formal public education programs. Funding should be provided in the agency budget. However, the costs could be expected to be minimal.

Reservations Standard 6.3

Police Relations with Young People

Each Indian police agency should place special emphasis on youth involvement and communications and on establishing programs to improve police-youth relations.

1. Police should visit schools and organizations attended by all ages to familiarize children and teenagers with who the police officer is and what the duties of the police officer are.

2. Police officers should attempt to involve children in this learning process through such programs as:

a. Cadet programs;

b. Ride-along programs;

c. Youth patrols to involve children who may often be in conflict with police through such activities as curfew patrol;

d. Recreation programs or outings sponsored by or involving police; and

e. Tours of police facilities.

3. Programs should be implemented to make parents aware of the special emphasis by the police agency to improve police-youth relations.

4. Parents should be informed as to the laws which affect their children and their legal responsibilities for their children.

Commentary

To many Indian young people the police may symbolize a punishing or controlling force. When police and young people do not communicate, or when communication occurs only when police are acting in an official capacity or position of authority, this negative image of police is maintained and perpetuated. If this image continues into adulthood, communication problems between the police and the community may also continue.

Because problems do exist between reservations law enforcement and youth and because these problems have not received the attention they require, the Reservations Task Force has designed a standard to deal in particular with improving police relations with young people. In response to a need for young people to understand the nature of police activities and the police role, police officers should visit with school classes and other organizations attended by children of all ages in order to make themselves familiar with young people on other than a characteristically formal basis and to answer questions. Young people also need an opportunity to express frustrations with law enforcement and to have certain ambiguities clarified. If police officers are to work effectively, especially in terms of prevention and helping young people who get into trouble, they must know how they are perceived by all age groups and where youth problems lie. Some problems may be solved simply by clearing up certain misunderstandings about the activities of police.

Learning through participation is one of the best ways to facilitate communication and educational goals. Involving young people in police or police-sponsored activities is a desirable way to familiarize youth and teenagers with police officers and the activities of law enforcement. The standard recommends that police officers facilitate this learning and acquaintanceship through cadet programs, ride-along programs, youth patrols and/or tours of police facilities. These activities are not only educational, but they can also promote an interest in, as well as an understanding of, the functions and need for law enforcement. These activities offer a means of bringing youngsters who are habitually in trouble into more positive contacts with police. Recreation programs and outings, either sponsored by police or in which police officers

are involved, are recommended to give youth and police officers a chance to relate on an individual basis outside traditional roles. Participation by police officers will also give children and teenagers an indication that the police officer cares about young people and is not interested in them only for the purpose of punishment and control.

The police agency should communicate its efforts in this area to parents as well. Because parents are concerned about the activities of their children and have fears concerning their children's involvement with, as well as treatment by, the police, this information could result in better relationships with parents, greater respect and support of police by parents in front of their children and increasing community support and/or sponsorship of police-youth activities.

Parents must learn that laws apply to young people as well as adults. Many parents do not have a clear understanding of the ways in which the laws apply to their children or their legal responsibilities as parents. Parents may resent the actions of officers in enforcing laws against their children. When parents are in some way also liable, because of the minor status of the child, the issue becomes even more confused and further hostilities may arise. Such incidents tend to impair police-community relations. In response to this dilemma, the standard advocates that Indian police agencies devise some means of educating parents as to the laws affecting their children, the effects of such laws on children and the legal responsibilities of parents under such laws. Conflicts between youth and the law will undoubtedly continue. Although it may be too much to say that such educational efforts could have a preventive effect, educational efforts may at least prevent some confusion and resentment when these situations do arise.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:

Initiation and implementation of the policies established by this standard belong initially with tribal and BIA police agencies. The police chief executive or a designated officer should work with schools and youth organizations to set up visits by and programs with police officers. The reasons for and importance of such activities should be explained to school authorities. The police agency at the initiation of its police chief executive should establish policies and procedures for the implementation of formal programs as described in section 2 of the standard. Formal programs, such as cadet, youth patrol or ride-along programs, should be governed by written departmental policies.

Agency action and change in or development of policies are necessary to implement the legal education program for parents discussed in the standard. The agency police chief executive should design or locate a model for such a program. Agency personnel should be involved in running the program and in program instruction, although other sources of instruction, such as tribal judges or legal aid, could be brought in as well.

C. Funding:

Programs requiring funding, such as the cadet program, may need to be submitted to the tribal council for approval. Funding may also be required for insurance purposes. Attempts by the agency to solicit equipment or donations may be advisable in establishing recreation programs. However, either the tribe or the police agency should fund these until public support can be established and maintained.

Reservations Standard 6.4

Officer Attitudes, Conduct and Community Relations

Indian police agencies should take steps to insure that individual police officers exhibit an attitude toward the public which is impartial, professional, noninflamatory, and cooperative.

1. Selection of police officers should include an evaluation of the officer's attitude and maturity to insure that the officer possesses the qualities described above.

2. Promotion of officers should reflect a consideration of the extent to which the officers have been able to conduct themselves in the manner described above.

3. Supervisors should insure that officers are assigned to duties that are suited to their abilities in dealing with varying age groups as well as differing citizen contact situations.

4. All reservations police officers should receive special training through their departments in interpersonal communications as well as the handling of situations such as but not limited to disorderly and abusive conduct, public intoxication, traffic offenses, juvenile offenses and domestic disputes. Procedures for the proper handling of such situations should be outlined and supplied to officers in written form.

Commentary

Each officer in day-to-day encounters with the public has the power to affect the police agency's image and relationship with the community. Thus every officer has a primary, individual responsibility for police-community relations. The strong community relations of an agency can be undone by just one or two officers who abuse their authority, fail to cooperate with the public or in any way act in an unprofessional manner. Police-community relations cannot be delegated, therefore, to one unit or to one individual. Slowly police administrators are becoming aware that police-community relations are the responsibility of the entire agency.

Standard 6.4 encourages police agencies to take steps to insure that the kind of personnel who serve as officers have the ability to handle themselves with the public in an impartial, professional, noninflamatory and cooperative manner. To do so first demands careful screening and selection of police candidates to insure that they can handle themselves professionally even in stressful situations. Any promotion procedure should also consider the extent to which the officer has exhibited these qualities in handling day-to-day duties. The agency should emphasize the importance of a mature attitude and professional conduct by considering for selection and promotion those individuals who have consistently conducted themselves in this manner.

Some officers, because of their personalities, interests or backgrounds, may be better suited to work with some age groups than with others. Although an officer should be able to function effectively in all citizen contact situations, the police agency should give some consideration to an officer's interests and abilities in making duty assignments. For ex-

ample, an officer who likes children or one who has done youth work may be a good choice for assignment in an area frequented by young people.

The need for special interpersonal communications training has been discussed in the training section of these standards. However, because the importance of interpersonal communications training should not bt underestimated, the Task Force has chosen to emphasize it again in the form of another standard. All officers should receive interpersonal communications training. This type of training enables officers to learn how they "come across" to people, how they are perceived as officers and the ways in which they can make their communication more effective.

Special emphasis should be placed on police officer training in the handling of various problem situations. Only a few of these, such as disorderly conduct, public intoxication, traffic and juvenile offenses and domestic disputes, are mentioned in the standard. The intention is not to limit training to the handling of these alone. Any situation involving citizen contacts, which is not clear cut and which offers the potential for a great deal of police discretion, should be the subject of such training. This training should help the officer to handle in the most effective manner possible situations which are uncertain and therefore vulnerable to abuse and mishandling. Many departments have set down policy guidelines for handling these types of discretionary situations. This standard recommends that tribal and BIA police also establish written procedures to guide the conduct of their officers in these situations.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.
Bureau of Indian Affairs.
Tribes.

B. Administrative Actions:

The police agency, through initiation by the police chief executive, has the primary responsibility for implementing this standard. In a case where a governing or administrative body other than the police chief executive is included in procedures for selection and promotion, this body should also adopt the recommendations outlined in sections 1 and 2 of this standard. Agency policy changes may be needed in terms of criteria used for the selection, promotion and assignment of police personnel.

C. Funding:

Funding through the police agency budget may be necessary to implement the training portion of this standard.

Reservations Standard 6.5

Relationships Among Law and Order Agencies

All components of tribal law and order systems should make an effort to understand the functions and problems of the other components of the system and make an effort to work more effectively with one another. The public image of the law and order system might be enhanced.

1. The responsibilities of each law and order component should be clearly delineated and circulated among all levels of the law and order system.

2. Police, courts, corrections and prosecution personnel should meet at least semi-annually to discuss problems, make suggestions and work out mutual solutions.

3. Indian court judges should be involved in the inservice training of police personnel.

Commentary

The various agencies of a reservation's law and order system are interdependent. As a case is processed from arrest through the court to incarceration, the handling of the case by one agency will affect the actions of another. As a system, these law and order components cannot accomplish their tasks effectively, thoroughly and efficiently unless there is communication and coordination among them. Each agency must become aware of its impact on the other agencies of the law and order system.

In order to increase coordination and communication within the system and at the same time to help improve its image with the public, this standard recommends that steps be taken to inform each law and order component of the responsibilities of all the others. To encourage relationships that facilitate the interchange of views and information, as well as mutual problem solving, the standard recommends that police, court and corrections personnel meet at least semi-annually for this purpose. However, when possible more frequent meetings are advisable.

Finally, because the activities of the police most profoundly affect the courts, both in terms of case processing and in terms of paper work and other administrative matters, it was felt that Indian court judges should be involved in the training of police personnel. Instruction would include, but not be limited to, the necessity for the submission of certain kinds of forms to the court, procedures for filling out these forms and the necessity for specific and complete information.

Implementation

A. Agencies Involved:
All law and order agencies.
Tribes.

B. Administrative Actions:

A central personnel or law and order committee should be responsible for developing and circulating descriptions delineating the functions and responsibilities of each law and order component. The respective police chief executive, chief judge, prosecutor and corrections administrator(s) should arrange meetings between law and order personnel. These individuals should arrange the meetings on a schedule that will enable all to attend. When absence cannot be avoided, however, a designee who can speak for the agency should be sent. The police chief executive should take the responsibility for including Indian court judges in the training of police personnel.

Reservations Standard 6.6

Requests for Personnel

A priority for additional police personnel to work in the area of police responsiveness to community needs should accompany the general request for additional police personnel on reservations.

Commentary

Tribal and BIA police agencies are presently understaffed. In addition these officers are called upon to perform duties not expected of other police officers. Added to their specialized and routine tasks are duties related to youth work, crime prevention, alcohol rehabilitation, rescue work and calls for routine services. Undoubtedly increased community involvement and community relations will further tax the resources of police agencies. Yet it has been recognized that such activities are crucial to their maximum effectiveness and vitality. Therefore, the standard emphasizes the need to employ additional police personnel as part of an overall agency effort to increase police responsiveness to community needs. This standard further specifies that this need should be emphasized in any general request for additional police officers. The standard officially recognizes that maximum community relations efforts require sufficient personnel to effectively satisfy the recommendations discussed in the previous standards.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:
Responsibility for the implementation of this standard would rest with the police agency chief, captain or agency special officer for the development of annual budget requests as well as any special requests for additional police personnel.

CHAPTER SEVEN

POLICE EQUIPMENT

Reservations Standard 7.1

Police Uniforms

Every tribal and BIA police chief executive should immediately develop and designate complete standard specifications for apparel and equipment to be worn by every agency employee when performing the duties of a uniformed police officer. To deter criminal activity, uniformed police officers should be highly visible, easily identifiable and readily distinguishable from other uniformed persons. Every officer's appearance should reflect favorably on the police agency and profession; however, to insure maximum efficiency, this should not be accomplished at the expense of physical comfort.

1. Every tribal and BIA police chief executive should consider seasonal changes and climate when developing the agency's standard police uniform.

2. Every tribal and BIA police chief executive should insure that the agency's police uniform identifies the wearer by name and agency, and makes the wearer plainly recognizable as a police officer. Such items should be visible.

3. Every tribal and BIA police agency should conduct daily uniform inspections to insure that every officer's appearance conforms to agency specifications and reflects favorably on the agency and the law enforcement profession.

4. The agency should furnish all required items at no cost to officers. Continuing conformity to uniform standards and appearance should be insured by regular replacement of uniforms or a uniform allowance.

5. Every police agency should furnish and replace at no cost to officers the sidearm, ammunition, and auxiliary personal equipment specified by the agency. Replacement by the agency should be limited to equipment that is defective or damaged during the performance of duty, as well as equipment unserviceable after normal wear.

Commentary

Police officers wear uniforms both as emblems of their positions and as symbols of the agencies they represent. The design of the uniform may vary. However, the design should not detract from the major purpose of a uniform, which is to identify the role or function of the person wearing it. Because a high level of visibility is desirable, particularly for the benefit of persons who require police services, standards of uniformity should be maintained and should be specified in writing by the police agency.

A number of factors concerning uniforms have been outlined in the standards. A uniform, though it is distinctive, need not be uncomfortable. The police agency should consider climate variations when specifying the uniform of its officers. Cooler, short-sleeved shirts and uniforms of lightweight material may be worn in the summer, while long-sleeved shirts and regulation jackets are more appropriate for winter wear. These variations should be standardized to provide for desired uniformity.

In many regions emblems, hats or special accessories may have a historical or cultural significance. Providing these accessories do not defeat the purpose of the officer's uniform, they are acceptable. They may even enhance an officer's identification with the agency or community. However, the officer's appearance should also make the wearer plainly visible as a police officer in order to avoid confusion on the part of citizens. All identifying emblems, including an officer name tag and an agency name tag, should be visible at all times. To insure compliance with the above, daily uniform inspections should be part of the agency's routine.

The standard also specifies that the agency should furnish all personal equipment and uniform items at no cost to the officer. This is usually standard procedure among police agencies. Also, this provision helps to insure uniformity and decrease the likelihood that officers will wear or carry unauthorized items. For the same reasons regular replacement of these items is the responsibility of the police agency. However, replacement of sidearms and auxiliary equipment should be limited to equipment that is defective, unserviceable or damaged during the performance of duties. Equipment that is damaged or lost due to officer negligence or misuse should be replaced at the officer's expense. Officers are therefore encouraged to take proper care of the equipment that is issued to them.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:
The police chief, captain or agency special officer is primarily responsible for developing uniform and equipment policies in compliance with this standard. According to the standard, all such policies should be distributed in written form.

Reservations Standard 7.2

General Police Equipment

Police equipment needs should reflect the unique law enforcement problems, terrain, transportation systems, communication systems and maintenance availability existing on each reservation.

1. Every tribal and BIA police agency should establish written specifications for agency-approved sidearms and ammunition to be carried by officers on uniformed duty. The specifications should include the type, caliber, barrel length, finish and style of the sidearms, and the specific type of ammunition.

2. Every police agency should insure that the officers of every automobile patrol unit are equipped with a shotgun and appropriate ammunition. An easily accessible shotgun receptacle that can be locked should be permanently installed in every vehicle.

3. Every police agency should designate all items of auxiliary equipment to be worn or carried by its uniformed officers. To insure intra-agency uniformity, the approved type, size, weight, color, style and other relevant variables of each auxiliary equipment item, along with the position on the uniform or belt where it is to be worn or carried, should be specified in writing.

4. Every police agency should initiate a program of frequent, regular equipment inspections to insure that personal

equipment items conform to agency specifications and are maintained in a presentable and serviceable condition. To insure that each officer's weapon functions properly, firearms practice should be required for all officers at least monthly, and all firearms should be examined at regular intervals by a qualified armorer.

5. To insure shooting competency, every agency's policy relative to firearms practice should require each officer to maintain a minimum qualifying score in the firearms practice course adopted by the agency.

6. Police agencies should consider replacing full-sized pursuit type vehicles currently used with intermediate-sized sedans housing smaller displacement, more economical engines.

7. Police agencies should evaluate their needs and give consideration to the use of vehicles which can be of dual purpose in nature or can answer a specialized need due to terrain or weather conditions. These could include but would not be limited to 4 wheel drive vehicles, van type vehicles, snowmobiles and water rescue equipment.

8. Every police agency acquiring ground vehicles should determine whether the acquisition should be made by purchasing, leasing or reimbursing for officer-owned vehicles. This determination should be based upon the following considerations:

a. Maintenance requirements;

b. Control problems;

c. Financing; and

d. Overall cost-effectiveness.

9. Every agency should develop a fleet vehicle safety, maintenance and inspection program to include:

a. Driver training;

b. Weekly vehicle safety and maintenance inspection; and

c. Funding provisions for major repairs as necessary.

Upon major breakdown or call for major repairs immediate determination should be made as to the cost feasibility of repair versus replacement of the vehicle. Immediate action should be taken to repair or replace the vehicle upon this determination.

Commentary

Adequacy of equipment is an area of vital concern to all law enforcement personnel. Though the variety of available police equipment is extensive, certain types of police equipment are intrinsically necessary for the day-to-day and specialized functions of BIA and tribal law enforcement officers.

It is recognized that equipment, even when adequate both in type and amount, cannot solve all or even a major portion of the problems of law enforcement on the reservation. The efficiency of equipment is affected by the adequacy of police personnel as well as the competence and training of the officers who use the equipment. On the other hand, no situation should be tolerated in which the lack of sufficient or adequate equipment prevents an officer from doing the job.

Generally the Task Force is concerned with equipment which is sufficient to enable an officer to perform the duties and services demanded in the course of both regular and specialized duties. Because geographical factors make reservation law enforcement needs unique and because these needs vary among the tribes, procurement of equipment, maintenance and training should reflect the unique law enforcement problems and individual factors related to terrain, transportation, communication and maintenance existing on each reservation.

The sidearm is crucial among police equipment. The National Advisory Commission (1973a:520) has noted a number of features which should be considered in any agency's adoption of a standard sidearm. As a defensive weapon, the sidearm must be able to incapacitate the individual on whom it is used. Authorities seem to agree that police sidearms should be at least .38 calibre, or 9 millimeters for weapons designed on a metric basis. A barrel length of 4 to 6 inches is standard, since longer barrels pose problems of accuracy. The sidearm should be nonreflective, noncorrosive and easy to clean. Revolvers should be capable of double action firing for use in a situation requiring immediate firing and should be able to be carried in the cocked position with safety. Ammunition, too, is an important variable. Ammunition should be interchangeable. Also, to guarantee quality, all ammunition should be factory loaded. All police officers should use only the types of weapons and ammunition specified by the agency.

At times a shotgun is needed by a police officer for adequate protection. In situations requiring a shotgun one should be available to the officer. The standard recommends that every automobile unit be outfitted with a shotgun. Storing the gun in the trunk or the back seat where it is not readily accessible could be disastrous. This weapon should be kept in an easily accessible storage receptacle in the front seat. Because police vehicles are frequently left unlocked, the shotgun receptacle should be kept locked.

Auxiliary equipment, such as batons, handcuffs and ammunition containers may be worn by BIA or tribal officers. In order to insure the uniformity and standardization of police equipment, the agency should specify the exact descriptions and positions of such items. Unauthorized equipment violates the criteria and equipment needs established by the agency and should be strictly prohibited.

The standard also recommends regular equipment inspections to insure that equipment meets agency specifications and is in good working condition. Efforts at equipment adequacy and uniformity cannot be effective unless subject to control. Firearms practice should be required at least monthly, and examinations by a qualified armorer should occur at regular intervals. These measures are designed to check and verify the good operating condition of firearms. In addition, because an officer may be required to use firearms at any moment, every officer should be competent with firearms and should maintain at least a minimum qualifying score on the firearms practice course adopted by the agency.

In assessing equipment needs, each BIA and tribal police agency should give consideration to the factors of cost, efficiency and unique factors warranting specialized equipment. Because of the distances that Indian officers must cover, coupled with rough terrain, the police vehicle is a particularly important piece of equipment.

Because most of the individuals who violate motor vehicle laws on the reservation usually live on or near the reservation or are recognized, high speed chase is not a crucial factor in the reservations' police function. Individuals who escape pursuit can be picked up later. Travel, mobility and vehicle flexibility rather than high pursuit should be considered as critical in determining vehicle needs. Because of increasing fuel and maintenance costs engine economy must be con-

sidered in purchasing vehicles. The Task Force recommends that tribal and BIA police agencies consider replacing full-sized pursuit type vehicles with intermediate-size sedans housing smaller displacement, more economical engines. Consideration should also be given to vehicles which are dual purpose in nature and better suited to the terrain and climate, such as 4 wheel drive vehicles which can easily move through snowy or muddy roads and reach occasionally inaccessible areas, van type vehicles which can be used for rescue and for carrying equipment, as well as for patrol, and snowombiles again for rougher winter weather and for reaching isolated, snowy areas. In addition, the Task Force recommends that consideration be given to water rescue equipment, since in some areas rescue needs can now be met only by calling upon outside assistance.

Although many agencies buy their own vehicles, some do lease them or reimburse officers who use their own. When a decision is made to acquire a vehicle, the agency involved should determine whether to buy, lease or procure the use of a vehicle on the basis of reimbursement. This decision should be based on the combined factors of maintenance, control, financing and overall cost effectiveness. In terms of maintenance, it should be recognized that a police vehicle is in service 24 hours a day and is thus subject to much greater wear than a normal vehicle. Control involves such factors as off-duty use of a vehicle and verification of mileage, and is mainly a consideration with vehicles utilized on a reimbursement basis. Financing involves the availability of funds to obtain or lease vehicles. If financing is required, interest rates must be considered. The size of the department and the subsequent number of vehicles required would also affect the feasibility of using one type of procurement arrangement over another. In general any procurement of vehicles should be cost effective. That is, the agency should attempt to meet its vehicle needs at the lowest price. For the sake of economy the National Advisory Commission (1973a:584) suggests that specialized vehicles which are used infrequently should be leased on an as needed basis.

Many vehicle expenditures involve costs for maintenance once the vehicle has been purchased. Misuse and the improper or irregular care of vehicles can increase these costs. Each individual officer has the responsibility to take care of the police vehicle. Improper driving habits can lessen the life of the vehicle and necessitate added repairs. Therefore, it is basic to vehicle maintenance that each officer receive training in the proper use and handling of a vehicle. This training should include some instruction in routine inspection and maintenance requirements. The officer should also be able to recognize and be aware of a situation in which the vehicle is not operating properly. The officer should also be held accountable for proper driving and care of the vehicle following this instruction.

In order to prevent breakdowns requiring major repairs, lessen costs and keep vehicles in good working condition, each vehicle should be inspected on a weekly basis for maintenance and safety purposes. Vehicles can be kept in effective operating condition for longer periods if care is taken to meet routine maintenance needs, and, thereby, major breakdowns can also be prevented. A vehicle which is out of service because of needed repairs is costly to the police agency in terms of time lost and decreased efficiency. Vehicles in this condition should not be allowed to sit idle for long periods. Upon determination of a major breakdown the agency should immediately assess the cost-effectiveness of repairing versus replacing the vehicle. When a decision has been made, the agency should act immediately to repair or to replace the vehicle.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:

The agency, through its police chief, captain or agency special officer, is responsible for establishing and distributing written policies regarding appropriate use and care of police equipment. Equipment policies should reflect standardization. Current policies that do not do so should be changed. Generally, administrative implementation of this standard is self-explanatory within the context of the standard.

C. Funding:

Additional funding will likely be needed to meet BIA and tribal police equipment needs in terms of both routine and specialized equipment. The agency police chief executive is responsible for determining these needs on the basis of the criteria mentioned in these standards. Funding should include adequate provision for replacement and immediate maintenance of equipment and the appropriate training of personnel. Funding should be provided through the regular police agency budget.

Reservations Standard 7.3

Property Inventory and Accountability

Each Indian police agency should establish a property inventory and control program utilizing existing personnel where possible.

1. This program should emphasize the need for personal accountability for all police equipment issued to individual officers.

2. Equipment lost or damaged due to officer misuse or neglect should be repaired or replaced at the officer's own expense.

Commentary

Because equipment is expensive and requires care, every officer has a primary, individual responsibility for the equipment that is issued. When the officer violates this responsibility, the officer should be held personally accountable as in any situation involving neglect of duty. In order to insure accountability, each BIA and tribal police agency should institute a program of property control and inventory. Although the details regarding the establishment of such a program are left to the discretion of the agency, this program should keep track of all agency equipment to insure its proper use, maintenance and return upon the resignation or dismissal of each officer. In conjunction with this goal, agency policy should indicate that equipment lost or damaged due to officer neglect or misuse will be replaced at the officer's own expense. Among the options available for instituting this procedure, the agency could require deductions from the officer's pay check or direct reimbursement to the agency by the officer involved.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:

The police agency, at the initiation of its chief, captain or agency special officer, should design an inventory and control program and define policies regarding equipment loss or damage due to officer misuse or neglect.

CHAPTER EIGHT

POLICE POLICY

Reservations Standard 8.1

Establishment of Policy

Every tribal and BIA police chief executive immediately should establish written policies in those areas of operations in which guidance is needed to direct agency employees toward the attainment of agency goals and objectives.

1. Every tribal and BIA police chief executive should promulgate policy that provides clear direction without necessarily limiting employee's exercise of discretion.

2. Every tribal and BIA police chief executive should provide for maximum participation in the policy formulation process. This participation should include at least:

a. Input from all levels within the agency — from the level of execution to that of management — through informal meetings between the police chief executive and members of the basic rank, idea incentive programs, and any other methods that will promote the upward flow of communication; and

b. Input from outside the agency as appropriate — from other government agencies, community organizations, and the specific community affected.

3. Every tribal and BIA police chief executive should provide written policies in those areas in which direction is needed, including:

a. General goals and objectives of the agency;
b. Administrative matters;
c. Community relations;
d. Public and press relations;
e. Personnel procedures and relations;
f. Personal conduct of employees;
g. Specific law enforcement operations with emphasis on such sensitive areas as the use of force, the use of lethal and nonlethal weapons, and arrest and custody; and
h. Use of support services.

Commentary

An examination of police work reveals that police continually confront situations in which a wide range of possibilities for action are available. Because exact rules of procedure cannot be written for every conceivable situation, the officer has frequent opportunities to use discretion in deciding which course of action to follow. Though the police are supposed to be answerable to the public, police discretion adds to the invisibility of the officer by permitting the officer to make subjective judgements about the correct procedures to follow. Unlike most organizations involving chains of command, police discretion and individual decision making usually increase as one moves down the position ladder. The patrol officer could conceivably have the most discretion of all officers in every rank.

A police officer exercises this wide discretion primarily because the officer has been given few explicit rules of procedure to follow. Although most departments do issue intradepartmental guidelines, often called general orders, few departments issue such guidelines on a satisfactory or comprehensive basis. Many departments limit these guidelines to definitions or procedures governing clear-cut situations, such as filling out forms. More and more departments are recognizing the need to formulate specific policies governing the use of force and other less clearly defined situations. Other departments have gone as far as issuing general procedural guidelines for handling such unpredictable situations as domestic disputes, handling of the mentally ill, the handling of juveniles and the handling of demonstrations. However, few departments have realized their full potential in this area.

When an agency neglects issuing clear-cut policy guidelines, it fails its responsibility to its officers, the public and itself. Any officer has the right to know what is expected. In turn, the agency should be concerned that its officers conduct themselves and carry out their duties in a manner that brings credit to the agency and to the law enforcement profession. When the police chief executive is silent in this regard, others in the agency, even the basic patrol person, may formulate policy which is not consistent with that desired by the police chief executive. In addition, the public has the right to know that there is some consistency and control of matters handled right down to the basic patrol level. Policy formulation and the formulation of intradepartmental guidelines are necessary to insure such control.

These standards are not meant to do away with all decision making and discretion on the part of individual officers. Some discretion is needed if police action is to fit the unique requirements of any given situation. However, it is also desirable to limit police discretion more than has been done traditionally and to develop officer conduct which is consistent with and answerable to agency policy. The above standards attempt to insure this by advocating that the BIA or tribal police chief executive formulate clear-cut policy guidelines for police personnel. These guidelines should be made available in written form. In addition in order to draw upon various levels of interest and expertise this policy formulation should include input from personnel at all levels of the agency and input from outside the agency through the tribal government, community organizations and the public in general. The means for accomplishing this are not specified. Some suggested means include informal meetings with agency personnel, idea incentive programs, open hearings, informal meetings with government, social service and community leaders, tribal council meetings and district council meetings.

Implementation

A. Agencies Involved:
BIA/tribal police agencies.

B. Administrative Actions:

Any administrative actions that would be necessary for implementation are explained in the context of this standard and the commentary.

C. Council Actions:

Amendments to tribal codes may be required where procedures such as those outlined in item 3 are included in tribal codes. Amendments to the codes should coincide with appropriate changes in police policies. As an alternative these code provisions could be deleted entirely in favor of vesting these policy-making powers exclusively in the police agency.

CHAPTER NINE

CROSS-DEPUTIZATION

Reservations Standard 9.1

Cross-Deputization

Cross-deputization between tribal, state and federal jurisdictions should be established for the purpose of effective enforcement of the laws of each of these jurisdictions.

1. Each jurisdiction should adopt statutes, ordinances or regulations in order to authorize and implement cross-deputization.

2. Cross-deputization should apply to all areas of the law as herein defined. Where the BIA has no authority to cross-deputize state or local officers to enforce tribal laws (a) the BIA should secure the tribe's permission as part of its cross-deputization plan; (b) the tribe should so authorize the BIA in its tribal code; or (c) the tribe itself should adopt a cross-deputization procedure.

3. Courts and prosecutors should be involved in the development of a cross-deputization plan, where possible, and should commit themselves to the impartial handling of cases involving cross-deputized officers.

4. Any cross-deputization plan should be publicized, the officers and their qualifications identified, and the reasons for cross-deputization explained. Public hearings should also be held in order to allow citizens to air grievances and uncertainties and have their questions answered.

5. Cross-deputized officers should meet the minimum training standards prescribed by the South Dakota Law Enforcement Officers Training and Standards Commission or equivalent acceptable training.

6. Cross-deputized officers should be given clear guidelines delineating the boundaries of their authority. Such guidelines should be provided by the appointing authority.

7. To further facilitate clarity in the performance of their duties, BIA, tribal, state and local police chiefs should insure that state and local cross-deputized officers become familiar with state laws. Such familiarization should occur before the assumption of duties associated with cross-deputization. In addition:

   a. Officers should have ready access to the laws in written form.

   b. The basic criminal law training as now provided by the South Dakota Criminal Justice Training Center should be expanded to include federal, tribal and state laws.

8. The appointing authority should cross-deputize only in accordance with statutes, ordinances or regulations governing such procedures.

9. When the State or a political subdivision finds law enforcement facilitated by cross-deputizing and consequently cross-deputizes law enforcement officers from other jurisdictions, the State or political subdivision should obtain or increase its civil liability insurance to protect sheriffs in their liability for the actions of those acting under their authority or to cover the actions of those cross-deputized and acting with the authority of the State or political subdivision. This insurance should be provided prior to the time that an officer assumes responsibility as a cross-deputized officer.

10. In all situations in which cross-deputization exists, the police chief executives of the respective law enforcement agencies should maintain contact and open communication for the purpose of formulating policies of mutual concern and resolving problems. This would include the development of a mutually effective deployment plan for the most efficient use of available police personnel.

11. When the cross-deputized officer is working within the additional jurisdiction he/she should be under the direction of the officer who is in charge of that jurisdiction.

12. Offenses committed within a jurisdiction should be responded to by the police agency that has primary law enforcement responsibility for the jurisdiction in which the offense was committed. This would not prevent, however, an officer properly authorized from initiating police action when time and distance would be a factor in expediting the law enforcement function.

13. Prior to any cross-deputization written agreements should be entered into between the agencies involved.

Commentary

Cross-deputization herein refers to the reciprocal granting of police authority to officers in another jurisdiction. The concern for cross-deputization arises out of the need for equitable and efficient law enforcement in areas in which jurisdictional separations may mean that a number of law enforcement agencies handle criminal matters in the same or adjacent geographical areas. Because of jurisdictional differences between the tribes and the State, it is often in the interest of law enforcement agencies representing both jurisdictions to cross-deputize their officers in order that officers of the tribe or State may assume jurisdiction over both Indians and non-Indians for purposes of arrest and delivery to the authority having ultimate jurisdiction.

Within the context of the standard, the term "State" is to be interpreted as referring to the State of South Dakota and all of its political subdivisions. The term "tribal" herein refers to those federally recognized tribes possessing law enforcement powers. The term "federal" herein refers to the law enforcement powers of the Bureau of Indian Affairs Law Enforcement Services. The term "laws" is herein defined as the laws of specific jurisdictions, which laws provide for arrest, fine and/or incarceration.

In essence, the standard intends that cross-deputization be established on a reciprocal basis between law enforcement agencies representing specific jurisdictions when a cross-deputization agreement will benefit and facilitate the interests of law enforcement within those jurisdictions. This agreement is meant to insure that no person who has committed a crime and who would normally be subject to arrest, fine and/or incarceration is permitted immunity from such action because of a law enforcement officer's inability to act in an official capacity within that jurisdiction. Cross-deputization is meant to apply to those territories in which law enforcement agencies, within the normal course of their duties, cross jurisdictional boundaries.

In some jurisdictions authority to enter into cross-deputization agreements is not clearly established or specified in a formal manner. Lack of clearly established and formal procedures for granting authority and entering into agreements may affect the validity of arrests under a cross-deputization plan. Therefore, the standard prescribes that each jurisdiction

adopt statutes, ordinances or regulations of a formal nature, and thereby specify the authority and means for implementing cross-deputization. The statutes, codes or regulations of each jurisdiction should recognize the validity of arrests taking place in a cross-deputization situation.

Occasionally a cross-deputization agreement has been established on a more limited basis than that recommended in the standard. Such a situation exists, for example, when BIA or tribal police are only permitted to exercise sheriff's powers over Indians but not non-Indians on county lands bordering the reservation. Or, the sheriff's office may only be empowered to enforce federal, but not tribal, laws on Indians within the boundaries of the reservation. These partial agreements defeat the goals of equitable law enforcement and the purpose of reciprocal cross-deputization.

Some controversy has existed over the authority of the BIA to cross-deputize state law enforcement officers for the purpose of enforcing tribal as well as federal laws. If law enforcement is a characteristic and function of government and sovereignty, then the tribes should have the authority to authorize cross-deputization. Presently the BIA has claimed a right to cross-deputize officers for the purpose of enforcing tribal as well as federal laws. However, if tribes do not in some way provide for cross-deputization, then state law enforcement officials may not be properly deputized by the BIA. In a related case the Cheyenne River Sioux Tribal Court in fact established that no cooperative agreement regarding cross-deputization existed between the City of Eagle Butte and the Cheyenne River Sioux Tribal Police due to the absence of a Cheyenne River Sioux Tribal Resolution providing for such an agreement.

Because of the issue of authority for law enforcement on the reservations, the Task Force has determined that it is important to clarify the legal basis for cross-deputization. In order to do so, the Task Force recommends that any one of the following steps be taken prior to the establishment of any cross-deputization agreement: the BIA should secure the tribe's permission to cross-deputize state officers to enforce tribal law. This should be done despite the fact that the BIA may feel it already possesses authority to do so. Since the tribe's sovereignty and its people are directly affected by cross-deputization, such a move should be part of official procedure on the part of the BIA. As other alternatives: the tribe could authorize the BIA to cross-deputize state officers to handle tribal, as well as federal, law enforcement through the tribal code, or the tribe could implement its own cross-deputization procedure.

A cross-deputization plan cannot work effectively if arrests under cross-deputization are not processed as they would be under regular circumstances. Effective operation of cross-deputization requires the cooperation of the courts and prosecutors. Within this standard the validity of arrests under cross-deputization would be assured through formal sanctioning by codes, ordinances, regulations or statutes. However, those establishing a cross-deputization plan can draw in many ways upon the legal expertise of the courts and prosecutors. In turn, these individuals should commit themselves, as part of their professional responsibilities, to the impartial handling of cases involving cross-deputized officers.

The support of court and prosecution personnel may influence general public support of a cross-deputization plan. However, citizens may oppose cross-deputization out of fear, lack of information about the officers involved or lack of information on the details of the cross-deputization plan. Citizens may be indignant or hostile to activities by officers of another jurisdiction.

Because citizens will be affected by cross-deputization, they should be able to air their grievances, questions and misgivings. The standard recommends holding public hearings for this purpose. Citizens should be given information concerning the need for and details of the plan. In addition, the qualifications of cross-deputized officers should be publicized. This will help to familiarize citizens with these officers and to reassure them about their abilities to handle their additional duties in a professional manner.

To upgrade the level of competency within law enforcement, it is expected that all state officers will be required to meet the minimum training requirements set by the South Dakota Law Enforcement Officers Training and Standards Commission. In addition, this standard requires that all cross-deputized officers meet these training standards or have equivalent, acceptable training. The basic police training course offered by the BIA would satisfy this requirement. This standard is designed to insure that cross-deputized BIA and tribal officers have the same level of training as regularly employed state officers. A like requirement for both State and reservations' officers will alleviate concern for insufficient training, which has been an obstacle to cross-deputization in the past.

Even where cross-deputization does exist, the system may be plagued by inconsistency of enforcement. Part of the problem may lie with officer uncertainty concerning jurisdictional issues and their law enforcement responsibilities in light of these issues. This lack of clarity places a heavy burden on individual officers as they attempt to determine the limits of their authority. Officers may be unwilling to risk false arrest charges, which they may feel are more likely under such circumstances.

Based on the premise that officers should be secure in knowing the limits of their authority, the standard suggests that these limits be delineated and clarified. This clarification will help to prevent neglect, as well as abuse, of authority. For similar reasons, before an officer assumes responsibility for a set of criminal laws he/she should be familiar with those laws and what is expected of him/her in relation to those laws. Therefore, a standard has also been developed to say that state and local cross-deputized officers should be familiar with tribal and federal laws while BIA and tribal officers should be familiar with state and local laws. Police chief executives should insure that this standard is met and should supply the necessary laws to their officers in written form. In order to facilitate familiarization with these laws the South Dakota Criminal Justice Training Center should extend its training program to include instruction in federal, tribal and state laws.

The standard evidences the need for formal laws and procedures for the implementation of cross-deputization. South Dakota counties have developed some procedural guidelines under the law. Yet some county law enforcement agencies have neglected to fulfill all of the requirements of these procedures. Sheriffs may believe that the use of an "informal" appointment process absolves them of responsibilities for the acts of their deputies which are associated with civil liability. However, South Dakota case law has established

that sheriffs are responsible for the duty related actions of individuals who perform law enforcement functions on their behalf, even when these persons are informally appointed. **Island v. Helmer,** 63 SD 362, 258 N.W. 812 (1935).

No longer should such abuses of law and procedure be ignored. Informal appointments or commissions threaten the validity of a cross-deputization plan and may call into question the legality of arrests by cross-deputized officers. Informal agreements may further complicate liability and worker's compensation protection. Therefore, the standard specifies that appointing authorities should enter into cross-deputization agreements only by following statutes, ordinances or regulations developed for this purpose.

Problems of liability have proven to be a major obstacle to cross-deputization. Sheriffs may be reluctant to cross-deputize officers because, under SDCL 7-12-11 (1967), a sheriff is responsible for the actions of deputies, clerks and jailors in the performance of duty.

SDCL 7-12-26 (1967) states that all judgements rendered against a sheriff or deputies for acts in the performance of duty are to be paid by the county commissioners. SDCL 7-12-26.1 (1976) empowers the county to purchase such liability insurance as the county may deem necessary for the protection of law enforcement officers However, this statute does not mandate the county to do so. Many boards choose to bond their officers instead. The counties may select this course in order to save money on insurance and to instill in their sheriffs a cautious attitude regarding cross-deputization, since, under the bond system, there is an indication that a suit could still be levied against the sheriff in addition to claims against the county. That is, the sheriff would remain liable for the actions of deputies. Hence, sheriffs continue to be reluctant to cross-deputize reservation officers and to assume the additional responsibility. Bonding has further limitations in that only certain acts of a sheriff or a deputy are ordinarily covered.

One alternative would be for cross-deputized officers to buy their own liability insurance. This solution would be unworkable since cross-deputized officers are not paid additional wages for their special services. The added financial burden would be inequitable and, no doubt, unacceptable to the law enforcement agencies involved.

If the State, counties and municipalities wish to benefit from the services provided by cross-deputization, they should assume the responsibility for the actions of cross-deputized officers by purchasing liability insurance to sufficiently cover sheriffs and cross-deputized officers. Counties desiring to establish cross-deputization with adjacent reservations should purchase additional liability insurance for sheriffs to protect them from liability under 7-12-11 and, thus, remove one of the strongest obstacles to cross-deputization. In the counties and other political subdivisions of the State, liability insurance should be provided for cross-deputized officers, unless they are covered by other means.

Another important factor in a cross-deputization system is the relationship of the cross-deputizing agencies to one another. Cross-deputization inherently involves two law enforcement organizational structures and dual channels of authority. In order for such a system to work effectively, communication channels between agencies must be opened. Therefore, police chief executives should work to air conflicts or uncertainties before they become problems which may undermine the cross-deputization plan. The fact that the actions of cross-deputized officers reflect upon each law enforcement agency also indicates the necessity for continuing communications concerning the functions of cross-deputized officers. To use both regular and cross-deputized personnel most effectively, and further to maximize the law enforcement performance of both agencies, a mutually beneficial deployment plan should be designed by the cooperating agency chief executives.

Some question has arisen as to who should be in charge of a cross-deputized officer when that officer is performing law enforcement functions in the additional jurisdiction. The standard specifies that in this instance the cross-deputized officer should be under the direction of the supervising officer in that jurisdiction. This procedure establishes clear lines of authority and responsibility for the actions of the cross-deputized officer. This procedure is proper since the functions performed by the cross-deputized officer are a direct and primary responsibility of the authorizing jurisdiction.

In addition, a further standard specifies that offenses committed within a jurisdiction should be responded to by the law enforcement agency having primary responsibility in that jurisdiction. That is, the agency within the jurisdiction should be contacted first and should be the agency to respond and to decide upon the appropriate action to be taken. However, a cross-deputized officer should be permitted to initiate action in a situation in which time and distance would prevent the law enforcement agency having original jurisdiction from acting with necessary speed. This policy maintains the primacy of the law enforcement agency within the jurisdiction. At the same time it does not interfere with the purpose of cross-deputization in facilitating and expediting the law enforcement function.

Finally, any cross-deputization agreement should be specific. The standard prescribes that cross-deputization be based on a written agreement between the agencies involved. The writing of an agreement will help to insure that proper procedures for entering into such an agreement have been followed. As part of this procedure and for insurance purposes, all participants should be identified and the limits of their authority under the cross-deputization plan should be defined.

Implementation

A. Agencies Involved:

State of South Dakota and its law enforcement services.

County Commissions having jurisdiction within or adjacent to Indian reservations and their county sheriffs' departments.

Municipal governments having jurisdiction within or adjacent to Indian reservations and their municipal police departments.

Nine federally recognized tribes with lands within South Dakota.

Bureau of Indian Affairs.

B. Council Actions/Legislation:

The tribes would conceivably need to implement code changes in terms of the following: authorizing the BIA to cross-deputize state officers to enforce tribal as well as federal laws or developing cross-deputization procedures of their own, and requiring their officers to have training at least equivalent to that required by the South Dakota Law Enforcement Training and Standards Commission. The State would need

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to enact statutes for the purpose of developing a cross-deputization procedure. Municipalities would need to develop ordinances to clarify and provide for civil liability insurance for cross-deputized officers as indicated in the standard. Cross-deputization procedures developed by the tribes, the State, counties and municipalities should be consistent with Standard 9.1, including the provision that cross-deputization be based upon a written agreement.

C. Administrative Actions:

Agency policy changes would be required of the BIA. For example, the BIA would need to implement a policy requiring that the tribes' permission be secured before the establishment of an agreement between the BIA and a state agency enabling cross-deputized officers to enforce tribal laws. All law enforcement agencies, through their police chief executivts, would be responsible for: publicizing cross-deputization plans and holding public hearings; insuring that proper procedures are followed in entering into cross-deputization agreements; insuring that cross-deputized officers have the required training before an agreement is reached; insuring that their own officers are familiar with and have access to the laws of the other jurisdiction and, as cross-deputized officers, know the limits of their authority; insuring that open lines of communication are kept between agencies; developing a mutually beneficial deployment plan; and, insuring that the cross-deputization plan is in writing and has all relevant issues clarified. As an agency, the South Dakota Criminal Justice Training Center would be responsible for implementing that portion of the standard regarding the teaching of state, federal, and tribal laws as part of its course of instruction.

D. Funding:

Additional funding may be required in order to implement the training portions of these standards, including the purchase of the appropriate volumes of the laws of each of the jurisdictions as necessary. Funding would also be necessary for the purchase of sufficient liability insurance to protect sheriffs in their liability for the actions of those acting under their authority or to cover the actions of those cross-deputized and acting with the authority of the State or political subdivision.

CHAPTER TEN

INDIAN COURT JUDGES

Reservations Standard 10.1

Educational Requirements for Chief Judges of Indian Courts

The Chief Judge of each tribal court governed by a tribal code or Indian court governed by the Code of Federal Regulations should have a law degree from an accredited law school. This degree should be obtained prior to assuming the office of Chief Judge.

1. The Chief Judge should be regularly available for administration and presiding over the tribal or CFR court on a full-time basis.

2. The Chief Judge should be responsible for inservice training of associate judges.

3. The Chief Judge should be thoroughly familiar with tribal law or the Code of Federal Regulations and have indicated such knowledge by passing a standardized examination covering the laws of the tribe.

4. Any case, civil or criminal, pending in a tribal or CFR court should be scheduled for trial before the Chief Judge upon the request of either the plaintiff or defendant.

Commentary

Chief and associate judges of tribal and CFR courts have frequently expressed the opinion that the Chief Judge should have a law degree. A number of reasons can be given to support this point of view. As demands for services have increased, Indian court systems have developed and matured. Indian courts handle a variety of cases, including criminal misdemeanors, domestic disputes, heirship and probate, motor vehicle violations, civil suits and juvenile offenses. The "Indian Civil Rights Act" of 1968 has further mandated Indian courts to safeguard the due process rights of individuals processed through tribal law and order systems. § 1302, 1303.

Because of this volume of responsibility, tribal and CFR judges assume positions of considerable power and importance. In non-jury hearings they are the ones who "hear the evidence, rule on objections and motions, resolve the facts, apply the law and ultimately reach a decision as to the guilt or innocence of a defendant." (National American Indian Court Judges Association, 1971:6). They determine if a law has, in fact, been violated and the appropriate sentence to impose. Through their interpretations of the code or the nature of a particular offense, Indian court judges may actually make law. In jury hearings, though Indian court judges may not resolve the facts, they play a critical role in interpreting laws and instructing juries as to how the law should be applied in light of the facts. In sentencing, a tribal or CFR judge may impose a fine of up to $500 and/or a sentence of up to six months (25 USC § 1302), though this is subject to some variation among tribal codes.

The Chief Judge holds a central position in the Indian court. The foremost duties of the Chief Judge are judicial, coupled with general responsibility for the conduct of the court. This includes primary responsibility for the administration of the court and the inservice training of associate judges.

In light of these responsibilities, the Task Force feels that tribal and CFR courts will benefit appreciably if the Chief Judge holds a law degree. The presence of a trained attorney would pose a safeguard against procedural violations of tribal law, federal law and due process. Because the "Indian Civil Rights Act" of 1968 offers an appeals outlet from Indian courts (25 USC § 1303), the availability of law-trained judges could prevent procedural mistakes or abuses for which the court could later be held responsible. A trained attorney would be in the best position to interpret the law and to draft and propose legislation designed to fill legal gaps within tribal codes. He/she could upgrade inservice training and act as a resource to associate judges who seek advice on law and procedure. However, the Chief Judge must also be the one who is well-versed in the laws of the tribe. To insure such knowledge the Chief Judge should be required to pass a standardized examination covering these laws.

The standard also calls for the Chief Judge to act on a full-time basis. This is in part due to the administrative and judicial demands of the position. It is preferable that the Chief Judge be readily available as a resource to associate judges.

Standard 10.2 calls for the upgraded training of associate judges. Despite this provision, a plaintiff or defendant may wish his/her case to be heard before the Chief Judge, who is a professional attorney. It is the feeling of the Task Force that this should be the defendant or plaintiff's right upon request. This provision also speaks in favor of having a law-trained Chief Judge available on a full-time basis.

Implementation

A. Agencies Involved:
Indian courts.

B. Council Actions:
For implementation purposes tribal/CFR codes will need amendments to require each Chief Judge to hold a law degree and to pass a standardized examination covering the laws of the tribe in order to qualify for that position.

A code provision could be necessary to guarantee a plaintiff or defendant the right to be heard before the Chief Judge upon request.

As an alternative, tribal/CFR courts may wish to implement this guarantee through the rules of the court.

C. Administrative Actions:
The training of associate judges by a law-trained Chief Judge is designed to upgrade inservice training. Where this is not the current practice, it should become standard procedure once law-trained Chief Judges are hired.

D. Funding:
It would be the responsibility of the tribe, through the tribal council, to employ a professional attorney as Chief Judge on a full-time basis.

Reservations Standard 10.2

Training Requirements for Associate Judges

All newly appointed or elected associate judges of tribal and CFR courts should complete a formal course of legal training relevant to their duties as judges within one year of assuming judicial office. An inservice training program should

also be provided by the court for newly appointed or elected judges prior to their assuming judicial office.

1. Formal training should include but not be limited to:

a. The ability to do legal research for purposes of finding precedent cases;

b. Knowledge of court procedures;

c. Knowledge of due process;

d. Knowledge of standard code provisions;

e. Knowledge of legislation to enable the judge to draft resolutions and make recommendations to the tribal council;and

f. The ability to draft and complete forms.

2. Inservice training may include but not be limited to:

a. Knowledge of the specific code with which the judge is working.

b. Knowledge of tribal tradition and customs as relates to their duties.

3. Prior experience as a tribal or CFR court judge may be considered in lieu of stated training requirements.

Commentary

Lack of formal and inservice training among Indian court judges has been an issue of general concern. Probably no one is more concerned than the judges themselves. Recent discussions and past reports reveal that Indian court judges are unanimously in favor of additional training. Many have described the hardships of assuming judicial office with little or no preparation for the complex demands of the court. Until expertise can be gained through experience the Indian court judge remains highly vulnerable to errors in handling judicial responsibilities, particularly in dealing with procedure and the law. Public respect for the entire court system may be greatly affected by a judge's competence and ability to handle judicial duties.

This standard addresses the need for judicial training which would prepare associate judges for their judicial responsibilities. This training requirement would fall into two categories. Newly elected or appointed associate judges would be required to complete a formal course of training within one year of assuming office. Areas to be covered would include law and procedure, as outlined in part two of the standard. Judges would be given a year to complete this training in order to avoid a training requirement which would place undue hardship on a court needing to fill a judicial vacancy immediately. The Task Force encourages efforts like those of the National American Indian Court Judges Association, which has developed a basic preparatory legal training course that is offered a number of times during the year, to enable new judges to receive training as soon as possible after employment.

The second category of training would involve inservice training, which should include though not be limited to instruction in tribal law as well as customs and traditions related to the position of a tribal judge. The inservice training should be completed prior to assuming judicial duties. It was the feeling of the Task Force that such training should be a basic requirement of the office. Completing training prior to assuming judicial office would impose little hardship in comparison to the benefits to be derived. This training could be offered at the tribal courthouse and would involve minimal travel, if any. The Chief Judge should be readily available to provide or assist in this training.

The Task Force has also recognized the value of experience as a training mechanism. Therefore, the standard provides that prior experience as a tribal or CFR court judge may be counted in lieu of one or more training requirements.

Implementation

A. Agencies Involved:
Indian courts.

B. Council Actions:

Training requirements should be included in the list of requirements and duties of judicial office set forth in tribal codes.

C. Administrative Actions:

The court should locate appropriate formal courses of preparatory training for newly elected or appointed associate judges and should establish an adequate program of inservice training, drawing on resources within and outside the court. The Chief Judge may wish to take action to encourage groups, such as the National American Indian Court Judges Association, to develop regular formal programs of basic preparatory training for new judges.

D. Funding:

The National American Indian Court Judges Association does fund Indian court judges who attend its sessions. Additional funding could be necessary if alternative sources of formal training are used.

Reservations Standard 10.3

Funds for Further Training

Funds should be made available to finance continued inservice training and to enable each judge to attend at least one formal judges' training course each year in addition to the regular inservice training. Regular salaries should continue during leaves taken for training purposes.

Commentary

Because of continual changes in law and procedure as well as the expanding role of the Indian court judge, judicial training should continue during a judge's term of office. Progress within a court system is closely linked to the advancement and increased knowledge of its judiciary. Indian court judges are in favor of continued formal and inservice training and have expressed a desire that funds be made available for this purpose.

However, without funds, particularly under present salary conditions, financing attendance at these sessions presents a burden which acts as an obstacle to further training. Therefore, within each court budget funds should be made available to finance continued inservice training and, in addition, to enable each judge to attend at least one formal training course each year. If at all possible, sufficient funds should be made available prior to attendance in order to spare judges possible financial hardship while awaiting reimbursement. Because such training would be related to the judicial function, judges should draw a regular salary while on leave for training purposes.

Implementation

A. Agencies Involved:
Indian courts.

B. Administrative Actions:

A request for training funds should be a regular part of Indian court budget requests. The courts have the initial responsibility to determine funding needs for training, though final approval would be the responsibility of the tribe or another funding source. Funds for training, once appropriated or otherwise obtained, should be administered directly by the court as the agency best suited to determine its own training needs and priorities.

Where funding is provided by an agency other than the tribe, such as the National American Indian Court Judges Association, on a reimbursement basis, the tribe can facilitate attendance at training sessions by financing the attendance of its judges. Judges could reimburse the tribe after they receive their checks from the sponsoring organization.

Reservations Standard 10.4

Career Incentive Program

Each organized tribe should institute a career incentive program to encourage Indian young people to pursue legal educations.

1. A positive program would be required at the tribal level in order to provide this incentive. Such a program would best be implemented in cooperation with local educators.

a. The program should include career counseling for high school and local community college students as well as accredited tribal or CFR court internships for students.

b. Students should also be encouraged to seek experience with courts both on and off the reservation.

c. A speaker program utilizing law students and faculty from the University of South Dakota and other law schools as well as practicing attorneys should be initiated.

d. Local community colleges should be encouraged to implement pre-law courses.

2. Educational funding should be made readily available. Various funding sources should be explored. These would include but not be limited to the following:

a. The Bureau of Indian Affairs;

b. The Law Enforcement Education Program (LEEP);

c. The Native American Legal Defense and Education Fund;

d. The American Indian Law Center;

e. The American Indian Law Students Association;

f. The American Indian Scholarship Fund;

g. Basic Opportunity Grants;

h. National Direct Student Loans and Grants; and

i. Other local and national scholarship and fellowship funds.

Commentary

A legal system, if it is to be accepted and obeyed, must stem from the beliefs, customs and lives of those to whom it is applied. This principle is reflected in a widely held belief among Indian people that tribal law and order is best administered by those who understand and recognize the needs, beliefs and customs of the members of that tribe.

In view of the more stringent educational and training requirements that are reflected in previous standards and in view of problems tribal and CFR courts have had in attracting a sufficient number of qualified judicial and court personnel, the tribes need to insure that qualified, legally-trained Indian young people will be available to work within Indian court systems in the future. One way to do this is for the tribe to institute positive career incentive programs to encourage Indian young people to pursue legal educations. These programs should focus on para-legal as well as professional legal training, since both forms of expertise are required and can benefit any court system. The programs outlined in the standards are meant to awaken an interest among Indian young people in the Indian court system and the legal system in general. With the growth of the Indian court, the increasing demands of court administration, and the need for law-trained personnel, it is important that the tribes develop a resource of Indian lawyers and paraprofessionals to serve within their court systems.

Implementation

A. Agencies Involved:
Tribes.
Indian courts.
Local schools and colleges.

B. Administrative Actions:

This program should be initiated by planners, education departments and/or courts at the tribal level. This program should be developed in conjunction with other interested individuals and groups, such as local high school and community college educators, local lawyers and other practicing attorneys, and resource persons from the American Indian Law Students' Association, the Native American Legal Defense and Education Fund and the University of South Dakota Law School.

C. Funding:

In order to prevent discouragement due to financial barriers, the tribes should explore and develop educational funding and program information readily available to interested persons.

Reservations Standard 10.5

Judicial Selection and Tenure

Selection of judges should be based on merit qualifications for judicial office. Judges should be selected by a judicial nominating commission which selects a slate of at least three (3) eligible candidates from which vacancies should be filled by the tribal chairperson or president with the advice and consent of the tribal council.

1. The Judicial Nominating Commission should consist of representatives from the general public, the tribal council and the tribal or CFR court.

2. Initial appointment should be until the next ensuing general election at which time the judge would run in an uncontested election to determine his/her retention or dismissal. Upon retention the term of office should be for six years.

3. In some cases the Commission may feel that there are not three qualified nominees. In cases in which the names of less than three nominees are submitted to the tribal chairperson or president, the reasons for so doing should be clearly stated and furnished to the tribal chairperson or president.

4. If the tribal chairperson or president and the tribal council fail to appoint a candidate from the list of nominees within 30 days, the power of appointment should revert back to the Judicial Nominating Commission.

Commentary

The Task Force recognizes that the quality of tribal and CFR courts is closely linked to the quality of persons attracted to judicial office. Judicial personnel must be selected on the basis of competence and high personal integrity. In order to obtain the services of competent professionals and retain experienced judges in tribal and CFR courts, judicial officers should be assured career stability and tenure.

Because of these considerations, the Task Force advocates a merit plan for judicial selection. Similar plans have received wide acclaim for their success in removing the judicial office from the mainstream of politics and undue political influence.

The standard envisions the creation of a Judicial Qualifications Commission which would be empowered to screen applicants for judicial office and select the names of the most qualified candidates, at least three, to be submitted to the tribal chairperson or president and the tribal council. Current methods of selection often involve selection by the tribal council alone. The proposed method of selection would provide for representation from both the public and the courts. Judicial representatives, for example, would be in the best position to assess the qualifications of potential candidates in terms of the requirements for judicial office.

Naturally, the effectiveness of a merit selection plan will be diminished if the Judicial Nominating Commission is politically controlled and subject to change with changing tribal administrations. The Task Force suggests that Judicial Nominating Commission members be selected by the tribal chairperson with the advice and consent of the tribal council for staggered terms. A staggered term system would prevent the turnover of all Commission members at any given time and would provide some stability and continuity of membership despite changing tribal administrations.

The Commission would have the responsibility to seek the best potential candidates to submit to the tribal council for its consideration. This screening procedure should include the evaluation of candidates on the basis of qualifications requirements outlined in the tribal code or tribal constituition. The list of candidates should not be submitted in any sort of priority order. If fewer than three names are submitted for a vacancy, the Commission should certify that no other persons who qualify could be found. The Task Force recommends that, should the tribal chairperson or president or the tribal council fail to act on a slate of candidates, the power of selection should revert back to the Judicial Nominating Commission.

The Task Force recognizes that a judge periodically needs to submit him/herself to the electorate for review and approval. The public needs to feel that it has a determining say in the type of individuals who will sit on the court. As a result, the standard advocates a system of appointment until the next ensuing general election. At this time a judge should run in an uncontested election in which the electorate could determine the judge's retention or dismissal. The ballot may read simply, "Should Judge ———— be retained in judicial office?" Under this system judges are forced to run entirely on their own records. This method increases the chance that voters will view the judge objectively and on the basis of qualifications without political considerations. It also eliminates some of the confusion of issues that is involved in a heated campaign in which more than one candidate must be considered. This method eliminates the necessity for a costly and time consuming campaign which takes the judge away from the performance of judicial duties. At the same time the standard allows for the popular rejection of a judge who has so offended public sentiment that the public is willing to reject him/her in favor of an unidentified successor. Upon rejection, of course, a new candidate would go through the appointment process as outlined previously.

Upon retention, a judge would remain in office for a term of six years. This standard is designed to provide some career incentive among judicial officers and to insure that experienced judges are retained for a reasonable period of time. A longer term of office would provide greater immunity from political influence, particularly during changing administrations.

Implementation

A. Council Actions:

Implementation of the standard would require changes in judicial selection and election procedures outlined in tribal codes and constitutions.

B. Funding:

The standard does not envision a salaried Judicial Qualifications Commission. Limited funding may be needed to cover operating expenses. Funding requirements would be minimal.

Reservations Standard 10.6

Uniform Qualifying Standards for Judges

With a view toward upgrading all Indian court systems, the tribes should develop and establish uniform qualifying standards for tribal court judges.

1. The Chief Judge should be required to have a law degree and be able to satisfactorily pass a standardized examination covering the laws of the tribe.

2. In addition, to be eligible to hold the office of judge a person:

a. Should be at last 25 years of age and not more than 65 years of age;

b. Should be of high moral character and integrity;

c. Should be capable of preparing the papers and reports incident to the office of judge;

d. Should never have been convicted of a felony for which he/she has not received a pardon;

e. Should be physically able to carry out the duties of the office;

f. Should not have been dishonorably discharged from the Armed Services;

g. Should have a high school diploma or equivalent; and

h. Licensed or qualified attorneys at law who are not members of the tribe may be eligible for appointment as judges of the tribal or CFR court.

Commentary

This standard offers a uniform set of qualifying standards well-suited to attract qualified judges to tribal and CFR courts.

These qualifying standards are primarily a combination of requirements established by many South Dakota tribes and are generally self-explanatory. The qualification requirements for Chief Judge outlined in Standard 10.1 have been included in the standard.

The standards set out in Standard 10.6 are designed to limit the judicial office to persons of good character who are competent to carry out the duties of that office. The Chief Judge should have a law degree for reasons previously stated. All judges, however, must have a sufficient degree of formal education to enable them to adequately grasp the often complex concepts of law and procedure. The Task Force joins with many of the tribes in advocating that all judges have at least a high school diploma or its equivalent.

General agreement exists that a tribal or CFR judge should be a person who understands the beliefs, customs and needs of members of the tribe. However, an Indian court should not be prevented from having the benefits of legal expertise because a lawyer applicant is not a tribal member. When possible, the tribal or CFR court should be staffed by qualified tribal members or, perhaps, members of tribes having similar beliefs and customs. However, when qualified attorneys make their services available, and more qualified tribal applicants cannot be found, attorneys should not be prevented from offering their professional expertise to the service of the court. More and more tribes are in agreement with this provision and are permitting non-members of the tribe to serve in the judiciary of tribal and CFR courts.

Implementation

A. Council Actions:

This standard would require implementation through enactments within tribal codes. Partial changes in the codes would be required in most cases.

Reservations Standard 10.7

Discipline and Removal of Judges

A judge should be subject to discipline or removal for permanent physical or mental disability seriously interfering with the performance of judicial duties, willful misconduct in office, willful and persistent failure to perform judicial duties, habitual intemperance, or conduct prejudicial to the administration of justice.

At any discipline or removal hearing the judge should be entitled to counsel and the right of confrontation.

Commentary

Judges must be free to perform their judicial duties on the basis of their special training and experienced judgement without threat of arbitrary disciplinary actions or removal. On the other hand, even with the best judicial selection systems, there may be times when the discipline or removal of a sitting judge will be necessary. Standard 10.7 outlines the occasions when judicial discipline or removal may be appropriate.

While preserving the public interest, it is also vital to preserve the rights of individual judges and to prevent the improper compromise of judicial independence. Therefore, at discipline or removal hearings judges should be entitled to counsel and the right to confront the charges and witnesses against them.

Implementation

A. Council Actions:

Implementation of this standard would require tribal council actions and enactment within tribal codes.

CHAPTER ELEVEN

COMPENSATION FOR INDIAN COURT JUDGES AND PERSONNEL

Reservations Standard 11.1

Compensation for Judges and Court Personnel

The tribes should establish and maintain salaries that will serve to attract and retain qualified judges and other competent Indian court personnel. Judges and court personnel should be compensated at a rate that adequately reflects their duties and responsibilities. Where appropriate, salaries and benefits should be increased during a judge's term of office. A salary review procedure should be established to insure the automatic annual adjustment of salaries of court personnel to reflect prevailing changes in wages and the local economy.

1. Tribal and CFR court judges should be paid salaries commensurate with education, experience and workload.

a. The salary of the Chief Judge should be comparable to the salaries of tribal department heads.

b. Associate judges should be paid a minimum of 75% of the Chief Judge's salary based on a 2,080 hour work year.

c. An associate judge should be given pay increases commensurate with and when sufficient training and experience are gained based upon evaluations by the Chief Judge and the Judicial Qualifications Commission.

d. All other court personnel's base salaries and salary increases should be in keeping with positions in the tribal government involving comparable responsibilities and duties.

2. In order to prevent improper interference with the performance of a judge's duties, judicial salaries should not be arbitrarily reduced or terminated during a judge's term of office.

Commentary

The relationship between success in attracting qualified judges and judicial personnel and their level of compensation is self-evident. Problems in attracting qualified personnel at inadequate salary levels are well-recognized by the tribes. Judges have indicated that low salaries pose considerable hardship. Inadequate salaries may mean that some judges will be forced to take second jobs in order to supplement their incomes. These second jobs frequently prevent judges from pursuing training and educational opportunities related to the judicial office. Because of the funding situation many judges are hired on a part-time basis only. However, with regular court sessions, paperwork and other duties, most part-time judges find it necessary to work additional uncompensated hours.

Along with the difficulty in attracting new judges, there is an inherent difficulty in retaining experienced judges when salaries remain low. Logically, a judge with experience and additional training would be of increased value to the tribal court. However, when salary increases do not reflect an appreciation of experience, judges may not feel a sufficient incentive to remain with the tribal or CFR court.

If the tribal and CFR courts are to attract and retain qualified judicial personnel, salaries must be increased. Attempts should also be made to eliminate part-time funding which results in part-time compensation. Because of the requirements and complexities of the judicial function, every attempt should be made to make judges full-time and to compensate them accordingly. This action would eliminate uncompensated work time and the need for judges to hold second jobs in order to supplement judicial salaries. Full-time employment would provide judges with additional time in which to engage in self-teaching and educational activities. Absences for educational purposes would no longer cause conflicts with second jobs. These salary increases are also needed to attract capable Indian attorneys to Indian court systems and to stimulate young people who may be interested in this field.

Because judges are in positions of high status and responsibility, they should receive annual salaries commensurate with education, experience, and workload. The Chief Judge should receive a salary at least comparable with those of other tribal department heads. Associate judges perform judicial functions comparable to those of the Chief Judge. These duties require a heavy career and training investment. As a result, an associate judge should receive a yearly salary which equals at least 75% of the Chief Judge's salary.

The standards further stipulate that judicial compensation should not be subject to reduction during a judge's term of office. If the concept of fair and equal justice is to be preserved, the judiciary must be able to function without fear of salary cutbacks and other threats to judicial independence. However, salary increases during a judge's terms of office should not be prohibited. Restrictions on salary increases may pose undue hardships on judges who are appointed or elected for a lengthy term of office, particularly where a judicial term of six years is foreseen. Associate judges should receive salary increases based upon an evaluation by the Chief Judge and the Judicial Qualifications Commission as they acquire additional training and experience. It is anticipated that the Chief Judge's salary should increase as do the salaries of other tribal department heads.

Where salaries of court staff are inadequate these should be increased to a level which will attract and retain qualified nonjudicial court personnel. As a minimum the standard recommends that base salaries and salary increases be comparable to those for other tribal government positions involving similar duties and responsibilities.

Implementation

A. Agencies Involved:
Indian courts.
Judicial Qualifications Commission.
Tribes.

B. Administrative Actions:
Salary review procedures may be implemented administratively by the Judicial Qualifications Commission and the courts in cooperation with the tribal council, the BIA or other funding sources.

C. Funding:
This standard should be implemented at the initiation of the tribe, through appropriations and salary procedures established by the funding agency.

CHAPTER TWELVE

INDIAN COURT STAFF

Reservations Standard 12.1

Adequate Court Staff Positions

Court staff positions should be developed and filled to meet the judicial, rehabilitative, professional legal and clerical needs of the court.

1. A sufficient number of Indian court judges should be employed to adequately handle all of the judicial duties of the court. A priority should be placed on full-time employment of Indian court judges. Under certain circumstances consideration should be given to allocating judicial resources to allow for specialization in handling certain types of cases. This specialization should include relevant training.

2. Funding should be made available to tribal and CFR courts to enable them to hire sufficient clerical staff. These funds should be provided directly to the courts through the court budget. Each tribal and CFR court should develop, implement, and control its own screening, hiring, and personnel procedures and criteria relating to the employment of court and clerical staff.

3. Every tribe having a tribal or CFR court should retain the services of a clerk of courts at a salary that will attract competent applicants and decrease the likelihood of a rapid turnover. The clerk of courts should not be expected to perform routine clerical tasks or assist in court in addition to the duties normally expected of a clerk of courts. Additional clerical staff should be employed for this purpose. Where possible the Indian court should retain the services of a bailiff to assist in court in addition to staff who may be present for court reporting purposes.

4. Each tribe should employ the services of at least one full-time probation and parole officer and more as needed. Judges should not be expected to perform the dual functions of judge and probation officer.

Commentary

Discussion has already centered on the relationship between adequate salaries and the hiring and retention of qualified staff. Additional consideration must be given to the allocation of duties among judicial personnel. Two serious problems exist. Many judges are hired on a part-time basis. In some tribal or CFR courts two or more part-time judges are employed, which means that two judges are employed part-time to do the work of at least one full-time judge. As mentioned previously, part-time employment presents a hardship to judges who must work additional uncompensated hours to satisfy the workload despite an already inadequate wage. Judges are frequently forced to secure outside employment in order to supplement this wage. Unfortunately an additional job prevents judicial participation in the kind of training that is necessary to prepare judges for their judicial duties.

The standard recommends that priority be placed upon hiring judges on a full-time basis. A sufficient number of judges should be retained to avoid overburdening individual judges and delaying the business of the court.

Because tribal and CFR court services are in demand and because their volume of cases is growing, many courts are at a point where, in addition to more judicial staff, they need some specialization in handling various types of cases. However, specialization should be differentiated from mere division of labor. Specialization requires the development of judicial expertise in a specific area, such as juvenile, criminal or civil procedures. Therefore, any specialization plan should include additional training for individual judges in their areas of specialization.

A shortage and turnover of clerical staff impedes the efficiency of tribal and CFR court systems. Possible problems may be delays in the completion of forms and reports necessary for court processing, inaccurate record-keeping, and disruption of filing systems. In some cases, judges and/or probation staff may be forced to assume clerical duties in order to keep up with the court's paperwork. These additional duties take judges and probation staff away from their primary responsibilities.

Clerical staffing problems have been attributed to both salary inadequacy and the unavailability of funds to hire additional staff. Other problems have been encountered in the means used to screen and hire clerical staff.

As an answer to these problems, the standard recommends that courts be provided with sufficient funds to hire and retain qualified clerical staff. Because the court is in the best position to determine its own administrative needs, the court should control its own screening and hiring procedures.

The position of the clerk of courts is a crucial one in the operation and management of the court. This position is also one which demands considerable expertise. Although all tribes provide for a clerk of courts, some have had problems in retaining qualified persons for long periods of time. This means that, with turnover, tribal and CFR courts suffer delay and disruption while a new clerk of courts is gaining experience in the clerk's position. In order to spare the court disruptive turnover and a continual training investment, a clerk of courts should be offered sufficient salary incentives to insure retention for longer periods of time.

Among the clerk of court's duties are calendaring, maintenance of the docket, keeping of court records, receipt of documents, and receipt of court costs and fines. All of these duties require time and care. A clerk of courts should not be expected to perform clerical and unrelated court tasks in addition to the clerk's primary duties. Additional clerical and court staff should be hired for this purpose as needed.

Standard 12.1 further addresses the need for sufficient probation personnel. Indian judges have reported juvenile delinquency problems to be the singularly most significant factor in the increase in recent demands upon Indian courts. (National American Indian Court Judges Association, 1971:61). Many tribal criminal justice systems suffer from a lack of probation and parole officers. Officers who are hired are sometimes required to perform judicial functions as well. In light of increasing problems of juvenile delinquency, this general lack of adequate rehabilitative and supervisory personnel is particularly significant.

In a recent report on Indian Reservation Criminal Justice, the Bureau of Indian Affairs Criminal Justice Task Force (1975:70) offers the following perspective on the need for probation officers:

> . . . Such officers represent that part of the criminal justice system with the clearest mandate to deal with the individual

problems that are the root causes of crime. Without them there is no alternative to incarceration other than unsupervised probation or a suspended sentence. It is clear that incarceration, especially in a small jail with no programs for the inmates, is ineffective as a means of rehabilitation or reducing recidivism. In addition to supervising persons who have been sentenced, probation and parole officers are needed to provide judges with the needed manpower to conduct presentence reports.

Implementation

A. Agencies Involved:
Indian courts.
Tribes.

B. Administrative Actions:

Determination of judicial, court and clerical personnel needs and the distribution of personnel are properly administrative functions and responsibilities of Indian courts. When determining personnel needs, the courts should consider the recommendations outlined in these standards. Personnel needs should be adequately reflected in budget requests to appropriate funding agencies, usually the tribe or BIA.

C. Funding:

Tribal councils or the BIA are responsible for appropriating sufficient funds to meet the staffing needs of the court. Funding needs will vary according to the adequacy of the staff in each court system.

Reservations Standard 12.2

Professional Prosecutor

Each tribe should retain the services of a full-time, skilled law trained prosecutor. This person should be selected on the basis of demonstrated ability and high personal integrity.

Commentary

Many tribes have recognized the need for a prosecutor although most tribes have not employed one. Standard 12.2 recommends the employment of a full-time, skilled, law trained prosecutor for a number of reasons. Often in court, a tribal of CFR judge is forced to assume the additional role of prosecutor, particularly when the defendant has an attorney and the tribe, as plaintiff, does not or when the defense advocate is trained and the individual acting for the tribe is not. This situation is confusing to observers and difficult for judges who lack sufficient training in procedure and the law. In an adversary proceeding, judges who assume this role actually destroy their positions as neutral observers, mediators and weighers of fact. To observers and participants, the assumption of this role may appear to indicate bias on the part of the court. Judges have indicated that this situations is both distasteful and improper. On the other hand, in a proceeding in which the defendant has secured the services of a trained professional or lay defender, one must consider whether the absence of a prosecutor on the other side does not actually enhance the position of the defendant and undermine the fairness of the proceeding. Certainly the adversary system cannot work if only one side, the defendant, has an attorney. These problems could be alleviated if the services of a prosecutor were made available to the court.

The services of a prosecutor are needed outside the court as well. A prosecutor should be available to give legal advice to law enforcement officers. Indian court judges who are now asked to provide this service should be spared the task, since at a later time they may be called upon to rule on their own advice.

A prosecutor serves the court and the tribe by screening cases out of the law and order system because of a lack of evidence or some other appropriate reason. The prosecutor is also in a position to divert domestic, alcohol or other cases which may be better handled by alternative means. Some Indian court judges have expressed the opinion that if prosecutors were hired, fewer cases would result in appearances before the court. The screening and diversion activities of a prosecutor would benefit the tribe by lessening the unnecessary processing of persons through the law and order system.

Tribes must consider the feasibility of employing a professional attorney versus a lay prosecutor. The standard recommends that the prosecutor be a professional attorney hired on a full-time basis, due to the volume of work and the legal expertise required for the job. This standard intends that the attorney need not be a member of the Bar of the State of South Dakota if the services of a qualified attorney can be obtained elsewhere.

Implementation

A. Council Actions:

The implementation of this standard would require action by the tribal council. Tribal councils may wish to establish qualifications requirements and specify the duties of the prosecutor's position within the laws of the tribe.

B. Funding:

Monies to finance a prosecutor and necessary staff should be obtained and provided by the tribal government.

Reservations Standard 12.3

Practice of Professional Attorneys in Tribal and CFR Courts

Professional attorneys should be permitted to practice in tribal and CFR courts. In order to maintain the objective of equal justice, application fees for attorneys to practice in tribal and CFR courts should not exceed $25.00 per annum.

Commentary

Previous standards have advocated the employment of professional attorneys both as judges and as prosecutors. Some tribes have opposed the presence of professional attorneys in Indian courts and have discouraged the practice by charging large application fees.

In consideration of the fact that more tribal and CFR courts are advocating the services of professional attorneys, these obstacles should be removed. Some tribes have already dispensed with prohibitions against professional attorneys in their courts and have lowered application fees.

Any practice which discriminates or discourages the practice of professional attorneys in tribal or CFR courts may actually work against equal justice in Indian courts. A number of tribes have advocated and will eventually hire pro-

fessional attorney prosecutors. In cases such as these, a defendant should also be permitted the services of a professional attorney if the court proceeding is to be a true adversary proceeding based on equal justice. The 1968 "Indian Civil Rights Act" (25 USC § 1302) permits an individual in any Court of Indian Offenses the right to an attorney at his/her own expense. A limited number of tribes charge extremely high court application fees. Because a professional attorney rarely practices in this court, the fee will probably be absorbed by the individual who hires the attorney, in addition to regular attorney's fees and other court costs. An unnecessaryily high application fee can actually be used to discourage or render parties unable to hire professional attorneys despite their desire to do so. These fees could well be declared unconstitutional and at the least damage regard and respect for Indian courts that practice this type of discrimination.

Some Indian court judges have expressed intimidation at the prospect of professional attorneys appearing before them, though limited reports indicate that there have been few problems. Cohen (1971:168) notes that it is important for judges to continue the practice of insisting that attorneys explain their positions clearly and answer all questions. He further notes that, "No attorney has been able to win a case simply by making elaborate motions." Probably this will not present a problem as long as Indian court judges are qualified and well-trained. The admission of trained attorneys to Indian courts will enhance the prestige of these courts and enable trained Indian attorneys to offer their services to Indian court systems.

Implementation

A. Council Actions:

This standard advocates the practice of professional attorneys in tribal and CFR courts at a reasonable fee, not to exceed $25.00 per annum. Implementation would require enactment by tribal councils through tribal codes.

CHAPTER THIRTEEN

APPEALS AND ACCESS TO INDIAN COURTS

Reservations Standard 13.1

Circuit Approach to an Appellate Court

A circuit court of appeals should be established by two or more tribes for the purpose of hearing appeals from the courts of any participating tribes. The appeals court should be composed of three judges of the tribal or CFR courts, excluding the judge who heard the case in the original proceeding, but including at least one chief judge of any of the participating Indian courts.

1. In order to utilize procedures that are flexible and that will insure maximum fairness, expedition and finality through a single review of the trial court proceeding, the review procedures should provide for:

a. Referral by the reviewing court to the trial judge of those issues that the reviewing court deems appropriate for the trial judge to decide;

b. Means of identifying and deciding all arguable points in the case, whether or not apparent on the record that heretofore have been grounds for a collatoral attack on the conviction or sentence;

c. Internal flexibility permitting the reviewing court to control written briefs and oral arguments, including leeway to dispose of the case without oral argument, or on oral argument without written briefs on some or all of the issues.

d. Authority in the reviewing court at its discretion to require or permit the presence of the defendant at a review hearing;

e. Authority in the reviewing court, for stated reasons, to substitute for the sentence imposed any other disposition that was open to the sentencing court, if the defendant has asserted the excessiveness of the sentence as error; and

f. Authority in the reviewing court, for stated reasons, to set aside a conviction or remand the case for a new trial, even though the conviction is supported by evidence and there is no legal error, if, under all the circumstances, the reviewing court determines that the conviction should not stand. This power should be exercised more frequently to speed finality.

2. Plaintiff and defendant should have the right to have counsel present at all proceedings before the appellate court.

3. The appeals court should be a court of record, requiring a verbatim transcript of the proceedings from the court of original jurisdiction.

4. The implementation of an appeals procedure should provide additional training of Indian court judges in appeals procedures.

Commentary

Appeals from Indian courts to Indian appellate courts have been rare. Although the structure for appeals exists in many tribal codes and ordinances, few tribes have implemented this structure. Part of this failure is due to the fact that most tribal appeals procedures require a hearing by (usually) three judges while the Indian court itself does not employ enough judges to staff an appeals court, particularly if the judge who originally heard the case is excluded.

However, a singular problem has arisen with the writ of habeus corpus appeals provision of the "Indian Civil Rights Act" of 1968. 25 USC § 1303. Although this provision for appeals from Indian courts is the subject of some controversy, it is still an issue with which the tribes must deal. Presumably, as more persons become aware of their rights under this act, the number of people seeking appeal outlets will increase.

Among the alternatives to be considered, appeals could be taken from tribal and CFR courts to federal district courts, where a trial de novo would be conducted. However, this procedure could undermine tribal and CFR courts while further overburdening already overburdened federal district courts.

Standard 13.1 is written to encourage the tribes to act on this appeals issue before it becomes an issue which is handled at the federal level. A preferable alternative, and one which could be quite easily implemented, would be an intertribal circuit court of appeals composed of tribal and CFR judges. The appeals court could be composed of three judges of the tribal or CFR courts, excluding the judge who originally heard the case, but including at least one Chief Judge of a participating tribe. This latter point is designed to provide additional expertise and experience, particularly where the Chief Judge has a law degree. In weighing the advantages of such a proposal, James Kerr in a law review article entitled "Tribal Justice" (1969:329-30) notes that,

> . . . Such bodies could make sure that tribal courts and councils observed minimum constitutional guarantees and respected the fundamental civil rights and liberties of members of the tribe while giving sympathetic consideration to the cultural reference points of the tribe. Such a court system would not undercut the tribal courts as would the imposition of the right of appeal to federal district courts. The appellate Indian courts could issue written opinions laying the groundwork for a body of precedent to guide tribal courts . . .

The intertribal circuit court approach would provide a workable and compatible alternative to procedures presently outlined in tribal codes, while at the same time overcoming problems presented by a shortage of judicial personnel. The National American Indian Court Judges Association has also endorsed this plan because of the feeling that an appellate circuit court would find it easier to be objective, since it would be less subject to some of the conflicts involved in small interrelated communities. This system would foster greater respect for Indian court decisions by other courts.

The implementation of an appeals process would upgrade Indian courts by forcing judges to expend greater efforts in adhering to proper procedures and due process at the trial court level. Because of a lack of written records most appeals have required a trial de novo, where the matter of guilt or innocence is retried and the evidence presented anew. This outlet may encourage laxity among lower court judges because it enables them to "pass the buck" if there have been errors in the conduct of a hearing. This is a drain on the resources of the appellate court and a burden on those who must appear to testify. For this reason the Task Force recommends that the appellate court be a court of record. Im-

plementation would require that the court of original jurisdiction provide a verbatim transcript of any case which is submitted for appeal.

The Task Force also advocates a series of flexible review procedures that could be tailored to meet the needs of each case. These are listed specifically in the standards. The Task Force also supports the defendant and the plaintiff's rights to have defense counsel present during these proceedings, whether or not the parties to the case are required to be there, as an added check on the appeals process.

A position on the appeals bench requires a strong appreciation of procedure and the law. Since appeals courts would be drawn from tribal and CFR court judges, all Indian court judges should receive training in appeals procedures.

Implementation

A. Agencies Involved:
Indian courts.
Tribes.

B. Council Actions:
Implementation would require approval by the councils of participating tribes and enactment into their laws.

C. Administrative Actions:
Either the tribes or the courts could assume responsibility for initiating this proposal. However, court personnel, because of their understanding of the judicial system and their potential involvement in the appeals system, should be involved in the planning process.

Implementation would require the cooperation of tribal governments for the purpose of developing the actual system and collaboration in developing a workable administrative process for the purpose of calendaring, record-keeping and other matters.

D. Funding:
Some additional funding may be needed for training and travel purposes. However, training could be undertaken as a cooperative effort by participating tribes.

Reservations Standard 13.2

Court Services In Outlying Areas

When reservation size and population dispersion warrant, tribal and CFR courts should consider providing court services in outlying areas.

Commentary

Each tribe must determine its own need for court services in outlying areas. Standard 13.2 is written to call attention to and to express concern for outlying communities that may require additional court services. The Task Force recommends that these services be provided only on reservations where the size and dispersion of the population indicate that the benefits of added services would outweigh the cost of providing them. Suggested systems include the implementation of a lower court, a circuit court system or a roving circuit judge system. The implementation of any one of these systems could reduce the need for court participants to travel long distances and to endure the costs and inconvenience of this travel. Easy access would expedite the judicial process for both police and the public. Since the burden of the calendar would be distributed among additional sittings of the court, participants could avoid inconvenient delays while waiting to be heard.

On the other hand, staffing, financing and administering additional systems could pose unique problems for individual tribes. Before implementing an extended court system each tribe should consider and answer the following questions. Would the establishment of additional courts improve or simply multiply the problems now faced by Indian court systems? Would present efforts to upgrade court systems be diluted because efforts would have to be extended to additional courts as well?

Implementation

A. Agencies Involved:
Indian Courts.
Tribes.

B. Administrative Actions:
Each tribal or CFR court should attempt to assess the need for court services and make appropriate proposals for change to the tribe. Ultimately, changes in court organization would be the responsibility of both the court and the tribe.

CHAPTER FOURTEEN

INDIAN COURT RECORD AND REPORTING SYSTEMS

Reservations Standard 14.1

Court Records

Every tribal and CFR court should establish standardized procedures that will insure a sufficient and complete recording of cases, including but not limited to information identifying the plaintiff and defendant, any charges, the plea and the case disposition. Every tribal court should establish a record-keeping system that collects, consolidates, and preserves this information for future reference. Reports of the court's activities should be published annually.

1. Standardized forms should be provided by the court for this purpose. Standardized forms encompassing the courts of all tribes should be encouraged.

2. The clerk of courts should receive specific training in court procedures, court record-keeping and the maintenance of a court record filing system.

3. The Indian court should have its own clerical personnel and record-keeping system separate from that of the law enforcement branch.

Commentary

The need for an effective record-keeping system is self-evident. As the official memory of the court the record-keeping system is intrinsically tied to the entire law and order process. The court record provides a summary of the facts of any given case. The record is there to be checked should these facts be in dispute. The record is necessary to protect the rights of those individuals who have been involved in the adjudication process, particularly in terms of recording the details of any conviction and the disposition of every case. For example, an individual's ability to get a job may depend upon the accuracy of these details.

A record system is also useful in the operation of the court. The record enables judges and probation staff to spot repeat offenders who have previously been adjudicated. The record facilitates a review of the details of each case. Checking the offense and the disposition of the case may help a judge determine if a more severe or different type of disposition is required. A judge may wish to review dispositions of similar cases to determine precedent.

In addition to the maintenance of individual records, the regular tabulation of court statistics, in the form of weekly, monthly or annual reports, is a basic contributor to court efficiency. Demographic data, age, sex, as well as information on the type of offense and the type of case, civil v. criminal, adult v. juvenile, can assist the court in evaluating and planning the use of judicial and rehabilitative resources. For example, an increasing number of juvenile offenses may indicate the need for a special juvenile court judge, additional probation staff, or further training for all law and order personnel in the area of juvenile justice. Recidivism statistics may indicate the need for new approaches to rehabilitation or the need for changes in existing programs.

Because consistency and uniformity in reporting are important, the standard recommends that the court provide standardized forms for this purpose. Because records may be examined and used by other tribal and reservations courts, the standard recommends that standardized forms be developed jointly and used among all tribes in their judicial systems. Intertribal uniformity would be especially important in an appeals process and would be helpful in other law and order exchanges between tribes.

In addressing the need for an effective court record-keeping system, emphasis should be placed on the training of court personnel, particularly the clerk of courts who has responsibility for maintaining court records. The hiring and retention of a competent clerk of courts should be a first priority. The alternative is rapid turnover, a disruption of recording and filing procedures, and the need for a new training investment.

An adequate number of staff must also be retained to meet the clerical and management needs of the court. Under some systems police and tribal courts share clerical personnel, facilitise, equipment and/or records. This situation contradicts the need for a separation of powers and complicates the relationship between police and courts. This situation also increases the burden on clerical personnel and impedes the court's ability to maintain a record-keeping system specifically suited to its own needs. The Indian court should have its own personnel and a record-keeping system separate from that of the law enforcement branch. However, tribal and CFR judges should work with police to insure that complaints and other forms submitted to the tribal court are filled out properly and completely.

Implementation

For information concerning implementation see the implementation section under Standard 14.2.

Reservations Standard 14.2

Court Reporting Systems

Each tribal and CFR court should employ a standardized method of producing a verbatim transcript of all court proceedings. Funds should be provided to employ a sufficient number of reporters and note typists to insure that a transcript of the evidence is available within 30 days of the filing of an appeal or as requested by the court.

Commentary

The need for verbatim transcripts in tribal and CFR courts has grown. An increasing number of persons are becoming aware of the right of appeal under the "Indian Civil Rights Act" of 1968. 25 USC § 1303. Should a defendant in a criminal or civil action wish to take advantage of the appeals provision, this procedure would be much facilitated by a complete record of the court proceedings. A verbatim record would also be necessary in any court appeals procedure established by the tribe and would preclude the necessity for a complete retrial of the case. A verbatim record would be valuable during the actual court proceedings should the court or an attorney desire a "reading of the testimony" in order to reconcile inconsistencies or clarify a point. A

record of the proceedings would be of assistance to a judge while reviewing a case before making final disposition.

A number of court reporting methods are available. Those in current use include shorthand reporting, stenotype, single track closed microphone recording and direct audio recording (single track and multi-track).

The Task Force has not taken a definite position on the desirability of any particular type of recording method. Each court must weigh its own resources and needs. However, cassette recording is one of the most economical forms of recording available to tribal courts. A multi-track method seems preferable to a single track system. Under both systems almost any secretary can type the proceedings from the tape recording. Judges and attorneys may have immediate access to tapes for review purposes since duplicate tapes are easily produced. A transcript is made only if the case is appealed. Until then the proceedings may be easily stored on the cassette tapes.

Using the multi-track method, microphones are placed around the room and separate sounds are picked up for simultaneous speech. Problems of off-the-record recording are diminished since individual microphones can be turned off. However, this method does require the presence of a recorder-operator-monitor to operate the machine and keep a log of the proceedings. (National Institute of Law Enforcement and Criminal Justice, 1971:4).

In order to expedite court procedures and avoid undue delay, the court must also consider the need for a sufficient number of reporters and note typists to insure that the verbatim written transcript can be produced promptly as needed. Production of the transcript should take no longer than 30 days after the filing of an appeal or after a request by the court.

Implementation

A. Agencies Involved:
Indian courts.

B. Administrative Actions:
The establishment of court reporting and record-keeping systems must fall within the administrative responsibilities of the Indian court. The courts should establish systems based on their own needs and economic considerations and should reflect these needs in budget requests.

C. Funding:
Funding would be required for the training of court personnel, reporting and filing equipment and the hiring of a reporter and note typists as needed.

CHAPTER FIFTEEN

TRIBAL CODES

Reservations Standard 15.1

Revisions of Tribal Codes

Where appropriate tribal codes should be revised and updated. It is recognized that tribal codes should adequately reflect the needs of the Indian community for the effective administration of justice and enforcement of civil rights.

1. When necessary and as often as is economically feasible tribal codes should be reviewed and revised. Revisions should include:

a. The addition of newly passed ordinances and appropriate changes in the current law;

b. Clarification and definition of ordinances, amendments and other laws that, because of their vagueness or because they are incomplete, cause difficulty in enforcement and judicial interpretation;

c. The enactment of code provisions covering or elaborating practices and procedures which are in need of regulation and consistency within established legal bounds;

d. A consideration of additions to the criminal code covering actions which threaten the security and safety of the community and which would be legally proscribed within other jurisdictions but have yet to be proscribed within tribal codes;

e. Changes, amendments, additions or deletions necessary to bring tribal codes into compliance with the "Indian Civil Rights Act" of 1968. 25 USC § 1301-3; and

f. Consideration should be given to applicable portions of state laws for adoption into tribal codes as a means of developing a body of law without expensive revision.

2. During periods when a complete revision of a tribal code is not possible, new ordinances, amendments and other changes in the law should be added to the tribal code at regular intervals in written supplement form, with such changes to be made readily available to all users of the tribal code. Amended or repealed ordinances should be indicated in this supplement where applicable.

3. Efforts to revise tribal codes should include input from representatives of each of a reservation's law and order components, from professional attorneys well versed in Indian and tribal law, from tribal governments, from tribal councils and from lay persons.

Commentary

Felix S. Cohen (1940:157), one of the foremost authorities on Indian law and jurisdiction, has commended tribal efforts toward the development of bodies of law. "An Indian reservation would be a criminal's paradise were it not for the preventive and punitive measures of the tribes themselves."

At the same time tribal officials, law and order personnel and Indian citizens have expressed concern for inadequacies that still plague tribal codes. A major problem involves keeping codes updated. Newly passed ordinances are not always immediately included within the codes. These delays diminish the effectiveness of new ordinances, prove confusing to law and order personnel and may make laws appear arbitrary because new ordinances are not systematically included within the codes.

Problems also result when the intention of a particular ordinance is unclear, when the ordinance is not specific or well-defined, or when the provisions of an ordinance do not adequately cover the possible varieties of a particular offense. In interpreting an ordinance against theft, for example, one may ask whether or not the ordinance also applies to larceny, forgery or swindling. The problem arises when any one or more of the offenses are not specifically prohibited elsewhere in the code. (Bubak, 1972:104-6). This type of confusion makes the enforcement and application of the law extremely difficult for Indian police and judges.

Law and order personnel are faced with a significant dilemma when code prohibitions do not adequately reflect the types of offenses committed on reservations. Ordinances prohibiting insufficient funds checks or vandalism are not included within the codes of some tribes. Other existing laws are outdated and, therefore, rarely enforced. In effect, tribes, like other jurisdictions, may need to delete some laws while adding others in order to respond to the realities of crime on the reservations.

A final consideration is the need to incorporate the "Indian Civil Rights Act" of 1968 (18 USC § 1301-1303) into tribal codes or constitutions. Some tribes have recognized this necessity and have undertaken appropriate revisions.

Recognizing the issues outlined above, Standard 15.1 calls for the periodic revision of tribal codes as necessary. Appropriate considerations are outlined in parts 1a. through e. and are self-explanatory. Part f. is offered as a suggestion to tribes that may desire code revisions but wish to spare themselves the costs of developing a body of laws. A number of tribes have adopted portions of state codes, particularly in regard to motor vehicle laws.

Part 2 of the standard is included for use as an interim measure when a complete revision of a code is not possible. Attaching new laws to old ones in supplement form is a common practice. Since tribal codes cannot be constantly revised a supplement is a useful tool. For ease of reference any attachments of this sort should clearly state which ordinances are amended or repealed by the new law. Supplements should be kept current and made immediately available to law and order personnel and the public. As often as possible, the entire code should be revised and these changes added to the body of the code.

The final portion of the standard calls for wide input into revision efforts. Law and order personnel, who work with the code on a daily basis, are in a good position to detect inadequacies and make appropriate recommendations. Some Indian court judges now play a part in recommending and drafting changes in the law. Professional legal assistance will prove valuable in clarifying code provisions, specifying changes in existing law and assisting in incorporating the provisions of the 1968 "Indian Civil Rights Act" into existing and revised codes. The community should also have the chance to express its views on proposed law changes. Some tribes have used public hearings for this purpose. However, the standard does not specify any particular means of obtaining this input.

Implementation

A. Council Actions:

Tribal councils are empowered to review, revise, ap-

propriately supplement and publicize tribal ordinances. The implementation of this standard would be primarily the responsibility of tribal councils. Tribal governments should devise their own methods for soliciting input from other segments of the community.

Presently some tribes are using the Code of Federal Regulations. In order to develop their own codes, these tribes would have to follow procedures prescribed by the Department of the Interior.

Reservations Standard 15.2

Uniform Tribal Criminal Code

In order to provide consistency in the enforcement and application of laws on reservations the tribes should join together in an effort to develop a uniform tribal criminal code. Any effort of this type should draw upon input from each tribal government, all criminal justice components on the reservations and professional attorneys well versed in Indian and tribal law. Additional advice and information may be sought from:

a. The Department of Interior;
b. The United States Attorney's Office;
c. The United States Magistrate's Office;
d. The National American Indian Court Judges Association;
e. The American Indian Law Students Association;
f. The American Indian Law Center;
g. The American Indian Lawyer Training Program;
h. The University of South Dakota Law School;
i. Local professional attorneys; and
j. Citizen groups.

Commentary

This standard is meant to encourage tribes to join together in developing a unified criminal code. The benefits to be derived from this effort are many: Because of mobility and intermarriage a uniform criminal code would provide consistency in the law as Indian people move or travel from one reservation to another. A uniform code would better enable Indian courts to pool resources for training Indian court judges in law and procedure. An intertribal appeals court, advocated in an earlier standard, would be much more efficient if judges did not have to deal with a number of different versions of the law. Those who feel that local and state law enforcement should learn tribal laws could present a much stronger case if state law enforcement training were able to draw upon one as opposed to many tribal criminal codes. This type of training would enable state law enforcement to be more responsive to the needs of Indian tribes in cross-deputization and extradition situations. Unification efforts could provide a forum for the exchange of ideas on the issues of code revision, enforcement and judicial interpretation. In fact, Indian court judges have noted that a uniform criminal code could facilitate the development of a body of case law because many Indian court judges would be dealing with the same laws.

Understandably, in light of unification efforts many tribes will be concerned with preserving the autonomy of their laws. Unification does not mean that tribal criminal codes must exactly parallel one another. Variations in the codes could exist to meet the special needs and circumstances of an individual tribe. Drawing upon the ideas and input of other Sioux Tribes, when law and order systems and problems are similar, would not threaten a tribe's autonomy but rather strengthen the tribe's resources for the administration of its law and order system.

Uniformity may seem a radical step. Yet it is not. A comparison of the codes of various Sioux Tribes indicates that a great deal of consistency already exists.

Implementation

A. Agencies Involved:
Tribes.

B. Council Actions:
Should a uniform code be developed it would be up to the tribal councils to amend their laws appropriately. Tribes now using the Code of Federal Regulations would have to go through the Department of Interior in the process of adopting a uniform tribal code.

C. Administrative Actions:
Only at the initiation of one or more tribal governments can this standard be implemented. Previous efforts have been made to develop model codes, though these usually pertain to procedure rather than criminal law. Individual tribes have drawn upon these codes in some cases. However, it is envisioned that strong tribal support would be needed for a successful unification effort. Tribes may wish to institute procedures to keep these efforts going even during changes in tribal administrations.

CHAPTER SIXTEEN

LEGAL ASSISTANCE ON RESERVATIONS

Reservations Standard 16.1

Legal Assistance on Reservations

Legal assistance in criminal cases should be available to defendants in Indian courts at their request. Efforts should be made to provide professional legal services in criminal cases on a full-time basis. In cases where there is a professional attorney prosecutor, a professional defense attorney should be available also. In cases not involving a professional attorney prosecutor lay advocates may be used.

1. Representation should be available to defendants in all criminal cases at their request or the request of someone acting for them, beginning at the time the individual either is arrested or is requested to participate in an investigation that has focused upon him/her as a likely suspect. The representation should continue during trial court proceedings and through the exhaustion of all Indian court avenues of relief from conviction. Legal assistance should be available in both adult and juvenile cases.

2. Every tribe should guarantee by ordinance or rule of court the right of an accused to prompt and effect communication with a lawyer or lay advocate and should require that reasonable access to a telephone or other facilities be provided for that purpose.

3. Any lay persons employed within the legal assistance program for legal advice or advocacy purposes should complete extensive training courses relevant to their duties within the program prior to assuming these duties. Continued inservice and periodic formal training should also be provided. Preliminary training should fulfill training needs in areas including substantive law and due process, trial practice and procedure, legal research, and brief preparation. No lay person should be permitted to assume duties for which that person does not have sufficient training competence.

Commentary

A growing number of Indian people are recognizing their need for individual legal assistance. In a report entitled, "Cheyenne River Indian Reservations Legal Needs and Priorities," the author notes that, "Indian people who once felt they could get justice from tribal court now see legal technicalities interfere with that justice." (Ferron, 1975). It has become common for Indian people to use the services of legal aid. Tribal officials and law and order personnel have begun to advocate the employment of law-trained judges and prosecutors.

Why is legal assistance needed on reservations? Because of poverty, many Indian people who require legal assistance cannot afford it. The Indian person may be at a distinct disadvantage in criminal proceedings. The National American Indian Court Judges Association (1971:115) offers this explanation:

> The purpose of the guarantee of the assistance of counsel is to protect the accused in a criminal proceeding from a conviction of an offense resulting from ignorance of his right. **Johnson v. Zerbst,** 304 U.S. 458 (1938). The individual defendant may not know what the court's procedures are; he may feel cowed by the atmosphere of the courtroom, and he may be too emotionally involved in his own case to represent himself effectively. For these reasons it is necessary that he be permitted the assistance of counsel.

Some may argue that the Indian court judge can adequately protect the right of the defendant. This argument is faulty. It ignores the fact that judges may be influenced by the conduct, appearance or past knowledge of the defendant even beore the facts of the case are heard. The situation becomes more complicated when an Indian court judge must act as both judge and prosecutor. The dual role clouds the position of the judge as arbitrator, mediator and objective listener. Despite sincere efforts by Indian court judges to protect the rights of uncounseled defendants, these dangers exist.

The legal assistance issue is addressed in the "Indian Civil Rights Act" of 1968 which provides that no defendant shall be deprived of the assistance of counsel at his/her own expense. 18 USC § 1302 (6). Although the wording seems clear the issue of the court's obligation to provide defense counsel to indigents is being challenged. Where legal assistance is already provided, a later federal ruling on this issue should cause little problem.

This consideration of legal assistance is not necessarily limited to indigents. Many Indian people with partial or total ability to pay may need help in securing legal assistance. The Task Force feels that eligibility requirements will have to be left to the sponsoring agency. The sponsoring agency may decide not to set eligibility requirements, or assistance may be reserved for tribal members or Indian people. However, caution must be exercised by tribes that assume jurisdiction over non-Indians. Failure to provide defense assistance to non-Indian indigents could be grounds for a due process attack on this practice.

The need for counsel applies not only in adult but also in juvenile cases. The Gault decision (**In re Gault,** 387 U.S. 1, 1967) determined that previous notions of the court as protective parent have not provided adequate protection to the rights of juveniles in juvenile court proceedings. In a discussion of the delinquency prevention aspects of legal counseling, Thomas Holton (1968:1080) reiterates these conclusions:

> The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child requires the guiding hand of counsel at every step in the proceedings against him. See also 387 U.S. at 22.

The standard advocates that representation be available to defendants even prior to any court proceedings. The right of the defendants should be preserved throughout the law and order system.

According to the National American Indian Court Judges Association (1971:115) report on the assistance of counsel in tribal courts:

> Initially, the defendant must be informed that he has the right to retain counsel. **Johnson v. Zerbst, supra.** This should be done as soon as he/she is taken into custody.

Miranda v. Arizona, 384 U.S. 436, 444 (1966). If it is not done, any statement made by the defendant cannot be introduced into evidence, id., except that a voluntary statement made by a defendant during this time may be introduced to contradict testimony given by the defendant at the trial. Harris v. New York, 91 S. Ct. 643 (1971). If there is a legal services program on the reservation, the defendant should be informed that he can receive the assistance of counsel, free, from that organization.

A lawyer performs crucial services which a defendant, especially if incarcerated, is unable to perform. A lawyer argues for pretrial release and often secures bond. This enables the client to help in the preparation of the case by locating witnesses, gathering facts, seeing that witnesses appear in court, deciding in what order they appear and in examining and cross-examining witnesses. To say that these are difficult tasks for the unrepresented defendant is an understatement. (Herman, 1973:21,25).

The use of lay advocates has been addressed throughout the standard. Many legal assistance programs use lay advocates who are well trained. Swan (1970:617) in his article on Indian legal services notes that the periodic legal training conferences to which lay advocates are sent do not fulfill training needs in substantive law, trial practices and especially research and brief preparation. Appropriate inservice training is also necessary. Lay counsel without adequate training would be subject to many of the same disadvantages as the unrepresented lay person. Aside from this training requirement, the presence of a professional attorney-supervisor may be necessary as an information resource and as a safeguard against abuses or mistakes in the advising of clients. In order to preserve the concept of equal protection under the law, neither the plaintiff nor the defendant should have the benefit of a professional attorney while the other does not. If tribes intend to use professional attorneys as prosecutors, then the defense attorney should be no less qualified. Conversely lay advocates may be used until tribes are able to employ professional attorney prosecutors.

Implementation

A. Agencies Involved:

Tribes or other sponsoring agencies (O.E.O., for example).

B. Council Actions:

The tribes would be responsible for implementing an ordinance or administrative ruling to assure accused persons of the right to prompt, effective communication with a lawyer or lay advocate beginning at the time of arrest or when the investigation focuses upon the accused as a likely suspect.

The tribes may or may not sponsor this legal assistance. Sponsorship would most likely require council action. O.E.O. sponsorship may be another option.

C. Administrative Actions:

The sponsoring agency is responsible to insure that any and all lay advocates are qualified and well trained as prescribed in the standard.

D. Funding:

South Dakota Legal Services (O.E.O. funded) presently serve the Rosebud, Crow Creek and Cheyenne River Reservations. The Oglala Sioux Tribe sponsors its own program. Funding would be required for additional legal assistance programs. O.E.O., LEAA and tribal funds are among the funding options.

Reservations Standard 16.2

Legal Assistance on Appeal

Legal assistance should be available to individuals for cases on appeal to Indian courts.

After conviction lawyers or lay advocates should explain to defendants the meaning and consequences of the court's judgement and their rights of appeal. Lawyers or lay advocates should explain to defendants the right to petition a federal court for a court appointed lawyer if the decision is made to exercise the right of appeal in federal court. The decision whether to appeal should be the defendant's own choice.

Commentary

The necessity for an appeals process has been considered elsewhere. The need for legal assistance extends to appeals as well as to the original criminal court proceedings. If tribes are to implement a viable appeals process, the importance of a lawyer or lay advocate for the defendant cannot be ignored. Who, if not the attorney, will take a client's case before the appeals court? If an error has been made at the tribal court level who, if not the attorney, is in a position to detect and make the necessary efforts to correct it? If Indian people are to be fairly protected, their rights must extend to and include every avenue of relief in Indian court.

Under the "Indian Civil Rights Act" of 1968 (18. USC § 1303) defendants in Indian courts may exercise appeals through the privilege of the writ of habeas corpus. A professional legal assistance attorney could bring this appeal before a federal court, unless there were program restrictions against the attorney's doing so. Lay advocates, however, are not eligible to handle appeals on the federal level, although they may appear before tribal appeals courts. Because defendants may be unaware of their options in this situation, legal assistance attorneys or lay advocates should explain that, upon proof of indigency and in the interests of justice, a federal court may grant a defendant a court appointed attorney. See 18 USC § 3006A (g); 28 USC § 1915 (d). On the other hand, a defendant may be satisfied with appeal relief on the tribal level. The exercise of the right of appeal should be the defendant's own choice.

Implementation

A. Agencies Involved:

Tribes and other legal assistance programs.

Legal assistance sponsors.

B. Administrative Actions:

It would be up to the sponsors of the legal assistance program or a designated policy-making board to insure that legal assistance is made available to clients for appeals to Indian appeals courts. The sponsor or board would also determine whether the assistance would be available to a client on a federal appeals level as well.

The legal assistance program, as a matter of program policy, would be responsible for implementing the second portion of standard 16.2 by explaining to defendants their options

for appeal and the right to petition the federal court for a court appointed lawyer. Depending upon the policy of the legal assistance program, however, professional legal assistance attorneys may be able to make themselves available for this purpose.

Reservations Standard 16.3

Freedom from Political Interference

Legal assistance programs and the lawyers and lay advocates therein should strive to remain as immune from political pressures and influence as possible.

Commentary

None of the standards herein stated advocate or oppose a particular type of legal assistance program sponsorship. However, in a situation involving tribal funding or sponsorship, legal assistance lawyers and advocates will be forced to weigh competing interests carefully, as defenders of individual rights on the one hand and servants of the tribe on the other. To further complicate matters, the defense attorney or advocate may be opposing a prosecutor who is also an employee of the tribe. Therefore, it is hoped that tribally sponsored programs will build in mechanisms to lessen the likelihood of political interference in local assistance programs. Conflict of interest should not be a problem if services are made available to clients on a first come first served basis and according to stated policy.

The importance of the defense lawyer's immunity from political interference cannot be overstated. The role of the lawyer or advocate, as the defender of individual rights, will be damaged and diminished if conflicts of interest are allowed to play a part in the quality of representation given to a client. Standards of professional ethics should govern the conduct of both lawyers and lay advocates in this regard.

Implementation

A. Agencies Involved:
Tribes or other legal assistance sponsors.
Legal assistance programs.

B. Administrative Actions:
Each of these bodies has a responsibility to institute policies and procedures that will lessen the liklihood of political interference in legal assistance programs.

Reservations Standard 16.4

Conflict of Interest Funds and Referral Services

Because of instances of conflict of interest or duty in which a legal assistance lawyer or lay advocate must decline to represent persons in need of legal services, a fund and referral service should be developed by the legal assistance agency for the purpose of securing counsel in these cases.

1. The referral service should maintain a list of lawyers or lay advocates willing and qualified to undertake the defense of a criminal case; it should be so organized that it can provide prompt service at all times.

2. The availability of legal assistance and the referral service should be publicized. In addition, notices about these services and how to contact them should be posted conspicuously in police stations, jails and wherever else they are likely to give effective notice.

Commentary

In some instances a legal assistance program will find itself unable to represent an individual who is otherwise in need of legal services. Perhaps the individual qualifies for legal assistance under normal conditions, but because of a conflict of interest the program must decline to take the case. O.E.O. legal services and other programs governed by established eligibility criteria must refuse to accept fee-generating cases from persons able to pay private attorneys.

The problem remains that these persons need and deserve legal services. Where does the client go when he or she is denied program assistance because of a conflict of interest? Who will assist the defendant who has limited funds but is too poor to hire an attorney on a normal fee basis?

To combat these problems many legal assistance programs have developed funds and a system for referring these persons to local private attorneys. Funds can be used to finance or supplement persons who are in need of legal services. The Task-Force envisions that the sponsor of the legal assistance program would be responsible for providing this fund.

A number of appropriate referral services could be developed, possibly with some type of fee reduction included in the plan. Tribes may wish to sponsor "judicare programs" in which persons may go to a lawyer who has indicated a willingness to participate in the program. The lawyer is reimbursed by the tribe at a previously agreed upon rate. A governing board could be created to establish policy, indicating which types of cases would be handled in this way.

As another alternative a "lawyer referral program" could be established to provide legal assistance to low-income people by channeling them to lawyers willing to handle such cases. A person calls or visits the central office and states the problem. The staff person, often a volunteer, then selects the name of a lawyer in private practice who has indicated his/her availablity for such a program. The lawyer-client relationship, including the fee, is worked out between the lawyer and client. The effectiveness of this type of program depends upon informing people of low-cost legal services and the willingness of lawyers to participate. (Widiss, 1970:126). Problems may exist on reservations where only a small number of attorneys are available or when long distances must be traveled to reach them.

The programs mentioned in this commentary are offered as suggestions and are not specifically advocated by the Task Force. Each tribe or sponsoring agency must select the type of funding and referral best suited to its needs. Tribes and other sponsors must decide whether they want to limit legal services by establishing eligibility criteria based on inability to pay. A referral program may attract more cooperation from local private attorneys in the event that Standard 12.3, regarding the lowering of fees for admission to practice in Indian courts, is implemented.

Implementation

A. Agencies Involved:
Tribes or other legal assistance sponsors.
Legal assistance programs.

B. Administrative Actions:

The sponsoring agency or a designated policy-making body should develop a program and appropriate guidelines and procedures for conflict of interest funding and referral to alternative legal services.

The program itself has the responsibility to publicize its legal assistance and referral services.

C. Funding:

The sponsoring agency is responsible for maintaining a conflict of interest fund and bearing the cost of referral services.

Reservations Standard 16.5

Community Education Responsibilities

Any legal assistance services should establish a program of community education designed to enable people to become aware of and understand their legal responsibilities and rights and to enable them to preserve and enhance these rights.

Commentary

A chief responsibility of a legal services program is to teach the people their responsibilities and rights under the law. The Papago and the Navajo (DNA) Legal Services both consider community education among their functions. Among their community education efforts the DNA distributes the Law in Action newspaper and uses oral and visual media for educational purposes throughout the schools and community. (Swan, 1970: 650).

In his article, "Indian Legal Services Programs: The Key to Red Power," Robert Swan (1970:596) outlines some obstacles to the acceptance of legal services programs on reservations. The first is a lack of understanding on the part of institutions that wield power on reservations. An Indian person may feel wronged or improperly treated, according to Swan, but there is difficulty in convincing that person that the law can remedy the situation. Because of the power and arbitrary nature of Congressional laws affecting Indian people, law has provided an element of uncertainty. Many Indian people view the law as a distant, powerful decision-making force, not as an instrument of social justice. Because laws on the reservation have reflected a great deal of non-Indian law, the law has been seen as more of an alien force than a force for equal justice. Jurisdictional complications have made laws so confusing that lay persons have found it difficult to protect their rights.

Legal services programs are in a position to educate Indian communities concerning the law, clarify misconceptions and afford Indian people the knowledge to enable them to protect themselves against intimidation and to retain better control of their own lives. An educational program is an opportunity for legal assistance to publicize its services, gain support and public trust and expose itself to direct input from the people of the community.

Implementation

A. Agencies Involved:
Legal assistance programs.

B. Administrative Actions:

The legal assistance program itself would be entirely responsible for the implementation of this standard.

Reservations Standard 16.6

Availability of Legal Services

A legal assistance program should be designed to serve individual clients from the reservation. Any legal assistance program should provide the following:

1. A definite, convenient and well-publicized place where the service may be applied for;

2. Definite office hours;

3. A definite person in whom confidence may be reposed and who can give executive direction; and

4. A supervisory policy-making group, composed at least in part of Indian people, to assure sound administration in the interests of the clientele and the tribe.

Commentary

In part, this standard refers to the need for a legal assistance program that is readily accessible to the people. One of the most important aspects of a legal assistance program is its day-to-day availability for legal advice and consultation purposes. As previously stated, the availability of legal services on a full-time basis is preferable.

If the people of the community are to accept and use the services of the legal assistance program, they must be able to place their trust and confidence in the persons who operate that program. A qualified person should be placed in charge of the daily operation of the program. However, this person may be too closely involved with policy conflicts to administer the program impartially. A supervisory policy-making group should be formulated for general administrative purposes.

A non-tribally sponsored legal assistance program should take care to include Indian people in administrative policy making. Involving Indian people on the governing boards of legal services programs has been offered as a partial solution to conflicts that may arise between the preservation of tribal sovereignty and custom on the one hand and safeguarding important individual rights on the other. (Getches, 1972:183). The board could act as a filtering body for receiving complaints or suggestions from tribal government, law and order personnel and the community. Because it is sometimes difficult for an attorney to decide which cases should and should not be taken in order to avoid infringment on a tribe's governmental prerogatives, the governing board could conceivably establish a general policy from the outset that particular types of cases will not be taken. However, such special policies should be exercised sparingly and be avoided when possible in order to preserve the original purpose of individual access to legal counsel.

Implementation

A. Agencies Involved:
Tribes or other sponsoring agencies.

B. Administrative Actions:

The entire standard would require implementation through the administrative actions of legal assistance sponsors. The provisions of Standard 16.6 are self-explanatory.

C. Funding:
See Standard 16.1 under "Funding".

Reservations Standard 16.7

Responsibility for Individual Client Representation

In order to avoid conflicts of interest and situations in which tribal matters may take precedence over the representation of individual clients, the legal assistance program should not furnish legal advice to the tribal council and other agencies.

Commentary

Conflicts of interest are likely to occur when legal assistance programs serve both the tribes and individual clients. Legal services, interested in both the well-being of the tribe and the individual client, will encounter a significant dilemma when these goals conflict. In an adversary process, the role of the defense is to defend and protect the rights of individuals. Legal assistance should not be involved in situations in which the problems of the tribal government or other agencies take precedence over those of individuals in need of legal services.

Implementation

A. Agencies Involved:
Tribes or other sponsoring agencies.
B. Administrative Actions:
Policies developed for the operation of the legal assistance program should specify that the program will not be required to furnish legal advice to the tribal government and other agencies.

Reservations Standard 16.8

Inmate Access to Legal Assistance

Persons incarcerated within Indian detention or correctional facilities should have access to legal assistance.

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

2. Personnel of jails, custodial institutions and correctional facilities should be prohibited by law or administrative regulations from examining or otherwise interfering with any communication or correspondence between a client and his/her lawyer or lay advocate relating to legal action arising out of charges or incarceration.

3. To insure the privacy essential for confidential communication between lawyer and client, adequate facilities should be available for private discussions between counsel and accused in jails, courthouses and other places where accused persons must confer with counsel.

Commentary

The law acknowledges and protects an inmate's right of access to the courts. The "Indian Civil Rights Act" of 1968 clearly states that, "no Indian tribe in exercising powers of self government shall make or enforce any law prohibiting . . . the right of the people . . . to petition for a redress of grievances . . . " 18 USC § 1302 (1). Denial of inmate access to the courts would seem to constitute a denial of 18 USC § 1302 (1), a denial of the "equal protection of its (the tribe's) laws" under 18 USC § 1302 (8), and a denial of 18 USC § 1303 which provides the privilege of the **writ of habeas corpus**" to any person . . . to test the legality of his detention by order of an Indian tribe."

On a related issue, the standard advocates access to legal assistance for persons incarcerated within Indian detention and correctional facilities. The standard does not specify who will bear the costs of legal assistance. That would be determined by the tribes and/or legal assistance sponsors. Consistent with other standards in this chapter, the standard does not specify that access must be to professional legal assistance.

Certainly, a number of inmates in Indian jails may be in need of legal assistance. Inmates, like most people, are usually not educated to the point where they can adequately represent themselves. As a matter of fairness and good correctional management, inmates' legal needs should be met. According to the National Advisory Commission Task Force on Corrections (1973c:27), corrections officials feel that the expansion of legal services would provide a safety valve for grievances and help reduce inmate tensions.

Court litigation regarding the right to and availability of counsel has touched upon a number of issues discussed in this standard. The concept of an inmate's right of access to legal assistance has been upheld. Naturally, a pretrial detainee's right of access to counsel is supported by the "Indian Civil Rights Act" of 1968 which prohibits an Indian tribe from denying any persons access to counsel at their own expense. It would seem that the courts have confirmed the inmate's right to counsel for the purpose of post-conviction relief. **Johnson v. Avery**, 393 U.S. 480 (1969) decided that a state may not bar inmates from assisting other inmates in preparing petitions for post-conviction relief unless it provides some alternative to assist inmates. **Procunier v. Martinez** held that a prisoner's rights were unconstitutionally abridged by a state prison administrative rule prohibiting inmates access to law student agents of attorneys. 416 U.S. 396, 94 S. Ct. 1800, 40 L. Ed. 2d 24b (1974).

A question remains concerning an inmate's right of access to counsel for the purpose of resolving civil problems, such as divorce, bankruptcy or probate. See **Souza v. Travisano**, 498 F. 2d 1120 (1974). The standard takes a position which favors inmate access to the courts for the purpose of civil litigation. Inmates should not be placed under the legal disadvantage of having to wait months before civil legal actions can be commenced. The availability of witnesses and the preservation of evidence can be seriously undermined during that period. The worry and frustration of unresolved legal matters may tend to hamper rehabilitative efforts as well.

Although the right of access to the courts is clearly stated and the right of access to counsel has been upheld, facilities are in a position to block effective inmate communication with the court and counsel by interfering with or censoring mail or other communications. The absence of a private place in which the inmate can confer with counsel also constitutes interference. The final two provisions of Standard 16.8 oppose this type of interference. Tribes may find it advisable to issue a tribal ordinance prohibiting interference with communications or correspondence between inmates and counsel or the courts.

The federal courts have shown themselves willing to examine allegations of this type of interference. In recent Supreme Court mail censorship cases the court has generally opposed censorship of inmate correspondence with public officials, under the right to petition for redress of grievances.

Instances have arisen in which inmates have filed lawsuits challenging censorship of mail between inmates and counsel. Courts have been divided on the issue of censorship and the extent of censorship. **Procunier v. Martinez,** 414 U.S. 973, 94 S. Ct. 1800 (1974) approved censorship reguations designed to prevent the transmittal of contraband or the exchange of plans for the commission of unlawful acts. The reading of inmate-attorney mail would also find support, provided it was forwarded if no evidence of abuse was discovered. At the same time, the need for client-attorney privacy would militate against this type of interference. See **Bach v. People of State of Illinois, Danelon,** 381 F. Supp. 911 (E.D.La 1974) in which the court forbade censorship of mail from attorneys, that is the reading of mail, and required the inmate's presence when mail was opened for inspection.

Wolf v. McDonnel conceded the right of prison officials to open and inspect mail coming from attorneys. 15 Cr. L. Rptr. 3304 (June 26, 1974) Section 10. The state in this case conceded the inmate's right to be present during this inspection. Wise administrators of Indian facilities should follow this procedure.

The right of an inmate to meet with counsel is part of the right to counsel. Regulations regarding security and discipline may affect visitation to a reasonable extent but should not be used to undermine the inmate's access to counsel. The courts have shown themselves willing to examine claims that an inmate's rights have been violated in this way.

The standard does not specifically advocate provision of counsel to indigent inmates or indeed all inmates at no cost. That type of provision could place an unreasonable burden on tribes or legal assistance programs at the present time. The standard actually seeks to facilitate access to counsel and the courts and to prohibit acts on the part of correctional personnel which would interfere with or undermine this access. However, many persons found in Indian jails are unable to pay for legal assistance. Even when persons have some token income, incarceration may impose financial hardships and undermine their ability to pay. Therefore, where free legal services or legal services on an indigency basis have been provided in the community, they should be made equally available to persons incarcerated in Indian jails.

Implementation

A. Agencies Involved:
BIA or tribal correctional agencies.
Tribes or other sponsoring agencies.

B. Council Actions:

As prescribed in part 2 of the standard, it may be advisable for tribes to prohibit by law the interference with correspondence and communications between inmate and legal counsel by personnel of Indian jails, custodial institutions or correctional facilities. As an alternative this ruling could be made in the administrative regulations of the facilities themselves.

C. Administrative Actions:

Correctional agency administrators should develop policies and procedures to insure the right of inmate access to legal assistance and the courts. Administrators should take actions to discourage interference by personnel with communications or correspondence between inmates and their lawyers or lay advocates. The administrator has the responsibility to insure that adequate and private facilities are available to inmates and their lawyers or advocates for conference purposes.

The tribes should insure that like facilities are provided in tribal courthouses.

Legal assistance program sponsors should develop policies to provide legal assistance to inmates in reservation correctional facilities.

CHAPTER SEVENTEEN

RECRIPROCAL EXTRADITION AND RELATED ISSUES

Reservations Standard 17.1

Reciprocal Extradition Between the State and Indian Tribes

Recripocal extradition between the State and the tribes should be established for the purpose of effective enforcement and prosecution of the laws of each of these jurisdictions.

Extradition should extend to all classes of crimes and all persons over which the tribe or state respectively has jurisdiction.

Commentary

Extradition is generally defined as the transfer of a fugitive from one government and jurisdiction to another. For example, a person who commits a crime within a state and then withdraws from the jurisdiction of that state is termed a fugitive from justice. 31 Am. Jur. Extradition, Sec. 15 (1967): see also, 32 A.L.R. 1167, 54 A.L.R. 281.

Standard 17.1 was developed by a joint meeting of the Reservations and Courts Task Forces after due consideration of H.B. 888, passed by the South Dakota Legislature during the 1976 session, which is "an act to provide for State extradition of certain Indians accused of crimes to Indian tribal governments."

The State of South Dakota has felt the need to extradite from reservations because of felons who escape State jurisdiction and take refuge on reservation lands. The tribes have desired the power of extradition for similar reasons. Although crimes under the jurisdiction of the tribes are not labeled felonies because limited to a punishment of $500 fine and/or six months imprisonment, many are serious crimes nevertheless. The objective of extradition is to secure a fugitive from an asylum jurisdiction where the fugitive would find freedom from prosecution. Without extradition agreements criminal procedure within the State may come to a halt because the problem of obtaining extradition exists or is anticipated. Both Indian and nonIndian persons have a right to feel secure and protected by the laws. Both deserve redress when they are victims of an offense. Extradition would have the effect of strengthening these rights by preventing the State and the reservations from becoming havens for fugitives.

In the past at least four of the nine tribes involved herein have granted the State of South Dakota powers of extradition. The State did not have the power to force the tribes to extradite to the State, since the federal courts have recognized the rights of tribes to control the extradition of Indian fugitives within their borders and have denied the states power to require tribes to extradite fugitives back to the states when they have fled from a state's jurisdiction to the reservation. **Ex. rel. Merrill v. Turtle**, 413 F. 2d. 683 (1969). A tribe may voluntarily agree to return fugitives who have sought asylum on the reservation. 25 C.F.R. 161.2; Association of American Indian Affairs, 1958:450; Solicitor's opinion 55 I.D. 344 (1941). However, the problem remained that, though the State then had recourse to extradite a fugitive from the State, the tribes had no recourse in a similar manner, since the State and its political subdivisions have no authority to extradite to the tribes. Because of this lack of reciprocity in the matter of extradition, a few of the tribes were unwilling to extradite to the State. Others passed ordinances authorizing extradition only on the condition of reciprocity.

Recent legislation passed by the South Dakota Legislature (H.B. 888, 1976) authorizes the State to extradite to any Indian tribe upon entry into a mutual and formal extradition compact between the two. This legislation is expected to facilitate extradition with tribes that have based extradition with the State on the issue of reciprocity. The Reservations and Courts Task Forces endorse reciprocal extradition between the State of South Dakota and the Indian tribes and feel that the recent legislation in the form of H.B. 888 (1976) is "a step in the right direction." However, the Task Forces recognize that this legislation in no way binds the tribes and that agreements will have to be worked out with the tribes individually. The Task Forces also maintain that this reciprocal extradition should extend to all classes of crimes and to all persons over which the State or tribes, respectively, have jurisdiction.

Implementation

A. Agencies Involved:
Tribes.
State of South Dakota.

B. Legislation:
The implementation of extradition from the State to the tribes is presently authorized under H.B. 888 (1976).

C. Council Actions:
Some tribal codes contain ordinances or resolutions authorizing the extradition of fugitives to the State of South Dakota. The National American Indian Court Judges Association (1974a:28) suggests that tribes enact tribal ordinances or resolutions on extradition to insure that the resulting extradition agreements will fit the specific needs and desires of the tribe. It is suggested that tribes enact ordinances or resolutions that set forth extradition procedures and that are consistent with their tribal constitutions and the 1968 "Indian Civil Rights Act." 25 USC § 1301-3.

Reservations Standard 17.2

Witness Appearances from State and Tribal Jurisdictions

Enabling legislation should be enacted to insure the appearance of witnesses within the jurisdictions of the State and the tribes.

Commentary

Even when the extradition of a fugitive is facilitated, a prosecution may fail or a case may be dismissed because of the inability of the State or tribes to secure necessary witnesses if they are permitted to escape the subpoena powers of the jurisdiction (tribal or State) having authority to hear the case. Both the defense and prosecution suffer in this respect.

As a result the joint Reservations and Courts Task Forces have set a goal which calls for enabling legislation, either a statute (State) or ordinances (tribal), to insure the appear-

ance of witnesses within State and tribal jurisdictions. The specifics of this legislation are subject to negotiations between the tribes and the State and have not been defined in this goal statement.

Implementation

A. Agencies Involved:
State of South Dakota.
Tribes.

B. Legislation:

The State may take action now to develop some consensus between the State and the tribes on the issue of witness appearances. Enabling legislation should be drafted as a result of these negotiations.

C. Council Actions:

In order to implement this standard the tribes should also first enact resolutions or ordinances on the issue.

Reservations Standard 17.3

Fresh Pursuit

Enabling legislation should be enacted to provide for fresh pursuit agreements between tribal and State jurisdictions.

Commentary

Because fresh pursuit is usually considered in the context of extradition, the joint Task Forces have addressed the issue of fresh pursuit among this series of goal statements devoted to law enforcement cooperation between the State and tribes. At the same time the Task Forces recognize that fresh pursuit is an issue separate from extradition and is not covered by the recent legislation, H.B. 888 (1976), on extradition.

Because nine reservations share borders with the State of South Dakota, the issue of fresh pursuit is of concern to law enforcement officers. Fresh pursuit involves the active pursuit by a law enforcement officer of a fugitive for the purpose of arrest. This pursuit will normally originate in the law enforcement officer's own jurisdiction but carry over into the jurisdiction of another authority. At the present time no formal agreement on fresh pursuit exists between the State and the tribes, although the State of South Dakota does cover fresh pursuit with bordering states under SDCL 23-23-1 (1976). The joint Task Forces feel that this issue should be addressed by the State and tribal jurisdictions through the enactment of enabling legislation designed to permit the State and individual tribes to enter into agreements on this issue. Entry into formal agreements would discourage extra-legal practices on the part of State and tribal law enforcement authorities with regard to fresh pursuit.

Implementation

A. Agencies Involved:
Tribes.
State of South Dakota.

B. Legislation:

The State should enact enabling legislation, after consultation with the tribes, to permit agreements with individual tribes on the issue of fresh pursuit.

C. Council Actions:

It is recognized that implementation will be predicated on the enactment of an extradition compact between any tribe and the State, although an agreement on fresh pursuit need not be part of the extradition compact.

The standard recommends that the tribes enact enabling legislation (ordinances) to permit tribal governments to enter into fresh pursuit agreements with the State. These ordinances would help to insure that a tribe's specific wishes, needs and substantive procedures are reflected in the fresh pursuit agreement.

CHAPTER EIGHTEEN

CORRECTIONAL PLANNING

Reservations Standard 18.1

Correctional Evaluation and Planning on Reservations

Criminal justice planners on each reservation or other designated BIA or tribal personnel should immediately undertake an evaluation of their corrections system in order to determine the needs, goals and objectives of that system. An evaluation team should be developed and composed of representatives from all law and order components on the reservation and from community programs or agencies which may be in a position to assist or are directly or indirectly related to the corrections system.

1. In the evaluation process consideration should be given to a determination of needs and problems in terms of the adequacy of physical facilities, the availability of jail services, the availability of alternatives to detention, internal policies and detention and correctional administration, and staffing needs.

2. In the evaluation process consideration should be given to a planning process involving a reorientation of priorities from detention to the institution of programs and detention alternatives designed to aid the offender's reintegration into the community. In the planning process provision should be made for the following:

a. Goals (long-term) and objectives (short-term) for the correctional system should be developed and a means of measuring the achievement of these should be included in the plan;

b. Minimum jail standards should be established. Provision should be made for periodic inspections of jail facilities by persons unrelated to the facility itself in order to insure that standards are being met; and

c. A provision for the periodic review of correctional services and programs should be included in the plan in order to insure that these services and programs are accomplishing stated objectives. Program or planning changes should be made as necessary.

3. In both evaluation and planning consideration should be given to the correctional goals and standards outlined by the Reservations Task Force on Criminal Justice Standards and Goals.

Commentary

Correctional thought has expanded over the years to include services and programs that extend far beyond lock-up, detention and punishment. Untold energy and dollars have been spent in efforts to "humanize" prison systems and to "rehabilitate" offenders.

Despite these efforts little attention has been given to possible alternatives to traditional detention in jail facilities. This is particularly unfortunate since most offenders have initial or continued contact with jail facilities. In effect, most first offenders and most minor offenders, including many juveniles, begin their corrections careers in the facilities least able to help them overcome the problems that have led to violations in the first place.

Even on reservations, where correctional responsibilities are limited and facilities are localized, little attention has been given to the corrections function, particularly in relation to jails. True some reservations have improved their jail facilities through building and renovation. Yet few facilities have made provision for a full-time jailor. A survey of reservations' facilities for South Dakota indicates serious inadequacies in terms of staffing, day-to-day services and the availability of alternative programs. There is little indication that comprehensive planning has been directed toward these issues, though criminal justice planners, law and order personnel and others are aware that problems exist.

Part of the problem undoubtedly involves funding. Yet a large portion of the problem also invloves a misunderstanding of the role of jails in the correctional process:

> . . . Community jails were originally conceived as being short-term holding facilities for persons awaiting trial. And most citizens and officials still think that this is how jails are used. Actually, they are used in a far different manner. They have become the receptacle of society's problems. They are detoxification centers for the alcoholic, miniprisons for the sentenced misdemeanant, and hostels for the poor. In most cases jails have become all too convenient facilities. They are always open and they have very few entrance requirements. The community's annoying health and vagrancy problems can always be handled by the jail rather than by more appropriate health and welfare systems. (Coughlin, 1972:13).

Fortunately there is a growing recognition that jails have a responsibility to provide basic services:

> The function of the jail must be redirected toward becoming a staging area for the total corrections system. If it is to be used as a detention facility the community should have the capacity to evaluate the needs of the people it confines and to provide for those needs. The jail staff should include personnel whose job it is to establish which prisoners are safe to await trial while free on their own recognizance; which convicted prisoners can be best treated by programs provided in their own community; and what in-jail programs are needed for the resident population. (Coughlin, 1972:13).

Greater emphasis must be placed on alternatives to traditional jail time. These programs should respond to rehabilitative needs that are not being met. They should grow out of efforts to reduce the repetition of offenses and a recognition that jail is not the appropriate place for many offenders.

Because reservations are limited in resources, an evaluation of present correctional systems must focus on local jails and the limited sentencing alternatives, particularly probation, available to Indian offenders. A first step in the evaluation process should be to determine present conditions as well as the needs and problems of corrections on each reservation.

A productive evaluation process should include planning. This is the point at which jail and other law and order per-

sonnel should be reorienting their priorities toward greater emphasis on correctional programming and reliance on alternatives to traditional detention. The correctional standards outlined by the Reservations Task Force on Criminal Justice Standards and Goals provide some appropriate guidelines to follow.

In implementing evaluation and planning, criminal justice planners and representatives of the law and order system should work together to develop goals (long-term) and objectives (short-term) by setting jail standards and establishing program priorities. Because a more coherent approach to corrections must be taken, planning should also involve cooperation and coordination among programs related directly or indirectly to the law and order system. While BIA and tribal facilities may themselves lack the means to provide many services to inmates and detainees, they may have also failed to take the fullest advantage of services that exist within the general community. If priorities in corrections are to be reoriented toward a greater use of community resources, these programs must in turn be brought into the correctional evaluation and planning process.

Implementation

A. Agencies Involved:
Tribes.
Bureau of Indian Affairs.
Criminal justice planners.

B. Administrative Actions:

The implementation of this standard should be a cooperative effort of the agencies listed above as well as law and order and non-law and order agencies that would have a vested interest or contribution to make in the evaluation and planning process.

The Bureau of Indian Affairs on the agency level may be in the best position to establish and enforce minimum jail standards, perhaps in cooperation with tribal law and order and criminal justice planners.

Police or jail personnel on the agency level should not be involved in inspections, since this would constitute representatives of the jail inspecting themselves.

Any agency that develops a correctional program should include an evalation component to insure that the program is meeting its objectives and to recognize and institute changes as needed.

C. Funding:

It is not expected that funding will be necessary for the actual evaluation and planning process. The implementation of programs resulting from this process will undoubtedly require funding. Funding through all possible sources should be actively sought by the agencies or groups who have been empowered to develop programs.

CHAPTER NINETEEN

INDIAN JAILS AND CORRECTIONAL FACILITIES

Reservations Standard 19.1

Standards and Rules for Jails and Correctional Facilities

As appropriate BIA or tribal authorities should establish a board empowered to set standards and rules for the operation of jails and correctional facilities.

1. Minimum standards should be developed with a view to providing the necessary custody of prisoners and to protecting their health, comfort and welfare. Minimum standards should relate to the following:

a. Physical facilities which are secure and safe;
b. Jail design;
c. Adequacy of space per prisoner;
d. Heat, light and ventilation;
e. Supervision of prisoners;
f. Personal hygiene and comfort of prisoners;
g. Medical care for prisoners;
h. Sanitation;
i. Food allowances, food preparation and food handling;
j. Such other provisions as may be necessary for the safekeeping, privacy, care, protection and welfare of prisoners.

2. Rules should cover the operation of the facility, including record-keeping, discipline, visitation and recreation. However, rules governing the operation of rehabilitation programs should only be covered to the extent that they relate to security.

3. Provisions should be made for an annual inspection of facilities to insure that all standards are being met and all rules are being followed.

a. This inspection should be made by persons who are independent of the jailor or administrative head of the facility.

b. The jailor or administrative head of the facility should be advised of deficiencies and recommendations in a written report which should be acted upon as soon as possible but no later than a time set by the board or inspector.

4. The board should have full access to the grounds, buildings, books, and records relating to the operation of any such facility and may require the head of the facility to provide information relating thereto in person or in response to a questionnaire.

Commentary

Despite the need for expanded correctional planning on reservations, one must face present realities. Because of inadequate resources and a law enforcement rather than correctional orientation, reservations jails like most jails have become catch-alls for every type of offender, including some juveniles and persons yet to be convicted and sentenced. No doubt this condition will persist for some time. In recognition of this fact it is important for jail administrators, BIA or tribal, to develop jail environments that are conducive to a correctional approach and that meet some of the program needs not available elsewhere on the reservations. As a part of this approach it is also necessary for jail administrators to provide an environment which, without compromising necessary security, provides an atmosphere that shows consideration for the mental and physical welfare of those detained within these facilities.

Although the adequacy of adult detention would be important if a jail held only one person per day, actual figures from six of the reservations indicated that a number of Indian people are affected through detention in reservation jails facilities. For 1974 the following figures are available: Cheyenne River has a daily average adult jail population of 9.92 adults; Crow Creek 7.6 adults; Lower Brule 8.7; Pine Ridge 24; Rosebud 36 and Standing Rock 12.33. The offenses for which these persons were accused or convicted ranged in seriousness from violent crimes against persons to petty theft, disorderly conduct and vagrancy. (Bureau of Indian Affairs, 1975).

Available indicators show that adult detention facilities on reservations are in need of improved methods of dealing with the diversity and numbers of offenders who proceed through their law and order systems. Although one or more detention facilities may satisfy some of the appropriate requirements, generally greater consideration needs to be given to the classification and separation of offenders, supervision and security, physical environment, health and sanitation, work, education, and recreation. In 1975 the Bureau of Indian Affairs Reservation Criminal Justice Task Force (1975:85) set these as some of the objectives for reservation detention facilities:

> There should be adequate funding and staffing to make jails physically safe and non-hazardous to health. It is essential that 24-hour supervision be provided at all jails in order to reduce the number of prisoner assaults and virtually eliminate deaths by suicide. Matrons should be on duty whenever women are imprisoned.

Although the Bureau of Indian Affairs makes a copy of the Jail Rules and Regulations of the South Dakota Board of Charities and Corrections available to agency personnel, a survey of facilities indicates that these rules and regulations, when at all applied, have been applied inconsistently. Standard 19.1 and the other standards in this chapter address these issues. The standards reflect what the Task Force feels are reasonable and necessary requirements for the protection and custody of inmates in reservation correctional facilities.

No doubt, correctional facility standards will not be set and maintained unless somebody assumes responsibility for insuring that this is done. Standard 19.1 advocates the establishment of a board empowered to set rules and standards for the operation of Indian jails and correctional facilities. This board should provide for the annual inspection of facilities to insure that standards are being met. As appropriate, the BIA or the tribes may sponsor this board, depending upon who sponsors and maintains the facility. These efforts should not duplicate one another but should be cooperative if possible. The Task Force suggests that the BIA establish a board of inspection at the area level to avoid a situation in which jail personnel are inspecting themselves at the agency level. In either case, inspections should be made by persons who are

independent of the jailor or administrative head of the facility.

Inspectors should include their observations and recommendations in a written report to be submitted to the administrative head of the facility. Because an inspection is useless unless remedies result, the inspectors should establish a deadline for corrective action. The standard does not provide for specific sanctions to be applied when facility administrators fail to act. The agency that sponsors the standards and inspection board should have the power to apply appropriate sanctions.

The standards that follow are of critical importance to a good correctional approach. They are based on two beliefs: First, correctional administrators and staff are responsible for the safety and well-being of persons in their custody. Secondly, the finest rehabilitation programs cannot work if inmates are forced to live in conditions that punish, jeopardize and dehumanize them.

Implementation

A. Agencies Involved:
Tribes.
Bureau of Indian Affairs.

B. Administrative Actions:

Should the BIA establish a standards and inspection board for BIA maintained facilities, the board should originate at the area rather than the agency level. The implementation of this standard is self-explanatory.

Reservations Standard 19.2

Provision of Medical Services

Reservation jails and correctional facilities should make provision for medical examinations and services to inmates as needed. Procedures should be developed and facilities provided for early detection and prevention of illness.

1. Medical personnel or legally qualified paramedical personnel should be available or on call at all times. Efforts should be made to obtain the services of a medical officer with knowledge of psychiatry.

2. During booking, a member of the jail staff should conduct an initial health screening in order to detect symptoms of illness or signs of injury. Jail staff should obtain a brief health history at booking from prisoners who need immediate or early medical or other health care. Such prisoners should promptly receive appropriate attention. When the need for immediate or early care is not apparent, detention and correctional facility staff should obtain a brief health history within 12 hours after booking. Within 48 hours of admission, exclusive of Sundays, each prisoner's health history should be reviewed and assessed by a qualified doctor, nurse or paramedic. The medical officer should see and examine every prisoner as soon as possible after admission, and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation; and the determination of the physical capacity of every inmate for work.

3. Prisoners should not be involved in food preparation unless they are inspected for cleanliness and illness.

4. Every facility administrator should, in cooperation with a consulting physician, set forth in writing to all facility personnel a routine procedure for the summoning of proper medical aid, for the application of emergency first aid and for the ongoing medical care of persons confined. All facility personnel should also have emergency first aid training.

5. A medical officer should regularly inspect and advise the administrative head of the facility upon:

a. The quantity, quality, preparation and service of food;

b. The hygiene and cleanliness of the facility and prisoners;

c. The sanitation, heating, lighting and ventilation of the facility; and

d. The suitability and cleanliness of the prisoner's clothing and bedding.

Commentary

The "Indian Civil Rights Act" of 1968 prohibits the inflicting of cruel and unusual punishment. 18 USC § 1302 (7). The lack of preventive medical care has been one factor in court findings that incarceration in certain facilities may constitute cruel and unusual punishment. Courts have also inquired into the right to medical treatment, adequacy of diet, sanitation and other issues affecting the mental and physical health of inmates. See **Biship v. Stoneman**, 508 F. 2d 1224 (2d. Cir. 1974); **Freeman v. Lockhart**, 503 F. 2d 1016 (8th Cir. 1970).

Although Public Health Service staff and facilities are available to inmates of Indian jails as needed, adequate procedures still do not exist to protect the health of inmates.

Standard 19.2 advocates and outlines a set of procedures that are designed to remedy this situation.

Implementation

A. Agencies Involved:
Tribes.
Bureau of Indian Affairs.
Indian correctional facilities.

B. Administrative Actions:

Facility administrators should take primary responsibility to see that these procedures are developed and implemented.

C. Funding:

The need for additional funding could be avoided with the development of medical resources in the community. Volunteers could be used to train facility personnel in health screening procedures.

Reservations Standard 19.3

Sanitation and Protective Maintenance

The inmate's life and health are the responsibility of the operating agency. Reservations jails and correctional facilities should be kept physically safe and nonhazardous to health. All parts of the jail should be kept immaculately clean by a systematic, supervised cleaning program.

1. Rules and regulations governing sanitation should include such matters as cleanliness of floors, walls, ceilings, storage spaces, utensils and other facilities; adequacy of lighting,

ventilation, lavatory facilities, bedding, and food protection facilities; treatment of eating and drinking utensils and waste disposal; methods of food preparation, handling, storage and serving; adequacy of diet; and such other items as are necessary in the interest of the health of the inmates and the public.

a. There should be cleaning of the entire jail facility at least once a day and provision should be made for a general sanitation inspection. Prisoners should be responsible for cleaning their own quarters.

b. Every prisoner should be provided with a separate bed and with separate and sufficient bedding which should be clean when issued, kept in good order and changed often enough to insure its cleanliness.

c. Three meals daily should be provided at regular and reasonable hours. Meals should be of sufficient quantity, well prepared, served in an attractive manner, and nutritionally balanced. Service should be prompt, so that hot food remains hot and cold food remains cold.

2. Each jail should have a protective maintenance schedule established requiring schedules for the inspection of all mechanical devices, including heating, ventilation, cooling and locking devices. Prompt repairs should be made whenever malfunctioning is detected.

3. The jail administrator should consult with the local fire department having jurisdiction over the facility in developing a fire suppression plan which should include but not be limited to:

a. A fire prevention plan to be part of the operations manual of policies and procedures;

b. Regular fire prevention inspections at least binannually by the fire department having jurisdiction. Recommendations resulting from inspections should be promptly implemented.

c. A regular schedule for testing and servicing fire suppression equipment (extinguishers, hoses, et cetera).

4. There should be an approved automatic fire alarm system in all facilities. Such a system should be capable of alerting personnel in a central control point to the presence of fire and smoke in a facility.

5. There should be a source of emergency power in all facilities capable of providing minimal lighting in housing units, activities areas, visiting and counseling rooms, corridors, stairs and central control points and to maintain communications and alarm systems.

6. A trained jailor or correctional staff member should be on duty in each facility on a 24-hour basis. Matrons should be present in the facility on a 24-hour basis when females are detained.

Commentary

Though a facility is old it need not be substandard in terms of cleanliness and maintenance. A filthy, ill-kept or hazardous environment decreases inmate morale, creates tensions and grievances and may undermine positive programs operating in or out of the facility.

A growing number of court cases are giving attention to the conditions of jail and prison facilities. Cases support the contention that inmates have the right to minimum levels of decency in facility environments. The courts have examined such factors as cell size, heating, lighting and ventilation, plumbing, exercise facilities and hygienic conditions. In cases where inadequacies exist courts have not hesitated to take action up to and including the closing of substandard facilities. Resolution of Correctional Problems and Issues, 1974:35; See also **Rhem v. Malcolm**, 377 F. Supp. 995 (S.D.N.Y. 1974); **Morales v. Turman**, ———F. Supp. ———, 16 Crim. L. Rptr. 1050 (E.D. Tex. 1974).

An inmate has a right to be confined in a safe and sanitary environment. Persons holding an inmate in custody assume responsibility for providing this type of environment.

A regular program of maintenance and sanitation should be developed in each reservation correctional facility. The agency that operates the facility, be it the tribe or Bureau of Indian Affairs, must insure that the facility is safe and not hazardous to health.

The final provision of Standard 19.3 relates to matters of adequate personnel and supervision. This has been an area of pointed concern and criticism. Most reservation jails do not employ full-time jailors or matrons, although the BIA Criminal Justice Task Force indicates that past suicides and assaults might have been prevented had supervision been adequate. (1975:85). The Task Force advocates the employment of full-time jailors around the clock as well as full-time matrons whenever female inmates are detained. Although funding has been an obstacle to adequate staffing and supervision, the money must be found. The physical well-being of inmates depends upon it.

Implementation

A. Agencies Involved:
Tribes.
Bureau of Indian Affairs.
Indian correctional facilities.

B. Administrative Actions:
The administrative heads of Indian correctional facilities should implement the provisions outlined in this standard or initiate action to see that they are implemented by the funding and supervisory agency.

C. Funding:
Funding may be required for the following: provision of cleaning supplies and adequate bed linens, upgrading of meals, maintenance and repairs, the installation of fire suppression equipment and a fire alarm system, and the installation of an emergency power system.

Reservations Standard 19.4

Facility Environments

Environmental conditions comparable to normal living should be provided to support the development of normal behavior patterns. In order to create these conditions provisions should be made for:

a. Visiting facilities and daily visiting hours under adequate supervision. The environment under which visits take place should be designed and operated under conditions as normal as possible;

b. Regular mail service to inmates;

c. Recreation space, installations and equipment;

d. Leisure activities (games, et cetera) and library services or current reading materials; and

e. Space for private interviews with counsel, counseling and rehabilitation services, classroom and study, and indoor recreation.

Existing community resources should be used for provision of correctional services to the maximum feasible extent.

Commentary

Violations of the law are often directly or indirectly related to the offender's inability to cope with the stress and pressures of everyday living. The offender responds to these pressures with behavior that is unacceptable to society. Unfortunately most jails and prisons have not responded to the need to change behavior but have spent their efforts on custody and control. Their methods of restraining and isolating the offender may create a good inmate but do little to assist the inmate's reintegration into the community. If the offender does not learn to cope with everyday pressures he or she may return to the facility again and again.

Standard 19.4 advocates that offenders be provided with environments that are as close to normal as possible so that they may learn to cope with the types of situations they will encounter when released. Visits, community contacts, mail, recreation and leisure are all part of normal living and should be part of the facility's environment as well. These experiences enable and teach an inmate to deal with social problems in a manner that is acceptable to the community. They may also act as outlets for the tensions of incarceration.

Implementation

A. Agencies Involved:
Tribes.
Bureau of Indian Affairs.
Indian correctional facilities.

B. Administrative Actions:

Facility administrators have direct responsibility for implementing these services. The means of implementation will vary depending upon the types of resources available.

Facility administrators should assign staff and develop procedures for the adequate supervision of visiting areas.

C. Funding:

Necessary funding can be minimized by administrators who are willing to improvise visitation, recreation and study facilities, make maximum use of community resources and seek donations of equipment.

Reservations Standard 19.5

Correctional Classification Systems

Each correctional facility should immediately reexamine its classification system and reorganize it. Classification should be designed to operate on a practicable level and for realistic purposes.

Commentary

Classification herein refers to programming, custody, and personal security and may consider such inmate characteristics as age, type of offense, need for services, abilities, interests and other background information. As one example, based on specific criteria (to be determined by each facility) an offender may be classified as eligible for community work release on a five day a week basis.

Implementation

A. Agencies Involved:
Indian correctional facilities.

B. Administrative Actions:

The standard refrains from specifying criteria for correctional classification except to say that classification should be practical and realistic. Facility administrators should establish criteria according to facilities and services available on their own reservations. It is recommended that other correctional staff, probation staff, court staff, and community resource persons be consulted in this regard.

Reservations Standard 19.6

Separation of Categories of Prisoners

The different categories of prisoners should be kept in separate facilities taking into account their sex, age, criminal record, the legal reasons for their detention and the necessities of their treatment.

1. In facilities that receive both men and women the whole of the premises allocated to women should be entirely separate; where possible men and women should be housed in separate facilities.

2. Young prisoners should be kept entirely separate from adults.

3. Untried prisoners should be kept entirely separate from convicted prisoners.

4. Persons imprisoned for civil matters should be kept separate from persons inprisoned because of criminal offenses.

5. Alternative programs and diversion of sociomedical problem cases (alcoholics, narcotics addicts, mentally ill and vagrants) should be provided. Persons who suffer from mental imbalance or diseases should be observed and treated in specialized programs or facilities under medical management.

6. Every prisoner on admission should be provided with written information governing the treatment of prisoners of his/her category, the disciplinary requirements of the facility, the authorized methods of seeking information and making complaints and all such other matters as are necessary to enable him/her to understand his/her rights and obligations and to adapt to the life of the facility.

Commentary

The separation of categories of offenders is the product of good correctional management and good common sense. Problems relating to security and aggression are lessened when assaultive offenders are separated from minor offenders and the drunk are separated from the sober. Juveniles should also be separated from adults to avoid the harmful influence of experienced offenders. The physical separation should be that which completely prevents communication. Increasingly, the courts are considering tort claims by inmates alleging assault by other inmates and facility negligence in providing reasonable safety to inmates, including the adequate screening of persons with emotional and behavioral disabilities. James v. Wallace, 383 F. Supp. 1177 (M.D. Ala. 1974).

Women should be separated from men for safety reasons and to preserve the privacy of both categories of offenders. The physical separation should be sufficient to prevent communication or any type of harassment. The facility must also consider the need to protect itself from liability in cases involving charges of abuse or other charges by female prisoners. If at all possible, women should be kept in separate jail facilities. This standard should not be construed as opposing coeducational halfway houses or other coeducational medium or minimum security rehabilitation programs.

Pretrial detainees are also entitled to special treatment under the presumption of innocent until proven guilty. The purpose of their incarceration is to insure appearance at trial rather than to punish. Pretrial detainees should also be separated from convicted offenders in order to prevent them from undermining or interfering in special activities with which the convicted inmate may be involved.

Persons with sociomedical problems (alcoholics, narcotics addicts, vagrants and the mentally ill) should be placed in separate facilities where they can receive proper care and treatment for these problems. Many times these persons need specific medical care and close supervision which cannot be adequately provided in local jail or correctional facilities. These persons should also be segregated from other inmates and closely supervised to prevent their causing harm to others or themselves. The mentally ill have been given special protection by the courts, while more and more courts are recognizing their right to treatment. Drug addiction and alcoholism are being recognized as diseases. Vagrancy has too long been a social problem handled by the jails. Vagrants are in need of help, not punishment.

Implementation

A. Agencies Involved:
Tribes.
Bureau of Indian Affairs.
Indian correctional facilities.
Public Health Service.
Alcoholism programs.

B. Administrative Actions.

The appropriate separation of categories of prisoners and the referral of sociomedical problems is the responsibility of the facility administrator. Procedures for the separation of prisoners should be established by the facility administrator.

The facility administrator should work with Public Health Service officials in order to develop procedures for the appropriate referral of mentally ill persons. The facility administrator should work with the directors of Indian alcoholism programs to institute procedures for the appropriate referral of alcoholics and drug addicts.

Tribes should not hesitate to share resources and facilities for referral. Appropriate resources for referral should be sought throughout the State.

C. Funding:

Additional funding should be sought where facilities are presently inadequate to meet these standards.

CHAPTER TWENTY

CORRECTIONAL INFORMATION ON RESERVATIONS

Reservations Standard 20.1

Corrections Information System

Each reservation correctional system should develop an information system and design a data base.

1. The information statistics function of offender accounting, administrative decision-making, on-going research, and rapid response to questions should be reflected in the design.

2. The data base should allow for the easy compilation of an annual statistical report, including sections on population movements, an analysis of recidivism, or any other information necessary to evaluate performance and assess the future needs of the facility and its programs.

3. The requirements of other law and order components for corrections data should be considered in the design.

4. In order to facilitate the development of a data base, record-keeping methods should be standardized. In order to facilitate the exchange of information among Indian correctional agencies, efforts should be made to standardize record-keeping procedures among the various reservations.

Commentary

For a commentary on this standard and information regarding implementation see Standard 20.2.

Reservations Standard 20.2

Correctional Records

An accurate records system is of utmost importance in monitoring population flow, controlling day-to-day operations and preserving exact and accurate information covering events during an inmate's incarceration. The facts and circumstances of incarceration may remain important for many years after the event has occured. Records should be permanently stored.

1. It should be the duty of every tribal/BIA detention/correctional facility administrator on each reservation to provide and keep a record in such form as that the same shall state:

a. The name, sex, age, race, residence and birthplace of each and every person committed or received in such facility;

b. The date received and by whose order;

c. For what offense committed or on what account received;

d. Whether awaiting trial, serving sentence or for fine unpaid and the date such began;

e. The date discharged and by whose order; and

f. The number of days kept and cost of board.

2. Each facility administrator should maintain individual inmate records which should include but not be limited to:

a. Personal property receipts;

b. Commitment papers;

c. Court orders;

d. Reports of disciplinary actions taken;

e. Medical actions taken; and

f. Reports of participation in counseling, education, work-release or similar programs.

g. Each facility administrator should maintain a written report of all incidents which result in physical harm or serious threat of physical harm to an employee or inmate of the facility or other person. Such records should include the names of person involved, a description of the incident, the actions taken, and the date and time of the occurence. Any such incidents should be reported to the facility manager or administrator within 24 hours of their occurrence.

3. Each facility administrator should maintain fiscal records which clearly indicate the costs for the detention/corrections facility according to generally accepted accounting principles. Such records should include feeding and other program costs.

Commentary

Just as we have documented the importance of standardized record keeping in law enforcement and Indian courts, the records portion of the correctional process is no less important. In fact, sound record keeping should be considered an administrative necessity in the management and control of a correctional facility. Records are necessary if decisions regarding inmates, classification, custody, treatment, release, are to be made on the basis of accurate information rather than guesswork and intuition. Even decisions which appear routine demand the amount of fairness and efficiency which is facilitated by accurate record keeping.

The maintenance of records is necessary for the development of statistics to be used in projecting the future needs of correctional facilities and programs. The development of statistics can also be used to evaluate the effectiveness of programs in terms of recidivism and other variables. A corrections information system should be designed to provide the type of data necessary to plan and evaluate programs and facilities as outlined in Standard 18.1. When data is developed, however, care should be taken to make sure that the interrelationships between the data used and planning decisions are valid.

Records are necessary for the exchange of information with other law and order agencies. Where the welfare and rights of an individual are concerned, decisions on the dismissal of charges, pretrial release or detention, diversion, sentencing alternatives, probation and incarceration should be based on fact, not heresay. Ideally, correctional record keeping and the exchange of information would be most effective if standardized to bring about consistency from one reservation to the next.

Records are also necessary for the day-to-day management of the detention or correctional facility. We have already discussed the need to keep accurate records for the proper medical treatment and care of prisoners. Property inventories, booking information and facility expenditures represent other records that should be kept. Part g. regarding records of injuries is important because of an increasing number of tort claims resulting from alleged injuries in Indian jails.

Implementation

A. Agencies Involved:
Tribes.

Bureau of Indian Affairs.
Indian correctional facilities.

B. Administrative Actions:

The BIA and the tribes should cooperate to develop a corrections information system on each reservation. Each reservation may have particular individual needs in terms of correctional record keeping. However, the tribes and BIA should work together to standardize certain basic correctional records across reservation lines. Other law and order agencies, including Indian courts, should provide input into the development of these records systems in order to meet their needs for records that are the usual responsibility of correctional facilities.

The facility administrator has a responsibility to see that records are kept accurately and consistently on a day-to-day basis and according to standardized procedures, as outlined in this standard.

CHAPTER TWENTY-ONE

DIVERSION AND SENTENCING ALTERNATIVES FOR TRIBAL LAW AND ORDER SYSTEMS

Reservations Standard 21.1

Availability of Diversion and Sentencing Alternatives

Law and order administrators, corrections, law enforcement, and probation personnel, and Indian court judges on each reservation should seek, initiate, implement and support programs and resources which may be used as alternatives to initial and continued criminal processing or as sentencing alternatives. Diversion and sentencing alternatives should be sought in but not limited to the following areas: (a) juvenile counseling and rehabilitation; (b) employment and educational counseling and training; (c) family counseling; (d) religious and spiritual counseling; (e) mental health; and (f) alcoholism treatment.

1. Law and order agencies and personnel should seek, examine and encourage alternatives that may be used in place of continued processing into the law and order system and traditional detention.

2. Law and order agencies and personnel should seek the cooperation and resources of non-law and order agencies in the community to which persons can be sent for services relating to their problems and needs.

3. Among the factors that should be considered favorable to diversion are:

a. The relative youth of the offender;

b. The willingness of the victim to have no conviction sought;

c. Any likelihood that the offender suffers from mental illness or psychological abnormality which was related to his/her crime and for which treatment is available;

d. Any likelihood that the crime was significantly related to any other condition or situation such as employment, alcoholism or family problems that would be subject to change by participation in a diversion program;

e. Any likelihood that prosecution toward conviction may cause undue harm to the defendant or aggravate the social problems that led to the defendant's criminal acts; and

f. The fact that services to meet the offender's needs and problems are unavailable within the law and order system or may be provided more effectively outside the system.

4. Among the factors that should be considered unfavorable to diversion are:

a. Any history of the use of physical violence toward others;

b. A history of antisocial conduct indicating that such conduct has become an ingrained part of the defendant's lifestyle and would be particularly resistant to change; and

c. Any special need to pursue criminal prosecution as a means of discouraging others from committing similar offenses.

5. Guidelines for making diversion decisions should be made public.

6. When a defendant is diverted in a manner either involving or not involving a diversion agreement between the defendant and the police or prosecutor, a written statement of the fact of, and reason for, the diversion should be made and retained. When a defendant who comes under a category of offenders for whom diversion regularly is considered is not diverted, a written statement of the reasons should be retained.

Commentary

Jail time is usually wasted time. Jails have not offered the means to assist offenders in solving basic problems; nor have they assisted in the offender's reintegration into the community. In fact, jail time is very costly to communities, both in terms of costs of operation and in terms of recidivism, that is, the repetition of criminal acts by persons who have previously been jailed. Jails exist more to punish and isolate than to correct or help offenders. It is a double criticism that persons who populate Indian jails, for example, those charged with disorderly conduct, drunken driving or assault, are treated uniformly as dangerous criminals and at the same time are denied the kinds of help they may need.

At most, imprisonment should be reserved for serious or persistent offenders who present a threat to others or for persons who must be detained in order to insure that they will appear in court. Others, minor and first offenders or persons with sociomedical problems, need particular types of counseling or assistance that is not offered in jails but could be provided through community resources or alternative programs. Reservations' corrections planning should be oriented toward the use of programs designed to help these persons.

Diversion and the use of sentencing alternatives involve very different steps in the law and order process. Diversion is implemented prior to adjudication while the imposition of a sentencing alternative takes place after adjudication occurs. Yet, these processes share a common characteristic. Both require and make use of alternatives to traditional detention.

Clearly, Indian people cannot benefit from diversion and sentencing alternatives until the tribes find ways to make these programs available to their people. The first portion of Standard 21.1 recognizes that tribes now have few if any diversion programs and sentencing alternatives available. The alternatives listed in parts a. through e. point out areas in which additional resources are needed.

The National Advisory Commission (1973b:27) defines diversion as "halting or suspending before conviction formal criminal charges against a person on the condition or assumption that he will do something in return." According to the NAC Corrections Task Force (1973c:73) diversion must involve . . . "formally acknowledged and organized efforts to utilize alternatives to initial or continued processing into the justice system." The Reservations Task Force has endorsed this concept, based on a belief that offenders should be diverted into non-criminal programs before trial or conviction in appropriate cases. Diversion would be appropriate when it is likely that a conviction could be obtained but the benefits of diversion far outweigh any harm done to the community by abandoning the criminal prosecution. Diversion uses the threat or possibility of prosecution to encourage accused persons to participate in these programs, although many accused may recognize the need to participate even without this threat.

The standard goes on to specify some instances in which diversion may or may not be appropriate. In many cases the nature of the offense, the nature of the offender and com-

munity attitudes do indicate that full prosecution of a case is necessary and desirable if the security of the community and the ends of order and justice are to be preserved. In many other cases the ends of law enforcement do not require or justify punishment or the attachment of a criminal status. The discretionary authority of the tribal prosecutor and other law and order personnel enable them to take action which more appropriately fits the circumstances of each case and the needs of both the accused and the community. Diversion is facilitated because pressures to insist on a disposition that fits the popular conception of punishment are less before conviction than they are once the defendant has been formally and publicly found guilty. (President's Commission on Law Enforcement and the Administration of Justice, 1967a:4).

Implementation

A. Agencies Involved:
   Tribes.
   BIA/tribal police agencies.
   Tribal prosecutors.
   Indian courts.

B. Administrative Actions:

The tribes, law and order personnel and any other agencies who are in a position to help should take responsibility to seek, initiate, implement and support needed diversion programs and sentencing alternatives. The tribes, through law and order personnel, should assume primary responsibility in this regard.

The law enforcement branch and prosecutors, where available, are charged with using diversion alternatives appropriately and setting forth guidelines for this purpose. Where available, tribal prosecutors have the primary responsibility in this regard.

The appropriate use of sentencing alternatives is the responsibility of probation staff, through sentencing recommendations, and the courts.

Reservations Standard 21.2

Tribal Authorization for Diversion

Tribal ordinances should authorize a wide variety of diversion programs as alternatives to formal adjudication. These laws should protect the interests of the accused by insuring that:

1. Diversion programs are limited to reasonable time periods.

2. The accused or the accused's representative has the right to demand formal adjudication at any time as an alternative to participation in the diversion program.

Commentary

Diversion has been previously endorsed by the Reservations Task Force based on the belief that further penetration into the law and order system, in some cases, will not benefit the individual nor serve the ends of the system and that some alternative means of handling the charge, other than formal prosecution, may be more productive. Diversion procedures contain an element of coercion, the threat or possibility of prosecution or adjudication, to "encourage" the accused to participate in an alternative program.

This system may be subject to abuse if an accused individual is placed in a diversion program and subjected to limitations or restrictions on his or her freedom which unreasonably exceed those to which the accused would be subjected had he or she gone through the normal court process. For example, a juvenile is accused of fighting and disorderly conduct and is diverted to a residential treatment program for a year, while had he gone through the normal court process, the maximum possible penalty imposed would have been $100 and/or 30 days imprisonment with probation a likely alternative.

Standard 21.2 is designed to bring attention to the possibility of abuses of this type. To guard against such abuses the accused or a representative of the accused should have the right to demand formal adjudication as an alternative to participation in a diversion program.

Implementation

A. Council Actions:

Tribal councils would have responsibility and authority to pass such laws authorizing a wide variety of diversion programs and insuring that the rights of accused individuals are protected as indicated in this standard. See also Standards 21.1, 25.4 and 26.1.

CHAPTER TWENTY-TWO

PRETRIAL AND PRESENTENCE TREATMENT OF ADULT OFFENDERS

Reservations Standard 22.1

Adult Intake Services

Each tribal criminal jurisdiction should take action, including the pursuit of appropriate laws where necessary, to establish centrally coordinated adult intake services to:

1. Perform investigative services for pretrial intake screening. Such services should be conducted within 3 days and provide data for decisions regarding the appropriateness of summons release, release on recognizance, conditional pretrial release, or other forms of pretrial release. Persons should not be placed in detention solely for the purpose of facilitating such services.
2. Emphasize diversion of alleged offenders from the law and order system and referral to alternative community-based programs (halfway houses, alcohol and drug treatment programs, and other residential and nonresidential programs). The principal tasks are identifying the need and matching community services to it.
3. Offer initial and ongoing assessment, evaluation, and classification services to other agencies as requested.
4. Provide assessment, evaluation, and classification services that assist program planning for sentenced offenders.
5. Arrange sceure residential detention for pretrial detainees at an existing community correctional center or jail, or at a separate facility for pretrial detainees where feasible. Most alleged offenders awaiting trial should be diverted to release programs, and the remaining population should be only those who represent a serious threat to the safety of others.

The following principles should be followed in establishing, planning, and operating intake services for adults:

1. Intake services should be administratively part of the judiciary.
2. Ideally, intake services should operate in conjunction with a community correctional facility.
3. Initiation of intake services should in no way imply that the client or recipient of its services is guilty. Protection of the rights of the accused must be maintained at every phase of the process.
4. Confidentiality should be maintained at all times.
5. Social inventory and offender classification should be a significant component of intake services.
6. Specialized services should be purchased in the community on a contractual basis.
7. The following persons should be available to intake service programs, either as staff members, by contract, or through voluntary participation:
   a. Physchiatrists, where possible.
   b. Clinical psychologists, where possible.
   c. Social workers.
   d. Interviewers.
   e. Education specialists.

Commentary

An intake staff is necessary for any tribal law and order system wishing to emphasize diversion and rehabilitation of offenders rather than their further penetration into the law and order system. An intake staff is the buffer between the needs and problems of an offender and the demands and formality of the law and order process. Intake staff are necessary to perform background investigations in order to enable the Indian court to make the decision whether to release or detain an accused offender. It is the responsibility of the intake staff to emphasize diversion and make use of programs that can offer more appropriate programs to help an offender than can the law and order system. For example, the intake staff would be responsible for making maximum use of referral to alcoholism programs in cases in which offenses are motivated primarily by the use of alcohol.

Intake staff can use their special expertise in evaluating offenders and planning programs for sentenced offenders. To maximize their effectiveness in this regard intake staff should not hesitate to consult and utilize the services of professionals and other resource persons from within or outside the community on a contractual or voluntary basis. In this regard intake staff should seek the services of resource persons who may not be readily apparent.

Intake is a specialized function and as such should be separated from probation. However, the Task Force recognizes tribal concern for the availability of funds for additional personnel. Until funds are made available Indian courts may be forced to use existing probation personnel as intake staff. Where probation officers are not employed, tribes should immediately act to employ them. A probation officer performs investigative and supervisory services that are indispensible to an effective law and order system. The long-term goal should be to hire a separate intake officer(s) to handle the functions outlined above. In either case, maximum use of outside resources should be made.

Implementation

A. Agencies Involved:
   Tribes.
   Indian courts.
   Intake staff.

B. Council Actions:

The tribes may find it necessary to pass ordinances before centrally coordinated adult intake services can be established. This type of ordinance should place administrative and supervisory responsibility within the courts. As an alternative the courts could establish an intake unit by court rule. This procedure would be most effective if funding for intake was part of the court budget.

C. Administrative Actions:

Each tribe, through its court, has the responsibility to hire a sufficient number of intake personnel. Where a separation of powers is to be maintained the court should be the actual hiring authority. In either case the court should have direct responsibility for supervising intake.

The intake staff itself is responsible for making the miximum use of resource persons, both within and outside the community.

D. Funding:

Additional funding may be necessary for the employment of intake staff and of resource persons on a contractual basis. Funding should be provided through the court budget.

Reservations Standard 22.2

Offender Evaluation Services and Staff

Law and order components on each reservation should develop an offender evaluation staff whose duties it will be to develop sufficient information on offenders, their statuses and their backgrounds to enable staff to compile presentence reports, make correctional intake recommendations and develop classification plans and appropriate programs for eligible offenders. The person or persons composing this staff should be trained and competent in the fields of offender evaluation and corrections. Staff should be available for these duties on a full-time basis.

Evaluation staff should include or have available for these duties on a full-time basis:

1. Corrections personnel;
2. Probation personnel;
3. Appropriate community resource representatives and professionals (educators, counselors, physicians or psychiatrists, for example);
4. A medicine man or spiritual leader; and
5. Offenders or ex-offenders.

The offender under evaluation should also participate in the development of his/her own classification and rehabilitation program.

Each individual classification plan and rehabilitation program should be stated in writing to insure that all persons involved know its objectives, assumptions, policies and procedures.

Commentary

While the emphasis in the previous standard was upon intake screening for an accused prior to trial, emphasis in Standard 22.2 is on offender evaluation after conviction. Offender evaluation staff would be empowered to develop presentence reports and make correctional intake recommendations for offenders. In order to apply a variety of expertise in developing a correctional program for an individual offender, the offender evaluation staff should include or seek the advice of persons listed in 1. through 5. above. These persons can aid in the successful implementation of an offender program.

Because of limited personnel resources, the core "intake" staff described previously would likely be the core staff for offender evaluation. However, Standard 22.2 specifies that additional staff or an advisory board, composed of 1. through 5. above, should be developed to work with the offender evaluation staff person(s). This standard does not seem to require the hiring of additional personnel.

In addition the standard specifies that offenders should be involved in the development of their own correctional plans. It is believed that an offender will feel greater commitment to and responsibility for a plan that he or she has helped to develop. This plan should be stated in writing to enable all persons involved to understand its requirements and objectives.

Implementation

A. Agencies Involved:
Law and order agencies.

B. Administrative actions:
Law and order agencies on each reservation should meet for the purpose of developing an evaluation staff as outlined in this standard. The initiation of this meeting would most likely be the responsibility of the administrative head of the local jail or correctional facility.

Reservations Standard 22.3

Presentence Reports and Content Specification

Indian courts immediately should develop standards for determining when a presentence report should be required and the kind and quantity of information needed to insure more equitable and correctionally appropriate dispositions. The guidelines should reflect the following:

1. Graduations of presentence reports should be developed between a full report and a short-form report for screening offenders to determine whether more information is desirable or for use when a full report is unnecessary.

2. In the event that an offender is sentenced, either initially or on revocation of a less confining sentence, to either community supervision or total incarceration, the presentence report should be made part of his/her official file.

3. The full presentence report should contain a complete file on the offender — his/her background, prospects for reform, and details of the crime for which he/she has been convicted. Specifically, the full report should contain at least the following items:

a. Complete description of the situation surrounding the criminal activity with which the offender has been charged; the offender's version of the criminal act; and his/her explanation for the act.

b. The offender's educational background.

c. The offender's employment background, including any military record, present employment status, and capabilities

d. The offender's social history, including family relationships, marital status, interests, and activities.

e. Residence history of the offender.

f. The offender's medical history and, if desirable, a psychological or psychiatric report.

g. Information about environments to which the offender might return or to which he/she could be sent should a sentence involving nonincarceration or community supervision be imposed.

h. Information about any resources available to assist the offender, such as treatment centers, residential facilities, vocational training services, special education facilities, rehabilitative programs or various institutions, and similar programs.

i. Views of person preparing the report as to the offender's motivations and ambitions, and an assessment of the offender's explanations for the criminal activity.

j. A full description of the defendant's criminal record including his/her version of the offenses and his/her explanations for them.

k. A recommendation as to disposition.

4. The short-form report should contain the information required in sections 3a, c, d, e, h, i, and k.

5. All information in the presentence report should be factual and verified to the extent possible by the preparer of the report. On examination at the sentencing hearing, the preparer of the report, if challenged on the issue of verification, should

bear the burden of explaining why it was impossible to verify the challenged information. Failure to do so should result in the refusal of the court to consider the information.

Commentary

Presentence reports are what the name implies, reports written prior to sentencing to provide information to the judge concerning the defendant's background, present status and future potential. These reports are valuable because they give judges concrete information to use in making sentencing decisions. Usually an intake or probation officer prepares the presentence report.

In some cases, serious offenses or cases involving considerable jail time, a full presentence report is necessary. In other cases the court may need little more information than has already been made available in court. In these cases a short form, as outlined in the standard, should be sufficient.

The standard offers an efficient method of using presentence reports. Yet thoroughness is as important as efficiency. To be useful the report must be accurate and complete. The preparer of the report should be ready to explain any information that cannot be verified if the preparer is challenged on that information. If the preparer's explanation is not satisfactory, the court should refuse to consider the challenged information.

Implementation

A. Agencies Involved:
Indian courts.
Probation staff.

B. Administrative Actions:

The courts have the primary responsibility for implementation through court rule or other administrative actions.

Reservations Standard 22.4

Pretrial Detention

Each BIA/tribal jail facility should develop and implement procedures and programs for pretrial detainees as follows:

1. Unconvicted detainees should be presumed innocent and should be treated as such.

2. Untried detainees should be kept separate from convicted prisoners.

3. An untried prisoner should be offered the opportunity to work, but should not be required to work.

4. An untried prisoner should be allowed to secure at his/her own expense books, writing materials and other means of occupation as are compatible with the security and good order of the facility.

5. An untried prisoner should be allowed to inform immediately his/her family of his/her detention and should be given all reasonable facilities for communicating with his/her family.

6. For purposes of defense, an untried prisoner should be allowed to apply for free legal aid where such aid is available, and to receive visits from his/her legal advisor with a view to handling his/her defense and to preparing and handling his/her confidential instructions. For these purposes, he/she should be supplied with writing materials upon request. Interviews between the prisoner and his/her legal advisor may be within sight but not within the hearing of police or jail officials.

7. Persons awaiting trial in detention should be encouraged but not required to participate in any program of treatment or rehabilitation. The following programs and services should be available on a voluntary basis for persons awaiting trial:

a. Educational, vocational, and recreational programs.

b. Treatment programs for problems associated with alcoholism, drug addiction, and mental or physical disease or defects.

c. Counseling programs for problems arising from marital, employment, financial or social responsibilities.

Commentary

Standard 22.4 is based on the assumption of "innocent until proven guilty." This concept, which has long been a mainstay of American jurisprudence and has been incorporated into American Indian courts, should be reflected in the treatment of persons who are detained prior to trial and before conviction. The standards specify guidelines for putting this concept into effect. Although law enforcement and correctional staff may find it difficult to accept these guidelines, especially if conviction is anticipated, they must do so in order to preserve justice in the law and order process and protect the rights of those who are innocent. The guidelines above may be considered by some to be special privileges for pretrial detainees. Yet they are not. Because of arrest and detention, the pretrial detainee is subject to great restrictions and therefore punishments, despite the presumption of innocence. This thought is particularly significant when one considers that, at times, the innocent as well as the guilty are incarcerated.

Implementation

A. Agencies Involved:
Indian correctional facilities.

B. Administrative Actions:

Each facility administrator should develop and implement procedures and programs for pretrial detainees as outlined above. All facility staff should be made fully aware of these. Steps should be taken by the administrator to insure that these procedures are applied in practice.

CHAPTER TWENTY-THREE

CORRECTIONAL PROGRAMS ON RESERVATIONS

Reservations Standard 23.1

Local Correctional Facility Programming

Every reservation jurisdiction operating locally based correctional facilities for adults should immediately adopt the following programming practices:

1. **A central information-gathering point;**
2. **Education programs;**
3. **A job placement program and job counseling;**
4. **Counseling services;**
5. **Physical exercise programs;**
6. **Planned leisure activities; and**
7. **Use of volunteers.**

Commentary

Many reservations are limited in resources available to offenders. Consequently, if any in-house rehabilitation programs are to be undertaken, the BIA or tribal jail may be the only available place for them. Fortunately, professionals in the corrections field are recognizing the need for local detention (jail) facilities to provide more than prisoner confinement. The current emphasis on correctional programs reflects a growing effort to make jails more than cages for holding people. (Murray and Baltz, 1972:8).

Throughout the country the large majority of incarcerated offenders have their first taste of imprisonment in the local jail. This fact may be no less true of Indian offenders. In light of this situation, it is evident that the local jail has the first chance and therefore the first responsibility to keep offenders from repeating acts that will result in further jail time. The failure of jails to do this is evidenced by high recidivism rates on reservations. Bubak (1973a:19) reports that on one reservation for the year 1970, 259 out of 583 cases processed by the tribal court were "Repeaters." On another reservation the recidivism rate ran as high as 75% (1973b:19).

An obvious gap in correctional services has been the failure of jails to work rehabilitation programs into detention routines. Indian courts are empowered to incarcerate offenders for up to six months for some offenses. This is a long time to waste. Offenders should be spending this time redirecting their lives through participation in educational, employment, counseling and similar programs. Because of the lack of programs in BIA and tribal jails most Indian offenders never have this chance. A survey of seven reservation jail facilities reveals that: Five out of seven reservations' facilities offer some sort of referral for alcoholics which varies among detox, in-jail counseling and the use of a halfway house. Five facilities offer no referral for drug users. Six out of seven facilities offer no educational programs, while the seventh offers employment education. At least three facilities do not offer work release programs. None offer recreational programs.

Small reservation facilities may readily lend themselves to an overall rehabilitative approach. Because of fewer inmates, demands for supervision are fewer. Rehabilitation resources may be used on a more individual basis. The jail is usually centrally located, which facilitates access to community facilities and services.

A large percentage of tribal offenses are relatively minor. Judges indicate that disorderly conduct, for example, is a common offense. Assault is another. Minor or serious, many offenses occur in conjunction with alcohol use. These offenders are persons with alcohol problems and problems relating with others. None of the facilities previously discussed are presently equipped to deal with these problems. However, all BIA and tribal jails are located in communities which have available at least some of the services needed to deal with these problems.

A community corrections approach seems a perferable alternative to present detention facilities. According to Dr. Donald Dahlin (1971:39) who has examined local jail facilities in South Dakota:

> Community based corrections may be defined as that approach to corrections which takes offender rehabilitation as the goal and full institutionalization as the last resort.

According to Dahlin, community-based corrections accomplishes this goal, (1) by using a variety of options, probation or work release, for example, to bring the offender closer to the community and lessen isolation, (2) by using community resources to aid in the offender's reintegration, (3) by changing community attitudes regarding an offender's reintegration, and (4) by the profitable use of time when institutionalization is necessary.

James Robideau of the Rapid City Indian Services Council (letter dated October 16, 1975) also advocates a treatment center approach to include modified versions of the following:

1. Educational and vocational opportunities consistent with needs on reservations.
2. Community involvement, especially family.
3. Medical treatment, with emphasis on Indian Medicine Men providing treatment. Those desiring white man's doctor and medicine will be assisted in that way.

Although tribes may not be in a position to build community corrections centers, similar programs can be operated within jails by the proper use of intake, classification, supervision and resources. Recommended programs and services are listed in the standard.

Briefly a "central information-gathering point" is designed to provide a locus of information about offenders and available services for the purpose of placing inmates in appropriate programs.

Educational programs enable inmates to use jail time productively. Educational programs are a means of bringing about behavior changes and helping inmates to seek meaningful goals. Earning a high school diploma, G.E.D. or the equivalent, for example, may be a meaningful goal for inmates who want to increase their potential for employment.

Employment education, job placement and work release are steps toward integrating an offender back into the community. There is some indication that the delinquency of Indian adults may be related to problems of employment and economic security. One of the bitterest factors facing ex-offender's and a significant factor influencing recidivism is the ex-offender's

inability to get or keep jobs once released from jail or prison. Therefore, employment education and work programs should provide offenders with practical skills that will lead to jobs.

Counseling services are designed to help offenders face their problems and develop solutions. Counselors are also important during the inmate's transition back into the community. The counselor acts as a continual contact and support. In order to be effective, the counseling approach should be the total approach of the facility, since punitive and rehabilitative philosophies do not readily coincide.

Recreational programs, involving both physical exercise and leisure activities, are pleasurable activities conducted for enjoyment. They help to teach the worthwhile use of free time. Both physical exercise and recreation are important for the health and well-being of any individual.

The Task Force recognizes that many Indian jail facilities do not yet have the resources to independently develop and operate the programs listed above. However, every Indian jail and correctional facility administrator has a responsibility to develop appropriate programs when necessary through the maximum use of community resources. Each reservation has access to schools, manpower and employment counselors, a P.H.S. or local mental health center which can be encouraged to provide diagnostic and treatment services, alcoholism counselors, and social workers who may be able to offer family, financial and other types of counseling. These should provide the starting point in locating programs, instructors, counselors and other resource personnel, job placement, referral, and financial assistance for programs within the facility.

Because the use of volunteers is becoming an accepted practice in correctional centers, skills necessary to conduct programs may be sought from tribal members on a volunteer basis. Both citizens and representatives of interested agencies should be encouraged to participate in jail and correctional facility programs on a volunteer basis as long as they agree to abide by facility rules and regulations governing the use of volunteers.

Implementation

A. Agencies Involved:
Indian correctional facilities.
Community resource agencies.

B. Administrative Actions:
Implementation is the primary responsibility of jail and correctional facility administrators in cooperation with their staffs and appropriate law and order and community resource agencies. Although the standard advocates the development of certain programs, the specifics of development are left to these agencies according to the individual needs of offenders and available facilities and services on each reservation.

Reservations Standard 23.2

Inmate Involvement in Community Programs

Correctional agencies should begin immediately to develop arrangements and procedures for offenders sentenced to reservation correctional facilities to assume increasing individual responsibility and community contact.

1. The facility should actively develop the maximum possible interaction between community and facility, including the involvement of community members in planning and in intramural and extramural activities, i.e.

a. Work release and study release programs;

b. Drug counseling sessions, alcoholism counseling, recreation programs, and so on;

c. Opportunities to participate in worship and spiritual services;

d. The facility should arrange for representatives of government agencies to render services to offenders by traveling to the facility or by enabling offenders to appear at agency offices; and

e. The facility should seek the participation of volunteers.

2. The facility should apply only the minimum amount of security measures, both physical and procedural, that are necessary for the protection of the public, the staff and inmates.

a. Committed offenders initially should be assigned the least restrictive custodial level possible; and

b. Disciplinary procedures should be adopted and promulgated and should include reasonable rules of conduct, disciplinary hearings and other procedures that indicate proper consideration for due process and the rights of individual offenders.

3. Because successful rehabilitation programs will require the support and cooperation of the local community, each local correctional facility administrator should take measures to inform the public of the aims and methods of each program and also of the fact that such programs require considerable moral effort on the part of inmates.

Commentary

Persons who violate the law often do so because of their inability to cope with everyday living or function effectively in social situations. Frequently committed offenses, assaults, disorderly conduct and domestic disputes, are common examples of this type. Yet by isolating offenders in jails, the community neglects or compounds these problems. A strict custodial environment does little, if anything, to help the offender function effectively on a day-to-day basis within the home environment and the community.

One of the chief goals of a correctional facility, large or small, should be to reintegrate the offender into the community. The offender must learn to function on a day-to-day basis using behavior that is acceptable rather than offensive to the community. By involving inmates in community programs and by bringing community resources into local facilities the inmate is given the opportunity to learn appropriate behavior in a community context, overcome special problems, and develop and strengthen meaningful ties to the community. Although security measures of varying degrees are necessary, unnecessary restrictions should not be allowed to interfere with an inmate's participation and reintegration. Recognizing the need for appropriate security, the emphasis of the facility should be upon increasing individual responsibility and community contact.

Implementation

A. Agencies Involved:
Indian correctional facilities.

B. Administrative Actions:
The requirements of the standard are self-evident. The details of implementation are the responsibility of correctional

facility administrators. In developing programs administrators should work closely with correctional staff, law and order personnel, community resource persons and volunteers.

Reservations Standard 23.3

Jail Release Programs

Every reservation jurisdiction operating locally based correctional facilities and programs for convicted adults immediately should develop release programs drawing community leadership, social agencies, and business interests into action with the law and order system.

1. Since release programs rely heavily on the participant's self-discipline and personal responsibility, the offender should be involved as a member of the program planning team.

2. Release programs have special potential for utilizing specialized community services to meet offenders' special needs. This capability avoids the necessity of service duplication within corrections.

3. Weekend visits and home furloughs should be planned regularly, so that eligible individuals can maintain ties with family and friends.

4. Work release should be made available to persons in all offense categories who do not present a serious threat to others. With a view toward social rehabilitation, inmates should be employed in work which will prepare them for useful and remunerative employment after release. The provision of work should encompass the learning of job skills that will be of most benefit and use to the inmate in that particular locale and geogrophical area.

5. The individual and work release agency may agree to allocation of earnings to cover subsistence, transportation costs, compensation to victims, family support payments, and spending money. The work release agency should maintain strict accounting procedures open to inspection by the client and others.

6. Work release may be operated initially from an existing jail facility, but this is not a long-term solution. Rented and converted buildings should be considered to separate the transitional program from the image of incarceration that accompanies the traditional jail.

7. When the release program is combined with a local correctional facility, there should be separate access to the work-release residence and activity areas, if possible.

8. Education or study release should be available to all inmates (pretrial and convicted) who do not present a serious threat to others. Arrangements with the local school district and nearby colleges should allow participation at any level required (literacy training, adult basic education, high school or general educational development equivalency, and college level).

9. Arrangements should be made to encourage offender participation in local community and social groups. Particular emphasis should be given to involving the offender in public education and the community in corrections efforts.

Commentary

Standard 23.1 summarizes steps that should be taken to reintegrate an offender into the community. A jail or other correctional facility tends to provide an overstructured and controlled environment which cannot duplicate the usual community living experiences. Release programs provide a normal transition by entrance into the community through decreasing levels of supervision.

Implementation

A. Agencies Involved:
Indian correctional agencies.
Criminal justice planners.

B. Administrative Actions:
Facility administrators should develop policies and procedures for jail release programs in cooperation with correctional staff and appropriate law and order and community resource agencies. For example, the correctional administrator should seek the involvement of tribal manpower, CETA and other employment programs.

Correctional administrators and tribal planners are responsible for working together to ultimately develop transitional programs in rented or converted buildings separate from existing jail facilities.

C. Funding:
Generally, the standard may be implemented without additional funding. The development of a transitional program in rented or converted buildings separate from existing jail facilities would probably require additional funding. These separate facilities are recognized as a long-term goal.

Reservations Standard 23.4

Authorization for Community-Based Programs

Where necessary ordinances or resolutions (tribal) or administrative rules (BIA) should be enacted authorizing the chief administrative officer of the local jail or correctional facility to extend the limits of confinement to permit eligible juvenile and adult offenders to participate in available community-based programs. These ordinances or rules should include:

1. Authorization for participation in the following programs as available, including:

a. Foster homes and group homes, primarily for juvenile and youthful offenders.

b. Prerelease guidance centers and half-way houses.

c. Work release programs.

d. Community-based vocational training programs, either public or private.

e. Participation in academic programs in the community.

f. Utilization of community medical, social rehabilitation, vocational rehabilitation, or similar resources.

g. Furloughs of short duration to visit relatives and family, contact prospective employers, or for any other reason consistent with the public interest.

2. Authorization for the development of community-based residential centers either directly or through contract with governmental agencies or private parties, and authorization to assign offenders to such centers while they are participating in community programs.

3. Authorization to cooperate with and contract for a wide range of community resources.

4. Requirement that the correctional agency promulgate rules and regulations specifying conduct that will result in

revocation of community-based privileges and procedures for such revocation. Such procedures should be governed by the same standards as disciplinary proceedings involving a substantial change in the status of the offender.

Commentary

The desirability of community-based alternatives to jail has been discussed previously and needs no further comment. Tribal and BIA facilities themselves may lack the authority to develop and utilize community-based alternatives to corrections. The tribes or Bureau of Indian Affairs, when necessary, should take action to authorize correctional administrators to utilize alternative programs. The tribes and BIA should attach reasonable conditions to the use of these programs, as long as these conditions do not undermine valid correctional goals. The standard itself advocates the requirement that correctional agencies develop and distribute rules and regulations specifying conduct that will result in the revocation of community-based privileges.

The standard recommends that the tribes or BIA authorize correctional agencies to develop community-based residential centers and contract for a wide range of community resources. Because funding is involved, the tribes and BIA may be unwilling to relinquish authority to correctional administrators. However, the need for community-based residential centers and contract services has been well-recognized. Some procedure should be developed to enable correctional agencies to obtain and use tribal, BIA or other funding for these purposes.

An optimal situation would be one in which correctional agencies were budgeted funds to develop community-based programs and contract for services as they saw fit, based on the individual needs of the agency. However, it is unlikely that blanket funds would be allocated in this manner. As an alternative the tribes and BIA should develop realistic and efficient procedures to enable correctional agencies to apply for funds on an as-needed basis. The tribes or BIA could retain ultimate review of individual program funding requests.

Implementation

The process of implementation is explained within the context of the standard.

CHAPTER TWENTY-FOUR

JUVENILE FACILITIES ON RESERVATIONS

Reservations Standard 24.1

Standards for Shelter Care and Detention Facilities

The Chief Judge of the Indian Court should prescribe and enforce rules and regulations governing the operation of detention and shelter care facilities for juveniles. The Chief Judge may assign this responsibility to a juvenile judge or other qualified designee.

The rules and regulations should include but not be limited to the following:

1. **Cleanliness standards;**
2. **Heat, water and light standards;**
3. **Personnel standards;**
4. **Visitation privileges;**
5. **Occupancy standards;**
6. **Provisions for medical and dental care; and**
7. **Provisions for food, furnishing, clothing and toilet articles.**

Regular inspections at least semi-annually, but preferably quarterly, should be made by the Chief Judge or a designee.

If any abuses, derelictions or deficiencies are found and not corrected within a reasonable length of time, determined by the Chief Judge or inspector and the administrator of the facility, this situation should be reported directly to the advisory board.

As long as juvenile detention facilities are located within the physical structure of the local jail, the Chief Judge or a designee and the jail administrator should work cooperatively in order to fulfill and satisfy these standards.

Commentary

The provisions of this standard are clear and the need for rules and regulations governing juvenile facilities is self-evident. The Indian court and the Chief Judge bear the greatest responsibility for the care and treatment of juveniles once they come to the attention of the law and order system. Also the Indian court judge has the authority to decide whether to place children in detention or shelter care. Consequently the Task Force feels that the Chief Judge should have the authority and responsibility to prescribe and enforce rules and regulations governing juvenile detention and shelter care facilities and conduct inspections to see that these rules are being followed.

However, if infractions or abuses are discovered the Chief Judge should make an initial report to the advisory board described in Standard 25.1. If no solutions result, the advisory board should bring these infractions or abuses to the attention of the tribe for action by the tribal government.

Implementation

A. Agencies Involved:
Tribes.
Chief Judges of Indian courts.
Advisory boards (Standard 25.1).
Indian correctional facilities.

B. Administrative Actions:

The tribe may need to grant to the Chief Judge authority to prescribe and enforce rules and regulations governing the operation of detention and shelter care facilities and to carry out periodic inspections. The Chief Judge should initiate actions to assume this authority or request it from the tribe where necessary.

The Chief Judge of each Indian Court and correctional administrators should make efforts to work cooperatively and see that these standards, rules and regulations are satisfied. However, the Chief Judge should not hesitate to work through the advisory board when solutions are not forthcoming.

Reservations Standard 24.2

Care and Treatment in Shelter Care and Detention Facilities

The Chief Judge of the court of each tribe should prescribe and enforce policies and procedures governing the administration of juvenile detention and shelter care facilities.

Policies and procedures should include, but not be limited to, the following:

Minors should not be punished, ridiculed or criticized for expressing through speech, custom, or dress their Indian or tribal heritage.

Minors should be allowed to wear their hair according to their personal taste. The minors should not be punished, ridiculed or criticized for their hairstyle.

Minors should wear their own clothes rather than clothes supplied by the detention facility, so long as they comply with minimum standards of cleanliness;

Incoming and outgoing mail may be inspected for contraband, but should not be read;

Whenever possible, minors should be allowed to attend the schools in which they were enrolled. School work and educational assistance, at the minor's level of development, should be provided for minors in detention facilities:

Minors should be allowed to attend traditional religious ceremonials provided that they are accompanied by a parent, guardian or custodian; have received consent to do so by the children's court judge; and return immediately to the detention or shelter care facility;

Minors should be given the opportunity to engage in physical exercise every day;

Minors should not be locked alone in a room unless there exists a reasonable belief that they may cause physical injury to themselves or others if not locked alone. While minors are locked alone in a room, they should be visited at least once an hour. The confinement should not continue unnecessarily;

Minors should not be punished by physical force, solitary confinement or deprivation of meals or family visits;

Detention facilities should be coeducational and should have access to a full range of supportive programs, including education, library, recreation, arts and crafts, music, drama, writing and entertainment. Outdoor recreational areas are essential.

In the event that or as long as juvenile detention facilities are located within the physical structure of the local jail,

the Chief Judge or a designee and the jail administrator should work cooperatively in order to fulfill and satisfy these standards.

Commentary

Overly structured, routinized and restrictive environments favor the control or isolation of juveniles in detention or shelter care but do little toward their rehabilitation and reintegration into the community. Rehabilitation and reintegration are better facilitated in an environment which does not impose unnecessary punishments or restrictions but approaches a normal living environment as closely as possible. For example, the Task Force concluded that the tribes would prefer to work with juveniles within the framework of the family for purposes of reintegration and solving family problems. Although in some cases family visits may need to be restricted, restriction of family visits should not be used as a form of punishment.

A portion of the juvenile standards, and particularly those above, were adapted from the Model Children's Code (1976:6-7), developed by the Indian Law Center of the University of New Mexico Law School in Albuquerque, New Mexico. These standards are specifically designed to meet the needs of Indian children and Indian courts.

Implementation

A. Agencies Involved:
   Tribes.
   Chief Judges of Indian courts.

B. Administrative Actions:
   The actions necessary for implementation are explained within the context of the standard. Also see the implementation section of Standard 26.1.

CHAPTER TWENTY-FIVE

ALTERNATIVES TO JUVENILE DETENTION

Reservations Standard 25.1

Development of In-House and Community-Based Alternatives to Juvenile Detention

An advisory board should be developed by the tribe to pursue the development of in-house and community-based alternatives to juvenile detention. Existing residential facilities within the community should be used in preference to new construction. Efforts should be made for the development of rehabilitation programs and the maximum possible incorporation of existing programs into new programs.

The advisory board membership should include:

1. The Chief Judge of the Indian court.
2. The juvenile judge, where applicable;
3. The tribal criminal justice planner;
4. A law enforcement representative;
5. A representative from the schools;
6. Representatives of rehabilitative and other social service agencies;
7. Representatives from tribal government; and
8. Community representatives.

Commentary

Law and order systems on reservations now bear a considerable burden for what is loosely termed the "juvenile problem." Law and order personnel and the local communities have expressed general concern for the rise in juvenile criminality (fighting, assaults, property damage, alcohol-related offenses, noxious inhalation) and the absence of appropriate programs to deal with young people.

In most cases law and order systems simply are not equipped to deal with juvenile offenders. Usually Indian court systems lack court personnel specifically trained to handle juveniles. Probation is often understaffed, and probation officers generally lack specific training in juvenile probation. On most reservations the tribal or BIA jail is the only facility available for handling offenders, adult or juvenile. Foster care and, particularly, shelter care are frequently unavailable.

Most Indian court judges are so reluctant to send juveniles to jail that they are willing to go to the opposite extreme and release juveniles completely.

> Tribes and judges are coming to the conclusion that jail is not the answer to problems of juvenile delinquency. The deteriorating condition of many jails is partially responsible. Judges are willing to send only those juveniles guilty of more serious crimes to jail . . . (BIA, Division of Law Enforcement Services, 1975:45).

In some cases probation may be an alternative. Yet probation is hardly an improvement over outright release when personnel and services are not available to provide the kind of help a juvenile may need.

Despite an aversion to placing juveniles in jail, and this is voiced by many Indian police as well as judges, juveniles are held in reservation jails quite regularly. According to a BIA statistical report (1975b), juveniles are detained in at least six out of seven reservation jails. In 1974 the average juvenile population varied among these jails from .4 to 4 juveniles a day. In addition, where facilities are inadequate, juveniles may share cells with older inmates. (Kaplan, et al.:221). Even when separated juveniles may be placed adjacent to or within hearing distance of older inmates.

The reaction to this situation is quite predictable. Juveniles should not be detained or imprisoned in jails. The problems of juvenile criminality and repeaters cannot be solved by keeping them out of sight. The stigma and environment of the jail may be more damaging in the long run than the benefits obtained by isolating the youth. This is particularly true given the inadequacy of most Indian jail facilities in separating adults and juveniles and the absence of rehabilitation programs.

Standard 25.1 and the juvenile justice standards that follow are offered by the Reservations Task Force as guidelines in addressing many juvenile justice problems now facing law and order systems on Indian reservations. At the same time it is recognized that problems of juvenile criminality go much deeper. Although mechanisms are necessary to handle juveniles once they come to the attention of the law and order system, the family, the schools and the community have the first responsibility to provide stability, guidance, direction, values, a sense of identity, and hope to Indian young people as a means of preventing behavior which is unacceptable to the community and damaging to young people. Prevention should be the first priority in addressing the "juvenile problem." Correction is much more difficult.

In addressing juvenile corrections, the logical first step will be the development of alternative programs for juveniles. In its analysis of this issue the Bureau of Indian Affairs Criminal Justice Task Force (1975:85) has drawn the same conclusion and suggested further that,

> . . . Probation officers must be available to supervise juvenile offenders. Juvenile officers must be assigned to cases involving youthful offenders to resolve as many problems as possible without resorting to the courts. For those youngsters for whom detention is a necessity, there must be special facilities available with rehabilitative programs.

Standard 25.1 supports an advisory board approach to the planning and development of in-house and community-based alternatives to juvenile detention. This board would allow for maximum input from law and order components, tribal government and resource persons and agencies in the community. This input would allow law and order and other appropriate agencies to pool their ideas, programs and resources, coordinate efforts, and avoid duplication of services.

In order to make maximum use of available resources and minimize costs, great emphasis should be placed on existing facilities. Buildings already standing could be converted for use in juvenile programs, especially since rehabilitation and reintegration into the community rather than detention and isolation are major concerns. Residential treatment and outreach programs could operate satisfactorily from existing facilities. However, the greatest emphasis should be upon programs. New programs will be needed. Yet existing pro-

grams should be used or incorporated into new programs as appropriate. Possibilities for programs are limited only to the extent that they should meet the unique needs of each reservation.

Implementation

A. Agencies Involved:
Tribes.
Criminal justice planners.
Law and order components.
Schools.
Social service agencies.

B. Administrative Actions:

These boards could be established through administrative actions of the tribes, possibly at the initiation of the tribal criminal justice planners or Chief Judges.

The Reservations Task Force is of the opinion that this standard is particularly applicable to reservations and easily implemented. It is the feeling of the Task Force that certain tribes may already have implemented this standard to some degree through the creation of similar boards.

CHAPTER TWENTY-SIX

INTAKE, DETENTION AND DISPOSITION OF JUVENILES ON RESERVATIONS

Reservations Standard 26.1

Juvenile Intake Services

Each tribal jurisdiction should take action, including the pursuit of enabling laws where necessary, to establish within the court of the tribe organized intake services. These services should operate as a part of or in conjunction with juvenile detention facilities, if possible. Intake services should be geared toward screening and referral intended to divert as many juveniles as possible from the law and order system and to reduce the detention of youngsters to an absolute minimum.

1. Intake personnel of the court should have the authority and responsibility to:

a. Dismiss the complaint when the matter does not fall within the delinquency jurisdiction of the court or is so minor or the circumstances such that no intervention is required.

b. Dismiss complaints which seem arbitrary, vindictive, or against the best interests of the juvenile.

c. Divert as many juveniles as possible to another appropriate section of the court or to alternative programs such as mental health and family services, public welfare agencies, and similar public and private agencies.

2. Intake personnel of the court should seek informal service dispositions for as many cases as possible, provided the safety of the juvenile and of the community is not endangered. Informal service denotes any provision for continuing efforts on the part of the court at disposition without the filing of a petition, including informal adjustment.

3. Informal service dispositions should have the following characteristics:

a. The juvenile and the juvenile's parent, guardian or custodian should be informed by intake personnel of their rights, including the right to retain counsel at their own expense, the right against self-incrimination, and the right to introduce evidence, to be heard on their own behalf and to examine witnesses. If the parties appear at the hearing without counsel, intake staff should continue the proceedings if they need additional time to seek counsel.

b. Participation by all concerned should be voluntary.

c. The major facts of the case should be undisputed.

d. Participants should be advised of their right to formal adjudication.

e. Any statements made during the informal process should be excluded from any subsequent formal proceeding on the original complaint.

f. A reasonable time limit (1 to 2 months) should be adhered to between date of complaint and date of agreement.

g. Restraints placed on the freedom of juveniles in connection with informal dispositions should be minimal.

h. When the juvenile and the juvenile's parents agree to informal proceedings, they should be informed that they can terminate such dispositions at any time and request formal adjudication.

4. Cases requiring judicial action should be referred to the court.

a. Court action is indicated when:

(1) Either the juvenile or the juvenile's parents request a formal hearing.

(2) There are substantial discrepancies about the allegations, or denial, of a serious offense.

(3) Protection of the community is an issue.

(4) Needs of the juvenile or the gravity of the offense makes court attention appropriate.

b. In all other instances, court action should not be indicated and the juvenile should be diverted from the court process. Under no circumstances should juveniles be referred to court for behavior that would not bring them before the law if they were adults.

5. Predetention screening of juveniles referred for court action should place into their parental home, a shelter, or nonsecure residential care as many youngsters as may be consistent with their needs and the safety of the community. Detention prior to adjudication of delinquency should be based on these criteria:

a. Detention should be considered a last resort where no other reasonable alternative is available.

b. Detention should be used only where the juvenile has no parent, guardian, custodian, or other person able to provide supervision and care and able to assure the juvenile's presence at subsequent judicial hearings or when necessary for the protection of society or the protection of the juvenile.

c. Detention decisions should be made only by court or intake personnel, not by police officers.

d. A juvenile should not be held without unnecessary delay prior to a first judicial hearing.

e. Juveniles should not be detained in jails, lockups, or other facilities used for adults.

6. Until separate detention facilities are available a juvenile alleged to be delinquent or in need of supervision may be detained in the jail provided the child is kept separate and apart from adults being detained therein and adequate supervision is provided to assure the safety and welfare of the juvenile.

The person in charge of any jail, detention or shelter care facility should promptly notify the court of any juvenile being detained or cared for at the facility without a court order and should deliver the juvenile to the court upon request.

7. Under no circumstances should juveniles alleged or determined neglected, dependent or abandoned be housed in jails, police stations or detention facilities.

Commentary

Like adult intake, and for many of the same reasons, juvenile intake services have been advocated by the Task Force. Because of funding and personnel shortages, the Indian court may be forced to use the same staff for both. Intake personnel are in a position to screen and divert juveniles who come to the attention of the law and order system. The emphasis of intake is referral, when necessary, and services. Therefore intake staff must have the authority to make these kinds of decisions. Enabling laws may be needed within some of the tribes. Rules of the courts or law and order committees may be sufficient in others. Because detention for juveniles on reservations is usually characterized by a lack of services, intake staff should work in conjunction with or as a part of

juvenile detention facilities to insure that the necessary emphasis is placed on services.

Informal service dispositions should be sought when possible. Many juveniles are brought before the courts for offenses that would not constitute crimes if committed by adults. Often the community turns to the courts to solve juvenile problems because no other solutions are apparent. In these cases it is more appropriate for juveniles to be handled informally or be referred outside of the law and order system. Intake screening should be made available to every child who is referred to the court.

Standard 26.1 also offers guidelines and conditions to govern informal service dispositions. Informal dispositions, though frequently desirable, are subject to a great deal of variation, inconsistency and potential abuse. These guidelines are designed to protect the rights of juveniles who may become involved in informal dispositions.

The Model Children's Code (1976:62) also endorses the concept of informal service dispositions, yet warns against possible abuses:

> Informal hearings are advantageous to the court because they reduce the case load. However, a detrimental aspect of the informal hearing is that it can be abused because a child may be separated from his parents without an official determination of his guilt or innocence. Several safeguards to prevent this have been developed and must be followed. The most important safeguard is there must be a determination of whether the facts justify jurisdiction by the court. If they do not, the Counselor must ask that the case be dismissed because it would be unfair to impose some sort of program on the minor and his parents if the court would dismiss the case. The code solves the problem by providing for a determination of "probable cause" at the preliminary inquiry . . .
>
> Other safeguards include the presence of an attorney or other representative, informing the parties that the informal hearing is completely voluntary, and prohibiting the later use of any statements made. Any informal adjustment is completely voluntary because the Children's Court has not ordered anyone to do anything yet. The informal hearing can also be abused by threatening the minor to either participate in the informal hearing or have a petition filed against him. The minor should not be coerced into the informal hearing; it is completely voluntary.

Detention of a juvenile should be avoided if possible. The criteria outlined in the standard should be followed for this purpose. Jail detention is discouraged because of the dangers of association with adult offenders. However, if a jail or similar facility is used, certain precautions should be taken. Juveniles should be kept separate from adults but not completely isolated. The Model Children's Code (1976:17) suggests that the juvenile should be able to at least see and hear other people in order to avoid the feelings of lonliness and despair that increase isolation and may result in suicide. The standard advocates a degree of supervision adequate to insure the safety and welfare of the juvenile. Never should minors alleged or determined to be neglected, dependent or abandoned be housed in jails. Foster homes, group homes or other preferable alternatives should be used for this purpose.

Implementation

A. Agencies Involved:
Indian courts.

B. Council Actions:
Council actions may or may not be necessary for the implementation of the first portion of this standard. The necessity of council actions should be determined by individual tribes. Where tribal action is not indicated court rules should be sufficient.

C. Administrative Actions:
Because of its administrative responsibility for intake the court has full responsibility to set appropriate policies and procedures and to implement this standard.

Reservations Standard 26.2

Role of Police at Intake and Detention

Each Indian court should take the leadership in working out with local police agencies policies and procedures governing the discretionary diversion authority of police officers and separating police officers from the detention decision in dealing with juveniles.

1. Indian police agencies should establish written policies and guidelines to support police discretionary authority, at the point of first contact as well as at the police station, to divert juveniles to alternative community-based programs and human resource agencies outside the law and order system when the safety of the community is not jeopardized. Disposition may include:

a. Release on the basis of unfounded charges;
b. Referral to parents (warning and release);
c. Referral to social agencies; or
d. Referral to juvenile intake services of the court.

2. Police should not have discretionary authority to make detention decisions. This responsibility rests with the court, which should assume control over admissions on a 24-hour basis.

When police have taken custody of a minor, and prior to disposition under Paragraph 2 above, the following guidelines should be observed.

1. Under the provisions of Gault and Miranda, police should first warn juveniles of their right to counsel and the right to remain silent while under custodial questioning.

2. The second act after apprehending a minor should be the notification of parents.

3. Juvenile records should be maintained physically separate from adult case records.

Commentary

Despite the emphasis upon intake personnel the fact remains that police usually have the first contact with youths who come to the attention of the law and order system. Studies indicate that police exercise broad discretion during encounters with juveniles and that official as well as unofficial actions as a result of similar encounters often vary. Because of opportunities for discretion and the alternatives available an officer may be unsure of what to do in any given situation. Much decision making of this type is inconsistent and vulnerable to mistakes and abuses. Policies and procedures designed to

guide some of this discretionary decision making may be as important to the interests of the officer as it is to the protection of the juvenile.

In addition, police at the point of first contact with a juvenile are in a position to undermine or reinforce the intake and detention objectives that have been supported in previous standards. Police must recognize the importance of minimizing the juvenile's penetration into the law and order system. As part of this recognition police agencies should establish written policies and procedures which support police authority to divert juveniles as needed. However, when a detention decision must be made, that is when a juvenile is not immediately released or referred after being taken into initial custody, the court should retain authority to make the detention decision on a 24-hour basis.

In the event that a juvenile is taken into custody, care should be taken to protect the rights of the juvenile. Police should warn juveniles of their rights, making sure that these rights are understood. The juvenile's parents should be notified immediately. Because the handling of juveniles is unique and separate from the criminal processing of adults, juvenile records should be maintained separately from adult records.

Implementation

A. Agencies Involved:
   Indian courts.
   BIA/tribal police agencies.
B. Administrative Actions:

The Chief Judge of each Indian court and the agency special officer, captain, police chief or other administrative head of the police agency have a responsibility to work cooperatively to see that these policies and procedures are developed, implemented and followed. Periodic checks to insure continued implementation would be advisable.

Reservations Standard 26.3

Detention and Disposition of Juveniles

Each tribe should enact ordinances limiting the delinquency jurisdiction of the courts to those juveniles who commit acts that if committed by an adult would be crimes.

Each tribal code should also include provisions governing the detention of juveniles accused of delinquent conduct, as follows:

1. A prohibition against detention of juveniles in jails, lockups or other facilities used for housing adults accused or convicted of crime.

2. Criteria for detention prior to adjudication of delinquency matters should include the following:

a. Detention should be considered as a last resort where no other reasonable alternative is available.

b. Detention should be used only where the juvenile has no parent, guardian, custodian or other person able to provide supervision and care for the juvenile and able to assure the juvenile's presence at subsequent judicial hearings or when necessary for the protection of society or for the protection of the juvenile.

3. Juveniles should not be held with unnecessary delay prior to a first judicial hearing.

4. Law enforcement officers should be prohibited from making the decision as to whether a juvenile should be detained. Detention decisions, that is when minors are not released, should be made by intake personnel and the court.

Laws consistent with the following should be enacted for the disposition of juveniles:

1. The court should be able to permit the child to remain with parents, guardian, or other custodian, subject to such conditions and limitations as the court may prescribe.

2. Detention, if imposed, should not be in a facility used for housing adults accused or convicted of crime.

3. Detention, if imposed, should be in a facility used only for housing juveniles who have committed acts that would be criminal if committed by an adult.

4. Dispositional orders should be reviewed at the court's discretion, but at least once every six months.

Commentary

Standard 26.3 is designed to protect the rights of juveniles who come to the attention of the law and order system. This is done by limiting the delinquency jurisdiction of the courts and by establishing general principles to govern juvenile detention.

The juvenile court proceeding is not a criminal proceeding but rather a civil proceeding involving both civil and criminal principles. The juvenile proceeding began as a rather informal hearing designed to determine the best interests of the child brought before the court. Juveniles were brought before the court for activities that would not be crimes if committed by adults — truancy, running away, curfew violations and teenage drinking and smoking, for example — as well as for dependency and neglect proceedings. Procedural and due process safeguards were not observed. The juvenile judge was expected to act as a benevolent parent, **parens patraie**, in determining actions in the best interests of the child and in establishing a plan of "treatment". Because the jurisdiction of the juvenile court was so broad and so vaguely defined, more and more "juvenile problems" were brought before the court and placed within the court's jurisdiction. The court came to assume many of the counseling and disciplinary functions that had previously been the responsibility of parents.

However, rising juvenile criminality and the failure of some treatment programs have exposed the rupture between the theory of juvenile courts and juvenile court practice. Arbitrariness and abuses were the natural result in the absence of procedural safeguards. Despite the fact that the juvenile hearing is a civil proceeding, the stigma of a delinquency ruling closely approximated conviction in an adult criminal hearing.

As abuses in the juvenile justice system have come to light, the federal courts have acted to protect the due process and procedural rights of juveniles. In **Kent v. United States**, 383 U.S. 541 (1966) the court concluded that counsel and counsel's access to social records are necessary. In 1966 the Supreme Court held that juveniles are entitled to adequate and timely notice of the proceedings and charges against them, legal counsel, the privilege against self-incrimination, and the right to cross-examine adverse witnesses. In **re Gault**, 387 U.S. 1 (1967). **In re Winship** applied the "proof beyond a reasonable doubt" standard to juvenile delinquency proceedings when institutional confinement was at issue, 90 S. Ct. 1068, 397 U.S. 358 (1970).

Although the overly broad jurisdiction of the courts concerning juvenile matters has been recognized, governments,

including tribal governments, have been slow to change their laws and to limit the delinquency jurisdictions of their courts. In actuality, enforcement of minor juvenile offenses may be minimal. However, the standard has brought attention to the issue of juvenile jurisdiction by recommending that the delinquency jurisdiction of the courts be limited in order to limit the possibility of arbitrary law enforcement, abuse and infringement of the personal rights of juveniles. Parents, schools and communities must reassume greater responsibility for dealing with minor misconduct among juveniles.

The problems with jail detention of juveniles are graphic. Juveniles are placed in jails adjacent to convicted and sentenced adults. No special programs exist for juveniles. Many juveniles are placed in jails or other detention without hearing or review. Because police are not trained in the placement of juveniles, juveniles may be placed in jail or detention unnecessarily when foster care or home placement would be appropriate.

As a first remedy the tribes should enact ordinances prohibiting the placement of juveniles in jails or other adult facilities. Police should never be permitted to make the juvenile detention decisions excluding the initial taking of the youth into custody. Intake personnel and the courts have that responsibility. Detention should be used only as a last resort, according to specific criteria, including sections (a) and (b) of the standard. Detention following disposition should be imposed only on juveniles who have committed acts that would be criminal if committed by an adult. Primary emphasis before and after disposition should be upon placement in the home, shelter care or foster care. Because a dispositional order for a juvenile may extend beyond the six month limit applied to the adult criminal jurisdiction of Indian courts, dispositional orders should be reviewed by the Indian court as necessary but at least once every six months when a dispositional order extends beyond that time period.

Implementation

A. Council Actions:

Tribal ordinances consistent with Standard 26.3 are recommended.

Reservations Standard 26.4

Predispotional Report

If and when the allegations of delinquency set forth in the petition are sustained and the court schedules a dispositional hearing for the juvenile, an intake officer of the court should prepare a written report describing all reasonable and appropriate alternative dispositions.

1. The report should contain a specific plan for the care of and assistance to the minor calculated to resolve the problems presented in the petition.

2. The report should contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan.

3. Preference should be given to the dispositional alternatives which are the least restrictive of the minor's freedom and are consistent with the interests of the tribe. When appropriate, the report should contain specific reasons for not recommending placement of the juvenile with the juvenile's parent, guardian or custodian.

4. The intake officer should present the predispositional report to the court, the person selected by the juvenile to represent the juvenile, and the presenting officer at least one day before the dispositional hearing.

At the dispositional hearing the court should consider the predispositional report submitted by the intake officer and afford the juvenile, the juvenile's parents and the juvenile's counsel an opportunity to controvert the factual contents and conclusions of the report. The court should also consider an alternative predispositional report prepared by the juvenile and the juvenile's attorney, if any.

Commentary

The predispositional report is used in a juvenile case for reasons similar to those that justify the use of a presentence report in an adult case. The predispositional report is particularly important because it provides necessary information to the court on the types of appropriate services or alternatives that might be made available to the juvenile. It gives the court a chance to weigh information, usually covering a wider range of alternatives than in an adult criminal case, and develop a concrete dispositional plan. Yet the report may contain damaging or inaccurate information about the juvenile. For that reason the juvenile, the juvenile's parents and counsel should be given a sufficient opportunity to review the report, challenge the factual content and conclusions of the report and prepare and submit an alternative report if they so desire. (Note: Some controversy exists over the advisability of revealing a predispositional report to a juvenile because of information it may contain which had not been previously revealed to the juvenile by his/her parents, for instance information relating to adoption. On the other hand, the juvenile has a basic human right of access to any information which may affect the juvenile's court disposition and the juvenile's future status in order to rebut, correct or elaborate this information as necessary. Controversy does not seem to exist concerning counsel's access to the predispositional report.)

Implementation

A. Agencies Involved:
Indian courts.
Intake (probation) staff.

B. Administrative Actions:

This standard should be implemented through policies and procedures of intake staff and rules of the Indian court. The Chief Judge should initiate implementation and work cooperatively with intake staff in developing the method and format of the predispositional report.

CHAPTER TWENTY-SEVEN

ALCOHOL-RELATED OFFENDERS AND THE LAW AND ORDER SYSTEM

Reservations Standard 27.1

Alcoholism and the Role of Law and Order Personnel

Law and order personnel should work to further the prevention of alcohol abuse, further rehabilitative efforts on reservations and decrease the incidence and negative impact of alcohol-related offenses. Greater emphasis should be placed on treating alcohol abuse as an illness rather than as a crime.

1. In doing so law and order personnel should enforce and apply laws against bootleggers, drug peddlers, and persons who drive while intoxicated.
2. Law and order personnel should strive to work with alcoholism program staffs in conducting community education programs covering the relationships between alcohol abuse and crime and the particular problems of the alcoholic offender. Educational and preventive efforts directed toward young people should be a major concern.
3. Law enforcement, jail and local correctional facility administrators should cooperate with alcoholism program personnel by permitting counselors to offer group and individual counseling sessions within jail and correctional facilities. In addition they should make every effort to allow inmates and residents of jail and correctional facilities to attend alcoholics anonymous, alanon, alateen or other relevant therapy sessions outside facilities as needed.
4. Law enforcement, correctional, probation and court personnel should work with alcoholism program staffs to improve old programs and initiate new programs designed to meet the needs of the alcohol-related offender.

Law and order personnel should work closely with alcoholism program staffs to provide alcohol-related offenders with opportunities for the treatment of alcohol problems and for other forms of rehabilitation — job training, family counseling, financial counseling, spiritual counseling, etc. — that these persons may need. Law and order and alcoholism program personnel should make optimal use of services offered by each and avoid needless duplication of efforts.

5. Maximum use of background investigations and predispositional and presentence reports should be made in screening and sentencing alcohol-related offenders, juvenile or adult.

Commentary

Law and order personnel have a significant role to play in the future of Indian alcoholism and alcohol rehabilitation. The majority of all offenses resulting in arrests on reservations involve alcohol. Sometimes the drinking is incidental to the offense. On the other hand, events related to alcohol use often result in assault, disorderly conduct or other charges. Although the charges may be justified, drinking, not delinquency, is the problem. Yet in most cases law enforcement personnel rather than doctors and counselors are the ones to handle it.

Every tribe in this area has admitted severe problems and a strong concern for the effect that alcohol use has had on its people and for the burden placed on law and order systems for offenses related to alcohol use. For example, FY 1972 figures from the Standing Rock Sioux Tribe Planning Staff (1973:20) indicate that 81.3% of all persons arrested had been using alcohol prior to their arrests.

The severity of the drinking problem among Indian youth is also apparent. In most instances an early history of glue or gasoline sniffing precedes drinking among children. (Kaplan, et. al.: 225-6). In 1968, 1,769 arrests resulted from excessive drinking on one northern plains reservation. Ten percent of these involved juveniles. (Indian Health Service, 1972:5). Figures from the Standing Rock Sioux Tribe Planning Staff for FY 1972 (1973:61) indicate that at least 53% of all juveniles arrested had been using alcohol to some extent prior to arrest. These arrest figures may not accurately reflect the extent of the problem, since usually only the most visible offenders are picked up, while distances impede bringing in other offenders.

In addition, the National Institute of Mental Health (1974:4,8) indicates that 75% to 80% of all Indian suicides are alcohol-related. On one South Dakota reservation in 1969, 87% of the suicide attempts were made by persons ages 15 to 21.

Alcohol-related offenses create a "vicious cycle" of problems for law and order systems. Because so many arrests involve alcohol abusers, law enforcement must use its resources to deal with chronic drinkers. The courts become involved. Yet because the law and order system is not equipped to handle problems of alcohol abuse, no solutions are applied, and the drinker gets into trouble again. At the same time alcohol program personnel may be unable to get to alcohol abusers before their problems are complicated by arrest records, loss of employment, family problems resulting from arrest, and the damage that results from a court appearance and jail time.

Indian law and order personnel are in a position to apply solutions and reduce a considerable burden on law and order systems. A first step would be for Indian police to increase enforcement of the laws against bootleggers and drug peddlers. Alcohol program personnel have particularly emphasized the need for stepped up enforcement. Bootlegging to juveniles may be a particular problem. Greater enforcement of alcohol-related motor vehicle violations, such as driving while intoxicated (D.W.I.), would also help. The above standard reflects this position. However, the greatest emphasis in the standard is placed on the role law and order personnel have to play in reducing alcohol-related offenses through community education, referral and cooperation with alcohol program staff in their treatment efforts. Greater emphasis must be placed on treating alcohol abuse as an illness rather than as a crime.

Correctional facilities should play a role in alcohol rehabilitation. Although the jail is gradually being phased out as the proper place for chronic alcoholics, effective treatment programs are offered in some correctional facilities. Inmates are provided with physical work therapy, educational and vocational rehabilitation, arts and crafts classes, plus exhibitions of their work, and participation in sports and other recreation. These programs include preparation for the inmate's eventual release. After release some correctional facilities provide group therapy. At times these therapy sessions have evolved into Alcoholics Anonymous or other alcohol therapy groups, although the National Institute of Mental Health (1974:24) notes that these efforts may fail unless some kind of legal compul-

sion, a requirement of probation or parole for example, exists to encourage ex-offenders to attend regularly.

Yet even those jails that offer employment counseling, job training, work release or other types of rehabilitation programs cannot satisfactorily meet the needs of the alcohol abuser. Granted, employment problems are highly related to alcohol abuse. However, alcoholics need added support, encouragement and the assurance that people are interested in them. Conversely, alcohol counseling alone will not satisfy the needs of the alcohol abuser without employment counseling, family counseling, financial counseling and other types of activities that will give the alcohol abuser a stake in society. Therefore, jail personnel and alcoholism personnel have to work together to provide rehabilitation programs for the alcoholic. Cooperation can avoid duplication of efforts and at the same time provide comprehensive programs to meet the needs of the alcoholic and the alcohol abuser.

Alcohol rehabilitation personnel can pave the way for cooperation with law enforcement and correctional personnel by showing concern for the proper treatment of alcoholics not only in their own facilities but in the whole community. One way to do this is to work with court and correctional personnel to develop referral methods and show a willingness to go to other facilities for treatment purposes. Another method of cooperation exists in a willingness to help in program improvement and the initiation of new programs. Alcoholism program personnel should also make it a point to educate tribal government officials, other agencies and the community about alcohol programs and work in the training of law and order personnel who come into contact with alcoholics and alcohol abusers.

Law enforcement and jail facility administrators can open themselves to cooperative efforts with alcohol programs by allowing alcohol personnel to offer group and individual counseling sessions within jail and correctional facilities, as has been done on some reservations, and by allowing inmates and residents to attend vocational rehabilitation and other programs designed to meet individual offender needs and supplement services offered by the correctional facility. A paraprofessional alcoholism counselor could also be placed in facilities on weekends or on call as needed. Recovered alcoholics in particular can be used as "enablers" to bring problem drinkers into the treatment system. (Beigel, et al., 1974:1114).

Implementation

A. Agencies Involved:
   BIA/tribal police agencies.
   Intake or probation staff.
   Indian correctional facilities.
   Alcohol programs.

B. Administrative Actions:

Police have the primary responsibility for implementation through stepped up enforcement and referral.

Police should use court intake staff for background investigations and screening when an alcohol-related offender is taken into custody.

Alcohol program staffs should work with local police and the courts to develop referral procedures and appropriate information categories within presentence and predispositional reports.

Police and alcohol staff should work together for the development of educational and treatment programs both within and outside jail facilities and generally cooperate to fulfill the other recommendations outlined in the standard. Alcohol staff should take the responsibility to approach law and order personnel with program ideas requiring their assistance or support. Alcohol program staff should also consider working with state, county and municipal police and courts for similar purposes.

Reservations Standard 27.2

Training to Deal with Alcohol-Related Offenders

The tribes and/or the BIA should regularly offer courses designed to equip law and order personnel to deal more effectively with problems of alcohol abuse and alcohol-related offenses on reservations. Emphasis should be placed upon:

1. Police training in handling the drunk;

2. Training of law enforcement personnel in crisis intervention;

3. Information concerning the special problems and needs of the alcoholic and alcohol abuser;

4. Locating and developing alternatives to incarceration for alcoholics, alcohol abusers and suicidal individuals;

5. Available referral services and how to use them;

6. Procedures to be followed by jail personnel in handling drunks and preventing potential suicides; and

7. Orientation for court and probation staffs covering the problems of the alcoholic offender and various treatment alternatives.

Commentary

Indian law and order personnel are not regularly trained in methods to deal with alcohol abusers and alcohol-related offenders. This fact is particularly revealing when we consider that most offenses on reservations are alcohol related. It would seem that an appropriate course of training in this area is long overdue.

Around 1970 the Bureau of Indian Affairs requested that the National Institute Of Mental Health prepare materials that could be used in courses designed to equip law and order personnel to deal more effectively with problems of suicidal behavior and alcoholism among young American Indians. A series of workshops on this subject were held, including a workshop in Aberdeen, South Dakota in September of 1972. Those attending included Indian law enforcement personnel, Indian court judges, tribal council members and health board members. This instruction was particularly relevant to law and order personnel because of their ability to identify high risk persons and provide alternatives to incarceration for suicidal individuals.

The relationship of suicide to alcoholism has been proven. Nearly all suicides in Indian jails are alcohol-related. The instructional materials (National Institute of Mental Health, 1974:15) note that suicides are most likely to occur during the detoxification period in the alcoholism cycle. Because in this case jail and police personnel can play a key role in preventing suicide, law enforcement personnel should have the knowledge to enable them to recognize a potentially suicidal individual. The materials suggest that police and jailors "should

consider any intoxicated and incarcerated person a potential suicide."

Homicide is also directly related to alcohol abuse. Among Indian people, homicide is rarely planned but occurs during fights when participants are drinking or during family fights at home.

The National Institute of Mental Health report concludes by encouraging the ongoing training of law enforcement personnel in crisis intervention and psychological information. This course itself should be repeated periodically, particularly because of turnover among law enforcement personnel. Instruction should include what to do and what not to do in dealing with alcoholics and potential suicides and when and how to use referral sources. "Basic knowledge concerning alcoholism and suicide should be the cornerstones of this program." (1971:31).

Implementation

The responsibility for implementation has already been designated within the context of the standard. Procedures required for implementation are explained therein.

Reservations Standard 27.3

Need for a Comprehensive Program

Cooperation between law and order and alcohol program personnel will be most effective if each reservation is able to maintain facilities for the detoxification, referral and treatment of alcoholics and alcohol abusers. Detoxification stations, referral centers, treatment centers, half-way houses and other inter-related agencies are needed to ease present demands on the law and order system resulting from alcohol-related offenses. Greater emphasis should be placed on the treatment of alcoholism and alcohol abuse.

1. All reservations should have detoxification units as part of their comprehensive treatment programs. Detoxification units should replace the police agency as the initial detention area for inebriates. The detoxification facility should include services for medical examinations, emergency care for the acutely intoxicated and transportation to a hospital if advanced medical care is needed. For persons who require secure detention, adequate detention facilities should be available at the detoxification facility.

2. As part of a comprehensive treatment approach, referral, treatment, half-way house and other programs should be developed for alcohol and other drug abusers on each reservation. Indian police, tribal prosecutors, intake and probation staff, and Indian court judges should work with alcoholism program staff to establish procedures for the diversion and referral of alcohol and drug abusers to appropriate treatment programs.

3. Law and order personnel should keep records of alcohol and drug-related arrests, charges, referrals, probation and other dispositions as documentation, when needed, to aid tribes in obtaining funds for alcohol and drug abuse programs. These records could also be used as a baseline to enable alcohol programs to measure their effectiveness in decreasing the incidence of alcohol-related arrests.

Commentary

Optimum cooperation between alcohol program staff and law and order personnel will be most effective if there are facilities for the referral and treatment of alcoholics and alcohol abusers. According to the South Dakota Department of Health, Division of Alcoholism (1975:7-1.101), "receiving stations, referrals centers, treatment centers, half-way houses and other interrelated agencies are needed . . . " John Williams, Director of the Alcohol Training Program of the University of South Dakota has confirmed this need for a comprehensive alcohol treatment program and appropriate facilities.

All reservations should have detox units as part of their comprehensive treatment programs. The center should include services for medical examinations, emergency care for the acutely intoxicated, and transportation to a hospital if advanced medical care is needed. Detox would replace the police agency as the initial detention area for inebriates. As one suggestion, persons could be brought to detox and be detained until sober under civil legislation as provided by the tribe. The decision to continue treatment would have to be left to the individual. If the police planned to prosecute they could leave a summons with the alcoholic offender to appear in court, unless the person required detention.

In the case of a person who requires detention, adequate detention facilities should be available at detox. However, using existing facilities on reservations, provisions for detox could be made within the jail facility itself. Whether a person is diverted to a detox unit or not, he/she should be provided with medical assistance during detoxification as needed since symptoms of serious illness may be mistaken for symptoms of intoxication. Also provision should be made to insure that an alcoholism staff person sees offenders before they are released in order to offer them an opportunity for help. Law enforcement and alcoholism staff should also work together in terms of training. Any police training course should include a section on handling the drunk.

Referral centers are also part of a comprehensive alcoholism treatment program. According to the South Dakota Department of Health, Division of Alcoholism, referral centers would provide the following direct services:

1. Evaluation of each alcoholic to determine the total rehabilitation program;
2. Information on all aspects of alcoholism;
3. All types and methods of counseling, including individual, group and family counseling;
4. Referrals to appropriate agencies, which will include all health/social service/manpower organizations; and
5. Follow up will be an essential part of treatment and provides information necessary for program evaluation.

Indirect services provided by referral centers include:

1. Information and awareness for all persons that the recovering alcoholic may have community acceptance;
2. Job placement to provide income, self-assurance and initiative for recovery; and
3. Identification of alcoholism as an illness. (1975:7-1.107).

Referral centers would provide badly needed services and ease demands on law and order systems.

In addition to referral by law enforcement officers, court referral is a means of bringing the alcoholic to treatment. Appropriate programs for effective referrals should be developed in cooperation with the alcoholism staff. Police, tribal prose-

cutors, probation and intake staff, and Indian court judges should develop a program of diversion of alcohol and other drug users to appropriate treatment programs as available. These programs would provide for immediate treatment and an opportunity to avoid further criminal prosecution, thus relieving the burden on jails and law and order personnel.

Law and order and alcohol program personnel could work together toward the development of residential treatment facilities. A halfway house or other residential treatment program may be particularly necessary for persons who need continual encouragement and support while dealing with their alcoholism, family, employment or other problems. A residential facility provides the necessary transitional step for abusers who have difficulty in coping with the full responsibilities and pressures of daily living.

Police departments and Indian courts should keep records on alcohol and drug related arrests, charges, referral, probation, and other dispositions in order to aid tribes in obtaining funds for alcohol and drug abuse programs. These records can also be used as a baseline to enable alcoholism programs to measure their effectiveness in cutting down alcohol-related arrests. Already many tribes have used the alcohol-related arrest record as one criterion of evaluation. The maintenance of records is consistent with the position of the Bureau of Indian Affairs issued in a memorandum by Area Director Harley D. Zephier on December 24, 1975 (Memorandum No. 44-1222):

> The Bureau staff, Area and Agency will assist in gathering pertinent information and data that will enable tribes to obtain funds for alcohol and drug abuse problems. We will also provide technical assistance to tribes and groups writing such proposals.

The Indian Health Service (1969:5) notes that "the records of the local police, courts, and prisons provide one of the most useful and graphic sources of information on the extent and impact of alcohol problems in a population." The Indian Health Service Task Force report does caution that these figures may be somewhat inflated because of a tendency to deal more harshly with intoxicated as opposed to sober persons for similar actions. Yet the report goes on to say that, "even when these allowances are made . . . the figures are still impressive testimony not only to the extent of drinking but to the social and family disruption, the loss of self respect, and the accidents and ill health caused by the excessive use of alcohol."

Implementation

A. Agencies Involved:
   Law and order agencies.
   Tribes.
   Alcohol programs.

B. Administrative Actions:

Alcohol program personnel should involve the tribes and law and order agencies in the support of comprehensive programs and facilities, as indicated in the standard.

Police and courts have the responsibility to keep records of alcohol and drug-related arrests, charges, referrals, probation and dispositions and to compile this information and data to be used as needed to enable tribes to obtain additional funding for alcohol and drug abuse programs and to provide a base upon which alcohol programs can measure their effectiveness. Data should be thorough and accurate. Recording and reporting methods should be standardized. Consistency in reporting should be emphasized.

C. Funding:

Tribes vary in the types of resources and facilities available. Only two reservations, for example, have residential halfway houses. Each tribe must assess its own needs and plan its program and seek funding according to these needs. Possible funding sources include the National Institute of Mental Health, the National Clearinghouse for Alcoholism Information and Alcohol Abuse, the Bureau of Indian Affairs, the State of South Dakota Department of Health, Division of Alcoholism, LEAA and the tribes. All potential funding sources should be explored. Tribes should seek a commitment for the funding of needed facilities as well as programs.

CHAPTER TWENTY-EIGHT

PROBATION AND PAROLE ON RESERVATIONS

Reservations Standard 28.1

The Probation Officer on the Reservation

In their general efforts to upgrade their law and order systems tribes should focus attention on the position and role of the probation officer.

1. Each tribe should establish qualifications criteria for probation officer positions designed to upgrade the staffing of these positions. Requirements should include good character, interpersonal communications skills, familiarity with local culture and the community, and education. At minimum a high school diploma or equivalent should be required.

2. Each tribe should design training requirements for probation officer positions. Training requirements should include the following:

a. Each new probation officer should complete a course of orientation training prior to assuming the duties of a probation officer. Orientation should include but not be limited to an introduction to probation, the law and order system and tribal law and an introduction to the availability and utilization of community resources.

b. Each probation officer should be required to engage in inservice and formal training programs on a regular basis. Appropriate courses that relate to the behavioral sciences, interpersonal communications and counseling, and the use of community resources should be sought and attended.

3. The needs of probationers should be identified, priorities established and resources allocated based on the established goals of the probation system. Sufficient probation staff should be employed to provide appropriate services based on these goals. As soon as possible additional staff should be employed to provide intake, social studies and other services to the court, thereby freeing probation staff members for activities defined as belonging distinctly to probation.

4. The primary function of the probation officer should be that of community resource manager for probationers.

Commentary

Indian courts rely heavily on probation mainly because few, if any, appropriate alternatives are available. In addition to counseling and supervising probationers, probation officers are expected to act as court intake workers and perform presentence investigations. Yet, despite the importance of these functions most tribes have not established specific selection and training requirements for probation officers. In most cases probation officers are untrained and probation is understaffed.

Considering this heavy reliance on probation at least two issues are paramount. First, tribes need to employ enough probation officers to handle caseloads and to perform the administrative and investigative tasks required of probation officers. As long as Indian courts must rely so heavily on the services of probation staffs, particularly until court intake staff and other alternatives to incarceration are available, a sufficient number of staff will be required to handle the large caseloads and variety of duties characteristic of the probation function at the present time. (The adequacy of staff size has already been addressed in Standard 12.1 § 4.)

Another significant issue involves the qualifications and training of probation officers. Because probation officers play perhaps the major role in offering rehabilitative services to Indian offenders, the proper training of officers should be required by the tribes. There is little point in offering probation services if the probation officers are not prepared to handle the variety of problem situations normally encountered in probation work. Among other duties, the probation officer acts as a counselor, advocate, investigator and coordinator of community resources. Each of these jobs requires certain abilities and expertise. Further, until intake and other additional staff can be employed by the tribes, probation officers will be vitally involved with the implementation of many standards discussed previously. The success of this implementation will depend upon the competency of probation staffs employed by the tribes.

The tribes can contribute to the upgrading of probation personnel by setting training requirements for the probation position. Qualification requirements should also be established by the tribe, including the requirement of at minimum a high school diploma or equivalent. This requirement is consistent with overall efforts to upgrade tribal law and order systems. An optimum personnel development and training approach should include the recruitment, screening and training of women, ex-offenders and volunteers. A shortage of personnel should encourage a maximum use of volunteers. According to the National Advisory Commission (1973c:329):

> In addition to serving as probation officers, volunteers can perform many other tasks that would extend the scope of current services to probationers. Many volunteers have special skills that are extremely helpful to probationers. And the fact that they are volunteers creates a sense of personal equality very different from the superior/inferior attitude that usually characterizes the relationships of probation officers and probationers.

For example, the Oglala Sioux Tribe employs "supervisors" who work with probationers without compensation. Oglala Sioux Juvenile Code, Cr. 3A, Sec. 54.9.

Standard 28.1 offers a new approach to the traditional role of the probation officer, an approach which is consistent with the maximum use of community resources advocated in previous standards. Primary emphasis would be diverted from counseling and surveillance to locating and using the community resources best able to offer necessary services and concrete programs to juveniles and adults who have been placed on probation by the Indian court. The role of the probation officer is envisioned in the following way:

> . . . In helping a probationer obtain needed services, the probation officer will have to assess the situation, know available resources, contact the appropriate resource, assist the probationer to obtain the services, and follow up on the case. When the probationer encounters difficulty in obtaining a service he and the probation officer will have to explore the reasons for the difficulty and take appropriate

steps to see that the service is delivered. The probation officer also will have to monitor and evaluate the services to which the probationer is referred. (National Advisory Commission, 1973c:322).

This approach eases the burden on probation staff for providing services directly to probationers and avoids costly duplication of services already available in the community. By utilizing community resources probation officers are better able to provide an offender with a variety of skills and help that they alone could not provide.

Implementation

A. Agencies Involved:
Probation staff.

B. Administrative Actions:

Tribal probation officers should reorient their primary functions to that of community resource managers as recommended in Standard 28.1 and defined in the commentary.

C. Funding:

Funding may be necessary for the hiring of additional personnel and for implementation of the training standards. Where specific training for probation officers is not immediately available, it should be developed or sought elsewhere. Community colleges should also be contacted for this purpose.

Reservations Standard 28.2

Parole

Please see the commentary below.

Commentary

Although no standard has been devoted to parole, the Reservations Task Force has issued the following official statement on this subject:

The Task Force recognizes the desirability of supervised parole, particularly in the area of alcohol-related offenses. It is the consensus of the Task Force that the expansion of probation services referred to previously would adequately cover the needs of providing supervised parole.

CHAPTER TWENTY-NINE

CORRECTIONAL STAFF IN RESERVATION FACILITIES

Reservations Standard 29.1

Adequacy of Correctional Personnel in Reservation Facilities

A sufficient number of personnel should be employed in each Indian detention and correctional facility to permit intermittent visual supervision of all inmates. There should be at least one employee on duty at all times in each detention and corrections facility, or in that portion of a building which houses inmates, who shall be immediately available and accessible to inmates in the event of an emergency. Such employee should not have any other duties which would conflict with the supervision and care of inmates in the event of an emergency.

1. There should be continuous sight and/or sound surveillance of all inmates. A staff member should personally observe persons confined at least each 60 minutes. Each patrol should be logged.

2. At all times in all Indian detention and correctional facilities at least one staff member of the same sex as the inmate(s) should be on duty. This person should be awake, alert and directly responsible for supervision and surveillance.

3. In order to determine if there is a sufficient number of personnel for a specific facility, the facility administrator should prepare and retain a staffing plan indicating the personnel assigned in the facility and their duties. This staffing plan should be reviewed prior to the submission of annual staff and facility budget requests. Appropriate recommendations should be reported to the jurisdiction or agency having fiscal responsibility for the facility.

4. The duties, responsibilities and authority of established positions in the facility should be clearly defined in the departmental rules and regulations.

Commentary

This standard is concerned with the adequacy of personnel who staff reservation jails and other local detention and correctional facilities. For facilities that emphasize security and custodial these standards are especially significant, although the standards are generally applicable to any correctional facility on a reservation.

We have already discovered that many, if not most, of these local facilities provide inadequate supervision of inmates. Rarely is a jailor employed. Matrons are uncommon. Dispatchers usually act in both of these capacities, though without any specialized training.

In its most recent Criminal Justice Task Force Analysis, the BIA (1975:95) discussed obvious inadequacies in jail supervision and concluded that:

> One of the most basic responsibilities of detention staff is assuring the health and safety of prisoners. If this responsibility is to be met there must be someone on duty 24 hours a day and there must be one person exclusively responsible for the jail operation.

The report emphasized that matrons should be on duty whenever women are incarcerated in order to conduct searches, provide for health needs and protect women prisoners from fear of abuse and unnecessary invasions of their privacy. This provision would also enable male jailors to avoid situations where they would be vulnerable to charges of misconduct.

The inmate (or resident) becomes the facility's responsibility by virtue of incarceration or detention. The standards enumerated above reflect concern for the health and safety of inmates (or residents) and the responsibility of facility administrators in this regard. Aside from custody and supervision, adequate staffing is necessary to provide programs and services within facilities. Good management requires a staffing plan and an outline of the duties, responsibilities and authority of each staff position.

Implementation

A. Agencies Involved:
   Tribes.
   Bureau of Indian Affairs.
   BIA/tribal police agencies.
   Indian correctional facilities.

B. Administrative Actions:
   Correctional facility administrators have the responsibility to implement staffing plans and policies in compliance with the standard. Administrators should also determine staffing needs and reflect these in budget requests.

C. Funding:
   Funding sources include thet ribes, the BIA and LEAA. Suicides, assaults and tort claims resulting from insufficient supervision are testimony to the pressing need to obtain adequate funding for staffing purposes.

Reservations Standard 29.2

Responsibility for Correctional Services

Indian jails and correctional facilities should be removed entirely from the law enforcement branch and placed in the hands of a separate correctional agency. Law enforcement personnel should not be assigned to the staff of correctional centers.

Commentary

The previous discussion of Indian jails brought out the importance of a correctional as opposed to a detention approach. The importance of rehabilitation programs in the jails as well as the use of community resources and alternatives to incarceration was expressed. The need to use a number of resources to help the Indian offender has been indicated. This view is consistent with that of the National Rehabilitation Association (6), whose remarks are as relevant to offender rehabilitation as they are to efforts to help Indian persons with a multitude of other immediate problems:

> The most effective technique of serving the American Indian is through the team approach since the clients usually possess a combination of psychological, physiological, social, cultural and economic problems.

The team approach is actually the multiagency-interdisciplinary approach, utilizing the existing resources of all available agencies to initiate a rehabilitation plan for the clients. In our rural areas we must effectively utilize all available resources by aggressive case management.

The rehabilitation counselor should be concerned with total rehabilitation of the Indian. Comprehensive services are usually required to overcome the pathology represented by Indian clientele. Fragmented services tend only to reinforce the Indian's contention that the counselor is not really interested in helping alleviate his situation.

The most effective treatment of Indian offenders will be attained if jail staff and all persons working with offenders adopt a correctional approach.

A new and significant treatment role for the correction workers who will replace traditional jailers is envisioned. Working under the supervision and with the advice of appropriate professionals, the correctional worker will be engaged not only in housekeeping and security tasks but also in inmate counseling and in operating programs both internal and external to the center proper . . . (National Advisory Commission, 1973c:301).

In addition Bubak (1973b:32), after studying the corrections options on one reservation, has concluded that corrections officers should work with offenders "in a 'whole family' context, treating not only the offender but also the context and environment which produced him, and to which he or she must return after incarceration or probation . . . "

These goals cannot be achieved on the reservations at this time because most persons who come into contact with offenders, particularly adult offenders, are not correctional personnel. Most Indian jails are run by the Bureau of Indian Affairs Law Enforcement Branch or, to a lesser extent, tribal police. Most law enforcement personnel are not trained in corrections. In fact law enforcement personnel who train at the BIA training facility in Brigham City, Utah receive only six hours of psychology out of approximately 400 hours of training. This course, entitled "Basic Psychology for Police," is oriented toward law enforcement rather than corrections. In effect, BIA officers receive no correctional training. Presumably the same is true for tribal police. Facilities which employ jailors or jailor-dispatchers also report that little if any correctional training is offered to these personnel.

Recognizing the fact that Indian offenders have their first contacts with law and order systems through the law enforcement branch, two approaches to these problems may be reasonable. As a long-term goal, the Task Force may wish to support the approach advocated by Mr. James Robideau of the Rapid City Indian Services Council. He states that Indian offenders should remain in detention no longer than four days, just enough time to diagnose the problems responsible for incarceration and refer Indian offenders to appropriate programs. (Letter dated October 16, 1975). This referral would make use of intake, classification and the alternative programs emphasized in previous standards. A short-term goal would be the reorientation toward a correctional approach of persons presently employed in Indian jail facilities. Jail rehabilitation programs could be used in either case as long as the emphasis was on treatment rather than custody. However, because it is so difficult to reconcile the goals of law enforcement with rehabilitation, reservation jails, except perhaps temporary lock-up, should be removed entirely from the law enforcement branch and placed in the hands of a separate correctional agency.

Implementation

A. Agencies Involved:
Tribes.
Bureau of Indian Affairs.

B. Council Actions:
Where tribes assume correctional administration or create a separate agency for this purpose, tribal laws would need to be passed or amended to establish and outline the functions and responsibilities of this agency.

C. Administrative Actions:
Tribes using BIA law enforcement and/or BIA operated jails would have to negotiate with the BIA, probably on the area level, to arrange for the separate administration of the detention/correctional facility.

Tribes that utilize their own police could possibly separate the two through administrative or council actions.

Reservations Standard 29.3

Staff Participation in Correctional Programming

Indian jails and correctional facilities should adopt a policy in which jailors and line staff are involved in a total facility correctional approach. Stress should be placed on the correctional aspects of staff work:

1. Every correctional worker should be assigned to a specific aspect of the facility's programming, such as the educational programs, recreation activities, or counseling programs.

2. Job functions and spheres of competency and authority should be clearly outlined, with stress on teamwork.

3. In all instances where correctional personnel engage in counseling and other forms of correctional programming, a professional(s) should serve in a supervisory and advisory capacity. The same professional(s) should oversee any counseling activities of volunteer workers within the facility. In addition, if possible, they themselves should engage in counseling and other activities as needs indicate.

4. Facility staff should be responsible for maintenance and security operations as well as for the bulk of the facility's in-house correctional programming for residents.

5. Facility staff should be involved in a program of participatory management within jail and correctional facilities. Line staff, administrators and offenders should share in identifying problems, finding mutually agreeable solutions, setting goals and objectives, defining new roles for participants and evaluating the effects of these processes.

Commentary

Though adequate programming is important to rehabilitative efforts within Indian jail and correctional facilities, the success of programming will depend to a great extent on the types of staff employed in these facilities. Staff members

who have day to day contacts with inmates can have a significant impact on incarceration, including the spirit in which inmates accept incarceration and view facility efforts to help them. One must look beyond the adequacy of staff in terms of numbers and emphasize the types of persons that are to be employed in these positions. Staff whose primary orientations are toward custody and law enforcement can seriously undermine the rehabilitative efforts of local facilities.

Nor can facilities counteract these problems by bringing in rehabilitation workers on a part-time basis. Criminologists have pointed out the conflicts that exist between the custodial and therapeutic aspects of prison life, particularly when two different sets of personnel are used to handle these functions. The therapeutic approach used by the rehabilitative staff involves teaching, counseling, individualized treatment and awareness of the offender's needs. The custodial approach, characteristic of jailors and law enforcement personnel, emphasizes detention, supervision and control. Corrections professionals are discovering that treatment cannot succeed if in operation on only a part-time basis. An inmate who is involved in rehabilitation (treatment) for six hours a day and punishment (custody) the rest of the time cannot remain immune from the effects of punishment. The correctional-treatment approach must be the total approach of the facility. Otherwise the custodial approach (custody as punishment) will undoubtedly lessen the impact of treatment.

As a practical matter, tribes will be concerned about the implications of this standard on funding and the need to hire additional personnel. Presuming that adequate staff, as outlined in Standard 29.1, are employed, the standard should not be difficult to implement. Basically implementation is a matter of administrative policy within the facility itself. Staff would continue to handle routine security and custodial duties. In addition they would be involved in programs and services offered within the facility. Involvement would extend, at minimum, to coordination and administrative matters and could extend to actual participation in counseling programs. When line staff are involved in counseling they should be supervised by professionals, since counseling can be negative and detrimental in the hands of untrained persons. Volunteers should be brought in to assist and supplement correctional staff.

Implementation

A. Agencies Involved:
Indian correctional facilities.

B. Administrative Actions:
Administrative policies and procedures should be established to involve jailors and line staff in a total facility correctional approach as outlined in the standard and elaborated in the final portion of the commentary.

C. Funding:
The services of professional counselors could be purchased on a contract basis. However, the voluntary services of professionals should be sought.

Reservations Standard 29.4
Community Resource Staff

In order to supplement the correctional resources of line staff within the facility, reservation jail and correctional facility administrators should attempt to solicit the services of persons in the community and elsewhere who can contribute to the facility's correctional approach and the short-term and long-term goals of the facility.

1. The use of professionals and paraprofessionals should be actively pursued. Wherever feasible and necessary, professional services should be purchased on a contract basis from practitioners in the community or from governmental agencies. Relevant agencies should be provided space in the institution to offer services. Similarly, other law and order employees should be encouraged to utilize the facility, particularly parole and probation officers.

2. Reservations corrections should recruit and make use of volunteers in correctional programs.

a. Volunteers should be recruited from community residents, persons outside the community, ex-offenders who can serve as success models, and professionals who can bring special expertise to a program and facility.

b. Training should be provided for volunteers to give them an understanding of the needs and life styles common among offenders and to acquaint them with correctional objectives, programs and problems.

c. The facility administrator or a paid staff member should be put in charge of coordinating volunteers.

d. Insurance plans should be made available to protect the volunteer from any mishaps experienced during participation in the program.

3. Indian correctional programmers should immediately begin to plan, support, and implement internship and work-study programs to attract students to Indian corrections as a career.

These programs should include:

1. A linkage between the academic experience and the corrections work experience for the student.

2. Cooperative planning between the school, the students and agency personnel.

3. Evaluation of each program.

4. Pay for students, when possible.

5. Follow-up with participating students to encourage them to pursue corrections work.

Commentary

The use of correctional resources, professionals, paraprofessionals and volunteers can bring skills and programs into a facility that otherwise would not be available. For example, when psychiatric services are needed the facility might contract for the services of a psychiatrist on a limited basis. This has been done by at least one tribal facility.

Other resource professionals are available on a volunteer basis. The BIA and Bureau of Prisons donate the services of resource persons. School counselors have been used on a volunteer basis. The Lower Brule Sioux Tribal Alcoholism Program utilizes the alcohol counselor training resources at the University of South Dakota. In each case these resource persons offer services at no expense to the tribal facility or program, although they are in fact being paid by other agencies.

The standard specifically encourages the use of volunteers in correctional programs. Where staff shortages are a problem, volunteers can be especially useful. Volunteers can be used to provide special skills, counseling, tutoring, recreation, or routine services, errands, driving, answering phones. How-

ever, duties should be interesting enough to encourage individuals to volunteer. Volunteers also provide important inmate (or resident) contact with the community and may provide liaison in the community when an inmate (or resident) leaves the facility. Despite their potential, volunteers have not been used to any great extent in tribal correctional facilities, although alcoholism programs have used volunteers. In using volunteers wisely the facility should recognize the necessity to train and supervise volunteers. Insurance should be provided to volunteers.

For similar reasons internships should also be encouraged. In most cases, to be acceptable to the school or college, an intership should be relevant to the student's course of study. The intern should not be delegated routine tasks. The internship should provide a realistic view of corrections and facility programming. At the same time it should provide enough variety and stimulation to encourage the student's participation in the correctional field. Internships have been used by Indian police agencies.

Implementation

A. Agencies Involved:
Indian correctional facilities.

B. Funding:
Funding may be needed to hire professionals or paraprofessionals on a contractual basis. Emphasis should be on volunteers. Limited funding may be necessary for insurance purposes.

Reservations Standard 29.5

Training in Corrections

A program of preservice and inservice training should be given to all jail and correctional facility personnel. Provision for such programs should be the responsibility of the tribe or BIA.

1. All new staff members should have at least 40 hours of orientation during their first week on the job and at least 60 hours of additional training during their first year. Orientation training should include but not be limited to:

a. Correctional history and philosophy.
b. Correctional techniques.
c. Use of community resources and special programs.
d. Counseling techniques.
e. Inmate attitudes and behavior.
f. Supervision.
g. Facility rules, regulations and procedures.
h. First aid.

Inservice and other additional training should include but not be limited to:

a. Counseling techniques.
b. New programs and services.
c. Recent developments in penology and corrections.
d. Any new facility rules and procedures.
e. The latest legal requirements for the confinement and treatment of inmates.

2. All staff members, after their first year, should have at least 40 hours of additional training a year to keep them abreast of the changing nature of their work and introduce them to current issues affecting corrections.

3. Sabbatical leave should be granted for correctional personnel to attend training or other courses relevant to their work.

4. With all jail and correctional staff, responsibilities and salaries should increase with training and experience. Performance and training records should be maintained for each staff member.

Commentary

As detention and intake increasingly emphasize diversion, the use of community-based resources, release programs and other alternatives to traditional jail detention, the need for professionally trained corrections and rehabilitation-oriented staff will be critical. One way to restructure staff roles is to provide preservice training, ongoing inservice training and staff development, and staff participation in the corrections management process.

All personnel assigned to local Indian correctional facilities should receive specialized training. Training expertise may be sought from counselors and other professionals within the Indian community and the State. For example, Indian counselors should have a sense of history and should be aware of the beliefs and values which prevail in the Indian offender's community. Cultural learning can be incorporated into rehabilitation programs for Indian offenders. According to James Robideau of the Rapid City Indian Services Council, training should also emphasize delicate counseling tasks as well as the development of community and facility resources in an overall offender program. (Letter dated October 25, 1975). Supervisors should also receive specialized training. As persons who must assume liaison between facilities and other criminal justice agencies, community resources and the public, they should be trained in community resources. Professionals within the community and elsewhere can offer correctional personnel needed supervision and advice. Administrators, secretarial and maintenance staff, community workers and volunteers can also offer support to correctional efforts.

Presumably the custodial aspects of jail will continue to exist until rehabilitative and alternate programs can be developed. Although the emphasis of any facility, even jails, should be corrections, personnel assigned to work in jails should receive the specific knowledge and skills necessary to their operation. Training courses are available by correspondence through the U. S. Bureau of Prisons.

Other sources of training are available at little or no cost. BIA facilities have utilized trainers from the Bureau of Prisons, the BIA Training Academy in Brigham City and elsewhere. The Bureau of Prisons offers a series of training sessions to alcoholism programs dealing with corrections and alcohol abuse. Training courses are periodically scheduled by law enforcement training organizations. The jail facility administrator should make it a point to locate and utilize these as necessary.

The standard recommends 40 hours of orientation training during a staff member's first week on the job and 60 hours of additional training thereafter but within the first year. The Task Force felt the 40 hour requirement would present little problem. At least 40 hours is needed to get correctional staff even minimally prepared for their positions and responsibilities. Sixty hours additional training in the first year may be a problem because of staff turnover. However, the turn-

over of some personnel should not prevent the adequate training of the rest. Yearly thereafter, staff members should receive 40 hours of additional training designed to keep them abreast of changes and issues affecting corrections.

Implementation

A. Agencies Involved:
Tribes.
Bureau of Indian Affairs.
Indian correctional facilities.

B. Administrative Actions:
Correctional administrators should actively seek to make use of relevant training resources.

C. Funding:
Where training cannot be obtained at no cost through the use of volunteers or other agencies, funding for additional training may be necessary. The BIA, LEAA and tribes would be potential funding sources.

Reservations Standard 29.6

Staffing Patterns

Local Indian jail and correctional facilities should begin immediately to develop personnel policies and practices that will facilitate the fair and effective selection of the best persons for staff positions. In the recruitment of personnel, agencies should:

1. Select, retain, and promote personnel on the basis of merit and their own proven abilities to perform the required duties of the job. Political patronage should play no part in staff selection;

2. Take particular care in the selection of line personnel whose primary responsibilities are both custodial and correctional. Personnel should be selected with a consideration for their abilities to relate to correctional philosophies and their willingness to work with other agencies that may offer services to inmates. Qualifications for staff should include the requirement of a high school diploma or equivalent;

3. Develop a statement of the qualifications necessary for each position, such qualifications to be directly related to the requirements of that position;

4. Designate a stated term of office for administrative positions. A procedure should be developed for the removal of an individual from an administrative or line staff position. This procedure should include a requirement for a showing of cause;

5. Eliminate unreasonable age or sex restrictions, unreasonable physical restrictions and residency requirements

6. Develop policies and implement practices to recruit and hire women for all types of positions in reservations corrections and to provide for lateral entry to allow immediate placement of women in administrative positions in order to give women a full role, including both line and administrative work, in reservations corrections; and

7. Take immediate and affirmative action to recruit and employ capable and qualified ex-offenders in correctional roles. Policies and practices restricting the hiring of ex-offenders should be reviewed and, where found unreasonable, eliminated or changed. Training programs and career development should be offered to ex-offenders to enable them to work and advance in the system.

Jail and correctional personnel should receive salaries equal to those of persons with comparable qualifications, training and experience in the jurisdiction's police agency.

Commentary

In addition to professional training, the recruitment of competent staff is a prerequisite for success in correctional programming. A staff member is not adequately equipped to counsel Indian offenders by virtue of native ability alone. Intelligence, good judgement and prior education are also important qualities and should be sought among the candidates who apply for these positions. Correctional administrators and/or the tribes should outline a list of requirements for employment which include the qualities outlined above as well as the requirement of a high school diploma or equivalent. Experts have demonstrated that persons with no professional or college education can be developed into competent counselors with approximately 100 hours of training. (National Advisory Commission, 1973c:301). Corrections staff should be persons able to motivate and earn the respect of inmates involved in correctional programs.

Salaries should also be high enough to attract and retain qualified personnel. Corrections involves both a training commitment and a personal commitment to inmates who participate in correctional programs. Time is needed for personnel to learn correctional concepts and develop community contacts. Employee turnover could undermine ongoing programs.

Along with adequate salaries both line staff and professionals should have job security. Once staff members have made the necessary training and personal commitment they should not have to feel that they could be removed at the whim of supervisors or officials. Personnel should be protected from undue public pressure and short-lived political attacks while at the same time remaining accountable to correctional supervisors. Standardized disciplinary procedures will help to insure that politics does not play a part in the corrections process.

Implementation

A. Agencies Involved:
Authority (BIA, tribe or other) responsible for the hiring of correctional personnel.

B. Council Actions:
This standard may be implemented through legal actions of the tribal council and subsequent code additions or changes, by administrative actions within local Indian jails and correctional facilities or by administrative actions of personnel committees, either tribal or BIA. Implementation would be the responsibility of the agency with ultimate power to recruit, select, employ, and promote jail and correctional personnel. The hiring authority would also have the responsibility to see that salaries are adequate, as described in the standard.

C. Funding:
Additional funding may be necessary for the improvement of correctional staff salaries.

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APPENDIX A

CRIMINAL JUSTICE SYSTEM PLANNING

Planning Standard 1.1

Crime Oriented Planning

As a part of its comprehensive criminal justice planning process, the State Criminal Justice Commission and the District Commissions should:

1. Analyze the crime problems in its jurisdiction;

2. Identify specific crimes deserving priority attention;

3. Establish quantifiable and time phased goals for the reduction of priority crimes;

4. Evaluate and select alternative strategies and programs for reducing priority crimes;

5. Allocate its own funds and staff resources in accordance with the crime reduction goals, strategies, and programs chosen;

6. Maintain close working relationships with criminal justice and other public agencies to implement crime reduction goals and objectives; and

7. Assume responsibility for the effective evaluation of its planning and funding decisions, and the use of evaluation results to define goals, strategies, and programs.

Commentary

The major mandate of the Omnibus Crime Control and Safe Streets Act of 1968 is to reduce crime in America. To meet this end, those planning for the distribution of those funds must determine the crime problems within their jurisdictions. Analysis of crime data should be the first step in the planning process. The analysis should be undertaken to determine the extent of crime in a jurisdiction.

Once crime has been stated in a quantitative form, the types of crime must be prioritized in terms of which crimes the planning agency wishes to invest its funds in to develop programs aimed at reducing the incidence of those priority crimes.

Crime reduction goals should then be developed. Such a goal may read as follows: Reduce the rate of residential burglary by 10% by 1980. Goals should not be set, as is so many times the case, through inspired guesses. The goals should be established on the basis of data analysis, present resources and anticipated expenditures.

Once the goals are set, staff and agency resources should be directed toward the attainment of those goals. Too often goals are set and little is done to encourage agencies to accept those goals as valid. Once the validity is established, projects and programs will be developed to meet the established goals and not to meet the funding category guidelines.

In a state such as South Dakota, we cannot ignore system improvement as a worthy goal. Before the advent of the Omnibus Crime Control and Safe Streets Act, little attention was given to the criminal justice system. Because of this, the system was one of 1900 trying to deal with the problems of the 1960's. We have made great strides in this direction, but we still have a long way to go. We must begin the process of crime-specific planning, but we cannot abandon the planning of system improvement programs.

Little good can be said for a program which has placed large sums of money into projects meant to reduce crime or improve the administration of justice without bothering to establish a mechanism to determine whether or not those funds were well spent. If we are to gain the most "bang for our bucks" we must turn our attention to evaluating the projects which we fund so we may learn what does or does not work and for what reasons.

The evaluation of a project should be considered at the time the project is being developed. This must be done for several reasons: (a) such considerations will tend to make project goals more realistic: (b) data needs can be determined prior to project implementation and adequate records can be maintained: (c) it makes it easier to make decisions related to agency direction and resource allocation; and (d) it lends itself to the enhancement of the monitoring process.

Implementation

A. Agencies Involved:

The State Criminal Justice Commission and District Criminal Justice Commissions.

B. Administrative Actions:

The State Criminal Justice Commission must mandate the usage of such a planning and evaluation procedure.

Planning Standard 1.2

Improving the Linkage Between Planning and Budgeting

The State Criminal Justice Commission supports the development of legislative action that would allow for multi-year planning and coordinated planning of State law enforcement agencies.

Unless the total crime problem and the response of the entire criminal justice system are considered, master plans are likely to be unrealistic and ineffective.

Commentary

The question is whether or not the State and District Criminal Justice Commissions are to remain dispensers of federal funds or if they are to become policy setters for criminal justice in South Dakota. If they are to pursue the latter they must look beyond the dispersement of 5% of the total yearly criminal justice expenditure.

The planning process must analyze all criminal justice expenditures, make recommendations about the expenditure of those dollars and allocate funds to enhance the impact of the remaining 95% of the criminal justice expenditure.

If such a procedure is not adopted, more and more one will hear the cry that LEAA is ineffective and of questionable value as a tool for crime reduction or improvement of the administration of justice.

The criminal justice system must be treated as a system. The planning efforts of one segment must be coordinated with those of other segments. To develop plans without analyzing and planning for their impact on the other segments of the criminal justice system can only lead to an ineffective and disruptive product.

Implementation

A. Agencies Involved:
State Criminal Justice Commission.
District Criminal Justice Commissions.
All State and local criminal justice agencies.
All private agencies which deal with the criminal or juvenile delinquent.

B. Legislation:
Legislation should be developed which would allow for multi-year and coordinated planning of State law enforcement agencies.

Planning Standard 1.3

Setting Minimum Statewide Standards for Recipients of Grants and Subgrants

Every criminal justice commission should establish minimum standards for making grants and subgrants from all funds under its control to criminal justice and related public and private agencies. Grants and subgrants to specific agencies should be contingent upon the agency's adoption of established minimum standards.

1. Standard-setting efforts should be limited to those human resources, and management and operations requirements that are clearly essential to the achievement of the goals of the criminal justice system.

2. Where existing State bodies have established standards, such standards should be considered controlling, and the State planning agencies should use them as minimum standards for funding.

3. Standards should be adopted by State criminal justice planning agencies only after a thorough effort has been made to notify all interested and affected parties and to solicit their opinions.

4. State criminal justice planning agencies in their standard-setting efforts should refer to and consider major national studies on standards, such as the National Advisory Commission on Criminal Justice Standards and Goals, and the standards of major professional associations.

5. Continuous evaluation of the usefulness of adopted standards in meeting established goals should be undertaken by the State Planning Agency.

Commentary

South Dakota has developed and adopted standards for the criminal justice system. The standards have been developed through a process of task force deliberations. The task forces have established standards for the following areas: police, courts, corrections, systems, community crime prevention, and reservations. Each task force was made up of professionals in the area of concentration, professionals from other areas of the criminal justice system, elected officials and citizens. The task forces developed their standards for South Dakota from the NAC standards, related professional group standards and staff research. The developed standards should become the basis for all future planning efforts.

The State Criminal Justice Commission has, in the past, used the compliance with certain state statutes as standards to be met by grant recipients. These standards have been established but, in most instances, were not continued as grant criteria or token compliance was accepted.

If standards are to be set as grant eligibility requirements, they should be well defined and articulated. Agencies should be given a sufficient amount of time to comply. Once the standard is set it should be followed in all instances and a system should be established to determine whether or not compliance is in fact being made.

Implementation

A. Agencies Involved:
State Criminal Justice Commission.
District Criminal Justice Commissions.

B. Administrative Actions:
This standard can be met through administrative actions on the part of those listed under A. A cooperative effort should be made to determine what the minimum standard is for South Dakota based on the Standards and Goals established. This minimum should be publicized and made known to all criminal justice agencies and State and local governments. A date of compliance should be set and a quality control mechanism established to determine the acceptable level of compliance for each subgrantee.

Planning Standard 1.4

Developing Planning Capabilities

State and local governments should provide support for planning capabilities at the several major levels of decision making, agency, local, and State.

1. South Dakota should establish a permanent criminal justice planning agency.

2. Cities and counties should establish criminal justice coordinating councils under the leadership of local chief executives.

3. Metropolitan cities and counties should be encouraged to consolidate criminal justice planning operations, and should not be penalized for doing so through restrictions of funds or loss of representation on State criminal justice policy boards.

4. Large and medium-sized operating agencies of law enforcement and criminal justice should consider establishing separate planning sections. In smaller agencies, the performance of the planning function should be done either by the senior executive or by staff on a part-time basis.

5. The administration of grants should be subordinate to planning efforts at all levels and should not be permitted to dominate agency operations.

6. Local units of government should participate in district criminal justice planning agency and coordinating councils.

Commentary

South Dakota criminal justice planning has had a history of strong criminal justice planning efforts at the district level. This planning effort should not be eroded under any circumstance. Crime is a local problem and must be dealt with by those closely familiar with local problems and personnel.

The District Criminal Justice Commissions historically have had active participation by the chief executives (mayors and county commissioners) from the units of government within

their boundaries. This participation should be continued.

Criminal Justice agencies should develop planning capabilities for the following reasons:

1. For problem identification;
2. For enhancement of budgeting capabilities;
3. To analyze and choose alternative ways of meeting long- and short-range problems; and
4. To strengthen policy decisions.

Depending upon the size of the agency, the planning effort may be undertaken by a full-time staff or at least by the chief executive of the agency.

Implementation

A. Agencies Involved:
State Criminal Justice Commission.
District Criminal Justice Commissions.
All criminal justice agencies.

B. Administrative Actions:

The Districts must continue to take an active role in the planning effort in South Dakota. Criminal justice agencies should commit themselves to the planning process and devote the maximum resources available to the planning effort.

Planning Standard 1.5

Participation in the Planning Process

Criminal justice planning agencies and coordinating councils should seek the participation of criminal justice operating agencies, governmental departments, and private citizens and groups in the planning process. Coordinating mechanisms include the following:

1. Where supervisory boards are established for planning agencies, at least one-third of their membership should be from non-criminal justice agencies and private citizens. Meetings of boards should be publicized and open to the public.

2. Criminal justice planning agencies and councils should request direct written communication from operating agencies to assist them in defining the jurisdiction's needs, problems, and priorities.

3. The results of planning agency studies and activities should be communicated through the public dissemination of planning documents, newsletters, sponsorship of intergovernmental conferences, and formal and informal briefings.

4. Temporary exchanges of personnel between criminal justice planning agencies and councils — and operating agencies —should be undertaken on a regularized basis.

Commentary

The criminal justice planning commissions in South Dakota do have the active involvement of non-criminal justice persons.

The lines of communication between criminal justice planning commissions and criminal justice agencies and the public must be open. If support for the activities of the commissions is to be gained, this communication is necessary.

The Commission should establish an exchange program between the State and districts. It would certainly be advantageous to all involved if personnel engaged in the planning and administration of the Safe Streets Act were familiar with the needs and problems of those at other levels of the structure.

Benefit could also be gained through exchanges with operating agencies. A planner who realizes the values, attitudes, roles and responsibilities of those for whom he/she is planning, and visa versa, is going to be more able to communicate with and effectively plan for their needs.

Implementation

A. Agencies Involved:
State Criminal Justice Commission.
District Criminal Justice Commissions.

B. Administrative Actions:

State and District Commissions should take steps to insure that non-criminal justice personnel actively take part in and are aware of their activities. Exchange programs with criminal justice agencies should be initiated by the criminal justice commissions.

Planning Recommendation 1.1

Federal Criminal Justice Planning

Although this report has concentrated upon standards for State and local agencies, the Commission recognizes that Federal, State, and local efforts are inextricably linked. The Commission urges the Federal Government to apply, where appropriate, the principles contained in the standards previously discussed.

* Note: Planning Standard Commentary by Robert G. Demos

APPENDIX B

TABLE OF CASES

1. Argersinger v. Hamlin, 407 U.S. 25 (1972)
2. Bach v. State of Illinois, Danelon, 381 F. Supp. 911 (E.D. La. 1974)
3. Bishop v. Stoneman, 508 F. 2d 1224 (2d. CK. 1974)
4. Black Bonnet v. South Dakota, 357 F. Supp. 889 (1972)
5. Boykin v. Alabama, 395 U.S. 238 (1969)
6. Brady v. Maryland, 373 U.S. 83 (1963)
7. Coleman v. Alabama, 339 U.S. 1 (1970)
8. Davis v. Kressly, 80 S.D. 254 (1963)
9. Ex Parte Hull, 312 U.S. 546 (1941)
10. Freeman v. Lockhart, 503 F. 2d 1016 (8th Cir. 1970)
11. Hamilton v. Love, 328 F. Supp. 1182 (1972)
12. Harris v. New York, 401 U.S. 222 (1971)
13. Holt v. Sarver, 309 F. Supp. 362 (1970)
14. In re Creek v. Stone, 379 F. 2d 106 (1967)
15. In re Elmore, 382 F. 2d 125 (1967)
16. In re Gault, 387 U.S. 1 (1967)
17. In re Winship, 397 U.S. 358 (1970)
18. James v. Wallace, 382 F. Supp. 1177 (M.D. Ala. 1974)
19. Johnson v. Avery, 393 U.S. 483 (1969)
20. Johnson v. Zerbst, 304 U.S. 458 (1938)
21. Kent. v. United States, 383 U.S. 541 (1966)
22. Kirby v. Illinois, 406 U.S. 682 (1972)
23. Landman v. Royster, 333 F. Supp. 621 (E.D. Va. 1971)
24. Martinez v. Procunier, 416 U.S. 396 (1974)
25. Mataralla v. Kelley, 359 F. Supp. 478 (S.D.N.Y. 1973)
26. McKeiver v. Pennsylvania, 403 U.S. 528 (1971)
27. Miranda v. Arizona, 384 U.S. 436 (1966)
28. Morales v. Turman, 16 Crim. L. Rptr, 1050 (E.D. Tex. 1974)
29. Nelson v. Heyne, 355 F. Supp. 451 (N.D. Ind. 1972)
30. Procunier v. Martinez, 414 U.S. 973 (1974)
31. Rhem v. Malcom, 507 F. 2d 333 (1974)
32. Souza v. Travisano, 498 F. 2d 1120 (1974)
33. State v. Egon, 47 S.D. 1 (1923)
34. State v. Tiedeman, 207 N.W. 153 (1926)
35. Wolff v. McDonnell, 94 S. Cl. 2963 (1974)
36. Younger v. Gilmore, 404 U.S. 15 (1971)

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