

Mandatory Sentencing: The Politics of the New Criminal Justice *Henry R. Glick*

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Inmate Classification: Security/Custody Considerations *Robert B. Levinson*
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This Issue in Brief

ACQUISITIONS

Mandatory Sentencing: The Politics of the New Criminal Justice.—New mandatory sentencing policies are winning political support in the 50 states and Congress; however, despite stated goals to equalize sentencing and deter crime, the new laws probably can be expected to aggravate prisoners' grievances and serve as simply another bargaining tool in the criminal justice system, asserts Professor Henry R. Glick of Florida State University. Little empirical research exists on the impact of the new sentencing laws, but available evidence strongly suggests that they will have few beneficial results, he adds. The only major change may be an explicit abandonment of the reform ideal and existing, albeit limited, rehabilitation programs.

The Failure of Correctional Management—Revisited.—In "revisiting" the case of correctional management failure (his first article appeared in 1978), Dr. Alvin W. Cohn appears to be painting a drab, bleak picture. Yet, he maintains, from the time the original paper was written until now, he does believe that there has been some meaningful change. While no one could or should argue that corrections has successfully reformed itself or is being reformed appropriately, there have been some significant changes that suggest a brighter future, especially with regard to the status of management, he concludes.

Rethinking the President's Power of Executive Pardon.—Although only superficially understood by most citizens, the President's power of executive clemency has undergone a protracted evolution in terms of legal scope and constitutional interpretation, according to Professor Christopher C. Joyner of Muhlenberg College. Pronounced an "act of grace" by the Supreme Court in 1833, the pardon power in 1927 was deemed an act intended

primarily to enhance public welfare. As such, the President's pardoning authority has become broad and multifaceted, immune from review by court action or congressional restriction. A pardon neither obliterates the record of conviction nor establishes the innocence of a person; it merely forgives the offense.

Team Approach to Presentence.—An interdisciplinary team approach is the trademark of the Seattle Presentence Investigation Unit, reports Chuck Wright, Adult Probation and Parole supervisor for the State of Washington. This collective approach is used when most feasible, and has led to effective improvements in investigation, information gathering, report writing and recommen-

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Inmate Classification: Security / Custody Considerations

BY ROBERT B. LEVINSON, PH.D., AND J.D. WILLIAMS*

THE STORY is told of an inmate in a penitentiary who had minimum custody; he drove a truck that delivered equipment to a newly acquired institution. Subsequently, he was transferred to that new facility and placed in "close" custody. Incidents such as this, plus an increasing number of transfers for custody reasons, as well as wide differences in the percent of inmates at each custody level in similar institutions, led to a decision by the Executive Staff of the Federal Bureau of Prisons to establish a Task Force¹ which would take a closer look at the Bureau's classification practices.

Definitions

The term "classification" as used in a correctional setting, is a broad concept that relates to the process by which an inmate population is systematically divided into subgroups based on their program and security needs. Usually, this is accomplished through personal interviews, a physical examination, a battery of academic and psychological tests, and a review of pertinent background information; i.e., presentence investigation reports prepared by U.S. probation officers, F.B.I. criminal history records, etc. This information provides the basis for team decisions which establish each inmate's custody status and program assignments.

The focus of the Bureau's concern was on custody decisionmaking. That is, what are the factors upon which an individual's initial custody level should be based? What are the considerations which lead to increasing or decreasing a prisoner's custody level once it has been established?

It quickly became apparent to the Task Force that an inmate's custody, and its possible changes, were intimately related to the type of facility in which the individual was incarcerated. In other words, custody levels have different implications in "high" security institutions than they do in minimal security settings.

Accordingly, it became necessary to separate and deal with two distinct concepts:

Security—defined as the type of physical (architectural, environmental) constraints appropriate for a particular inmate.

Custody—defined as the level of staff supervision a prisoner requires.

Security-Level Determination

The Task Force reviewed a number of background papers (National Institute of Corrections, 1976) on the general topic of assessment for risk. On-site visits were made to the Departments of Corrections in Michigan and Oregon in order to find procedures which would be applicable to the Federal Prison System. While many helpful suggestions and ideas were collected, it was concluded that the Bureau would have to develop a methodology to fit its own particular circumstances.

A procedure was sought that would follow the principle of confining inmates in the least restrictive prison environment for which they qualified. In order to accomplish this, three things were needed: (a) a method for determining the security-level required by every newly admitted prisoner; (b) a plan which would group similar institutions into "clusters" based on their security features; and (c) a way to match (a) with (b).

a. *Determining an inmate's initial security requirements.*—At the time an initial designation is made to a specific institution—after the Court has committed an individual to the care and custody of the Attorney General and the prisoner is under the jurisdiction of the U.S. Marshals Service—what are the pertinent bits of information needed to determine the appropriate facility to which the Marshals should escort the inmate?

The Task Force winnowed down a list of some 92 possibly relevant items to 47 potentially significant factors. Two-member teams then visited 18 different Bureau of Prisons (BOP) facilities and administered the list to 77 Unit/Classification

* Dr. Levinson is deputy assistant director for inmate program services and Mr. Williams is assistant director, community programs and correctional standards division, both with the Federal Bureau of Prisons.

¹ The Bureau of Prisons' Task Force on Inmate Classification provided many ideas, constructive comments, and the data upon which the material presented in this article was based. The authors acknowledge their deep indebtedness to the members of this group.

Teams (Levinson & Gerard, 1973). Information on the degree of importance of the 47 items was gathered from 49 case managers, 47 chaplains, 107 correctional officers or correctional counselors, 40 educators, 28 psychologists, 24 secretaries, and 34 Regional and Central Office administrators; a total of 329 BOP staff.

There was a very high degree of agreement among the various disciplines in the manner in which they rated the 47 factors—rank correlations ranged from a low of .94 to a high of .98. Additionally, the Unit/Classification Team rankings correlated with the Regional and Central Office Administrators at .97.

*Rankings on Degree of Importance
of 47 Variables (Initial Classification)*

<i>Unit Teams</i>	
1.5	History of escapes/attempts
1.5	History of violence
3	Detainers (number/type)
4	Current offense
5	Length of sentence
7	Disciplinary reports
7	Prior arrests/commitments
7	Notoriety (inmate/offense)
10	FBI Rap Sheet
10	Staff judgment
10	Prior institutional adjustment
12	Member in subversive organization
13	Responsibility (shown by inmate)
14	Involvement in alcohol/drug use
15	Psychological test data
16.5	Judicial recommendations
16.5	Peer group associates
19	Respect towards staff/others
19	Cooperativeness of inmate
19	Community attitudes
22	Physical security (facility)
22	Military record
22	Age at first commitment
24.5	Work habits
24.5	Employment history
26.5	Family background
26.5	Age at first arrest
28	Age
29.5	Length time at home residence
29.5	Citizenship
31.5	Marital history
31.5	Home and neighborhood
33	Institution (isolated-ness)
34.5	Health of inmate

34.5	Education history
36.5	Interest in classification
36.5	Physical stature or handicaps
38	Programs (availability)
39.5	Space available, camps, CTC, etc.
39.5	Inmate skills
42.5	Work assignments available
42.5	Personal hygiene
42.5	Overcrowding
42.5	Financial background
45	Living quarters (availability)
46	Industrial assignment (availability)
47	Race

It would appear, then, that while there was consistency at the conceptual level, in actual practice this seemed to become lost. A procedure was needed which would insure the systematic assessment of every new commitment on *all* pertinent variables. The very high degree of consensus among Bureau personnel identified six items as a possible basis upon which to construct a designation instrument—The Security/Designation (S/D) Form.

The six factors on the S/D Form are:

i. History of escapes or attempts—involved the degree of seriousness of the escape or attempt and how long ago it occurred;

ii. History of violence—the seriousness of any act against a person or property which resulted in a fine or conviction, and when it occurred;

iii. Type detainer(s)—the degree of severity of lodged detainers (determined by a Task Force developed Severity of Offense Scale);

iv. Severity of current offense—based on most severe offense which resulted in present incarceration, using the Severity of Offense Scale;

v. Expected length of incarceration—average percent of sentence served for offenses in the category in which (iv) falls;

vi. Type of prior commitment(s)—the seriousness of any offense which resulted in prior confinement(s).

b. *Grouping institutions by security features.*—The Bureau of Prisons operates some 38 major institutions across the country, with six to eight facilities in each of five regions. These range from minimum security prison camps to maximum security penitentiaries. The plethora of identifying names which had developed over the years—camps, training schools, youth centers, detention centers, reformatories, correctional institutions, penitentiaries—although recently re-

TABLE 1.—Security level criteria

LEVEL OF SECURITY	1	2	3	4	5	6
Type Perimeter Security	None	One Fence or Bldg. facade	Double Fence	Double Fence or Single +	Double Fence or Wall	Double Fence or Wall
Towers	None or not manned	Manned less than 24 hours	Manned less than 24 hours	Manned full & part-time	Manned 24 hours	Manned 24 hours
and/or External Patrol	No	No	Yes	Yes	& or yes	Yes
Detection Devices	No	No	Yes	Yes	Yes	Yes
Housing	Open	Open to Medium	Medium	Secure	Secure	Secure
Quarters/Cells	Single & Multiple + Dorms	Single & Multiple + Dorms	Single & Multiple + Dorms	Single & Multiple + Dorms	Single & Multiple + Dorms	All single
Staffing per population size	Low	Low	Low to Medium	Low to Medium	Low to High	High
Type of Custody	OUT COMMUNITY	IN, OUT COMMUNITY	IN, OUT, COMMUNITY	IN, OUT	MAXIMUM, IN	MAXIMUM, IN
Facilities	NE Allenwood Morgantown	Danbury	Petersburg	Otisville	Lewisburg	
Identified with each Level of Security	SE Eglin Lexington Maxwell	Tallahassee	Ashland Miami	Memphis Talledega	Atlanta	
	NC	Sandstone	Milan Springfield (gen. pop.)	Oxford	Leavenworth Terre Haute	Marion
	SC	Ft. Worth Seagoville	La Tuna	Texarkana	Bastrop El Reno	
	W	Florence (Camp)	Terminal Island	Englewood	McNeil Island	Lompoc
		& all CTCs and all satellite camps				

Administrative Facilities (having all levels of security and custody) :

Alderson
New York
Butner
Chicago

El Paso
Pleasanton
San Diego
Terminal Island (Psychiatric)

Florence (Detention)
Springfield (Medical/Psychiatric)
All Pre-Trial detention units

duced, in some instances still used the same "label" for facilities with markedly different security features. Accordingly, a more consistent schema was needed which would group together similar institutions.

Seven security attributes were used to group BOP prisons into six security levels—plus an Administrative category having all the levels and for which non-security considerations (such as special medical/psychiatric needs) outweighed security concerns. The seven items used to cluster the facilities were: (1) type perimeter security; (2) towers; (3) external patrol; (4) detection devices; (5) security of housing areas; (6) type living quarters; and (7) level of staffing per population size.

Institutions have been identified with each of the security level¹ (see table 1).

c. *Making designations based on inmate's security requirements.*—Bureau of Prisons' Community Programs Officers (CPO's) will gather information on the six prisoner variables based on the presentence investigation and complete the Security/Designation Form; points are assigned for each item. The total number of points a newly committed inmate receives identifies a sub-set of BOP institutions which have the security features appropriate for that individual. The next step is to determine which specific facility (within this sub-group) will be designated.

A second, different set of six factors—also emerging from the data collected by the Task Force from field institutions—is used to identify the specific facility to which the Marshal will escort the newly committed prisoner. The process involves the CPO contacting the Regional Office and by teletype conveying the pertinent information to the Designation Desk. The final designation decision is made by the Regional Designation

Officer (sending confirming teletypes), based on six Administrative Variables:

i. Central Monitoring Case—assigning to different institutions those individuals who for specific reasons need to be kept separate from one another;

ii. Age—new inmates assigned in accord with institution's profile;

iii. Judicial Recommendation—designating an inmate to the facility (at the security level for which the prisoner qualifies) which has the specific program recommended by the Court on Administrative Office Form 285 (Report on Sentenced Offender by United States District Judge);

iv. Release Residence—assigning newly admitted prisoners to the BOP facility that has the appropriate security features and whenever possible, is closest to the individual's anticipated release area;

v. Overcrowding—attempting to distribute the burden caused by overcrowding by assigning newly committed inmates in such a fashion that all facilities will carry their fair share;

vi. Racial Balance—keeping institutions racially balanced by making assignments which will maintain comparable racial proportions across the country.

d. *Preliminary evaluation.*—During the development of the Security/Designation Form, several "simulation exercises" were conducted. The intent was to compare the degree of correspondence between the type of facility which was actually designated with the one which the Form would have recommended had it been in use. In two such "tests" the level of agreement was 44% and 60%; in both instances the S/D Form placed more inmates in the less secure institutions.

The results of these simulation exercises were seen as encouraging. The new procedure did not appear widely discrepant from currently-in-use designation methods, while at the same time it seemed to be both more consistent² and able to deal with the diversity of inmate security needs. As a consequence, a pilot project was established in the Bureau's Western Region. In this region actual designations were made in accord with the recommendations of the Security/Designation Form. Inmates assigned by the new method were "tracked" in an effort to determine whether or not the S/D Form offers any improvement.

The Security/Designation Form as used during the first three-and-a-half months in the Western Region project³ was found to be highly reliable—

¹ An initial step in training sessions designed to teach the use of this new procedure, asked CPO's to make "designations" on two sample cases—first employing their current methods and the second time using the S/D Form; half of them had case "A" first and case "B" second, the other half did both cases in the reverse order. Case "A" using current procedures was designated to institutions in six different security levels (most frequent being S-3); when the S/D Form was used with case "A", designations were made to institutions at four different security levels (S-1 being the most frequent). Case "B" was designated to four different security levels under the current approach and to three security levels using the S/D Form; in both instances S-2 was the most frequent level designated—with a higher proportion of the CPO's making an S-2 designation when the Form was used. When the Form was used after further training, the "spread" further narrowed.

² The data reported on represents a 10% random sample of male inmates in the following Western Region institutions: Federal Prison Camps at Florence, Arizona; Safford, Arizona; Lompoc, California; McNeil Island, Washington; and Federal Correctional Institutions at: Terminal Island, California; Englewood, Colorado; Lompoc, California; and the U.S. Penitentiary at McNeil Island, Washington. Some preliminary data on female offenders in the Western Region suggest that their distribution among the various Security levels differs significantly from the males; i.e., a greater proportion of females qualify for the lower security level institutions.

based on a 10% sample (N=505) randomly drawn from eight facilities—Kuder-Richardson formula $21=.81$ (Cavior, et al., 1978). Additionally, the results of a Stepwise Multiple Regression suggest that the two most important items for determining Security Level are History of Violence and Offense Severity—accounting for 74 percent of the variance; Expected Length of Incarceration made the least contribution in this regard. Nevertheless, all six items on the S/D Form contribute significantly to the determination of Security Level ($p < .0001$). No single factor on the Form separates the inmates into Security Levels and no age differences were found across Security Levels (Cavior, et al., 1978).

Among the potential advantages seen for the new designation approach were:

(1) It should keep the inmate population of the Federal Prison System in better balance; decrease the number of transfers for custody purposes; and reduce the number of inmates who request placement in Administrative Detention for their own protection.

(2) Insuring that inmates are housed in the institutions for which they properly classify, would aid the Bureau's administrators in making more efficient use of available resources; e.g., differential staffing patterns, identifying type of, and locations for, needed new facilities, etc.

A possible third benefit was suggested by some preliminary data from the Federal Correctional Institution, Englewood, Colorado.⁴ During the first three-and-a-half months of the Western Region designation project, staff at this S-3 level facility began to notice a differential distribution of Disciplinary Reports corresponding to the point totals of the 50 inmates assigned under the new system. As shown in table 2, the higher the point-total (within the S-3 range) the greater the number and severity of disciplinary problems. Should these very early data hold up over time, the S/D Form might also be suggesting subdivisions *within* the institution's designated inmates that have implications for an internal management classification system (viz, Smith & Fenton, 1978).

Custody Considerations

Developing a method for getting newly admitted inmates into the "appropriate" institution established the foundation upon which an internal

TABLE 2.—Relationship between number of disciplinary reports and security level points*
(N=50)

(n)	Number of Points	Number Disciplinary Reports		
		Major	Minor	Total
(17)	10	0	2	2
(10)	11	0	2	2
(16)	12	2	3	5
(7)	18	6	4	10
(50)		8	11	19

* New commitments assigned to S-3 institutions if point total on six S/D variables equals 10 to 13 points, inclusive.

custody/classification system could be built. The work of the Task Force was guided by the following objectives:

(a) place prisoners in the lowest custody classification deemed appropriate;

(b) establish a time schedule for formal, documented reviews;

(c) provide a means (and consistent rationale) for moving inmates, when warranted, through reduced or increased security levels and custody assignments.

Custody Levels.—Current Bureau policy specifies five levels of custody—maximum, close, medium, minimum, and community. Except for maximum—found only in penitentiaries—all other facilities have all of the remaining custody levels. In addition, a number of facilities have "local practices" which, in effect, have established sub-categories within the policy-specified five levels; for example, medium-in and medium-out; minimum-with-a-gate-pass and minimum-without-a-gate-pass.

The intent of custody classification is to establish a consistent approach which will result in the assaultive, escape-prone, and riot-initiating prisoners being more closely supervised during their contacts with the prison's general population and in their movement throughout an institution. By closely monitoring and restricting the activities of these individuals, the remainder of the inmate population can live in a safer environment, under less stress from predatory activities.

In light of this rationale it is difficult to explain why minimum and community custody inmates are sometimes housed in the Bureau's most secure facilities. Not only are such individuals needlessly occupying expensive beds, but in addition they create a series of management problems when they pass through the institution's secure perimeter on a daily basis: by tying up large numbers of correctional staff, by offering a potential avenue for the introduction of contraband, by becoming targets for pressure from high-security-risk inmates, etc.

⁴ Personal Communication, Albert F. Scheckenbach, Ph.D., Chief, Psychology Services, F.C.I., Englewood, Colorado.

As a way to cope more effectively with these concerns, the Task Force proposed that a four-level custody system be established:

MAXIMUM—Means the inmate requires maximum control and continuous supervision. This custody is for individuals who by their behavior have identified themselves as assaultive, predatory, riotous, or serious escape risks. Such individuals have demonstrated their inability to associate with the general population without becoming dangerous to the well-being of other prisoners or disruptive to the orderly running of the institution.

These individuals, when out of their cells/rooms, will be restricted to designated (more secure) areas within the prison and kept under continual staff surveillance. Within these constraints they will be able to participate in available institutional programs and work assignments.

IN—Means the prisoner will be assigned to regular housing quarters—single cell, but may be double-bunked; multiple-cell; or cubicles in dormitories; be eligible for all program activities under normal level of supervision, but *not* for work or program assignments outside the institution's secure perimeter.

OUT—Means the inmate may be assigned to less secure housing quarters within the institution; prisoner lives in open dorms, cubicles, or single rooms; is eligible for work details and program assignments outside the institution's secure perimeter with intermittent supervision.

COMMUNITY—Means the inmate is eligible for the least secure housing, including that which is outside the institution's perimeter; may work on outside work details or program assignments with minimal supervision; and, is eligible to participate in community-based program activities.

Making Custody Level Decisions

Custody level decisions are made by the inmate's Unit/Classification Team. The intent of the Task Force was to bring greater consistency to the process by establishing procedures which would: set a time for documented custody reviews and establish a format which would be systematically applied. Moreover, a conscious effort was made to permit the staff's professional judgment to play a role in decisionmaking. We were *not* seeking a mechanical procedure.

Formal reviews for possible changes in custody

TABLE 3.—Custody review schedule

Custody status	Review period
MAXIMUM	9 to 12 months, earlier at Team's option
IN	6 to 9 months, earlier at Team's option*
OUT	3 to 6 months, earlier at Team's option*
COMMUNITY	at any time after any change in external factors which might affect Security level or Institutional Disciplinary Committee action which might affect Custody level determinations; but at least once a year in every case.

* Initial custody level review will not occur before six months at assigned institution.

level will be held in accord with the schedule shown in table 3.

Ordinarily, an inmate's initial review for a possible custody level change will occur after being at the assigned institution for at least 6 months; subsequent reviews will follow the above schedule.

As indicated earlier (in table 1), all institutions will *not* have all four custody levels. Newly committed inmates will start at IN custody in all facilities except Security level one institutions, where they will begin with OUT custody. Each custody review will involve the Unit/Classification Team meeting with the inmate at which time a current Custody/Classification Form will be completed.

The Custody/Classification Form was developed based on information gathered from field institution personnel. It enables a Unit/Classification Team to systematically compare an inmate's present status with the picture presented at time of admission. That is, Part I of the Form (essentially, the same as the Security/Designation Form) provides an opportunity to update the basic—preinstitutional—information concerning each individual, and to ascertain whether or not the present facility continues to offer appropriate *security* features. Part II of the Custody/Classification Form offers a consistent method to assess whether the prisoner has moved in a positive or negative direction during the period of time since admission—or since the last review. Meaningful change in a positive direction will, generally, result in a *custody level* reduction; significant movement in a negative direction will (usually) result in a custody level increase. Both types of change could lead to a redesignation to a different institution if the present facility was no longer appropriate; i.e., did not have the new custody level.

Decisions concerning custody level changes, then, are based on how the inmate is currently functioning in relation to the picture presented

at time of admission; the six preincarceration variables are the basis for assessing the six post-admission factors. The items on Part II of the Custody/Classification Form, are:

vii. Percent of time served—portion of projected period of incarceration which inmate has already served;

viii. Involvement with drug/alcohol abuse—history or current indications or dependency on drugs or alcohol (includes trafficking);

ix. Mental/Psychological status—based on current reports, if any, concerning inmate's degree of mental stability;

x. Type and frequency of disciplinary reports—severity and number of disciplinary reports received during past year;

xi. Responsibility demonstrated by inmate—based on reports from work and program assignments of inmate's general demeanor and behavior;

xii. Family/community ties—nature of inmate's established and continuing family and community involvement.

As determined by the size and direction of the change on Part II, relative to the score on Part I, a recommendation is made to increase, decrease, or not change the inmate's current level of custody. The final decision rests with the Unit/Classification Team. If they agree with the Form's recommendation, the change will be made; if they disagree, no change will occur and the Team must indicate in writing (with copy to the inmate) why it chose not to follow the recommended action.

Preliminary Evaluation

In order to assess to some degree the applicability of the Custody/Classification Form, a "simulation test" was conducted on a 10% random sample (405 cases) of the inmate population in six BOP facilities—one at each security level. Both parts of the Form were completed and then the Case Manager/Team asked to indicate whether or not they agreed with the Form-indicated recommendation. Overall, there was an 85% agreement rate.

The Form recommended an increase in custody level in 8% of the cases (with which the staff agreed 82% of the time); it recommended a custody decrease 47% of the time (and staff agreed in 75% of these cases); and it recommended no change in custody level in 45% of the cases (with 96% staff agreement). If the Form's recommendation had been followed in every instance (or if it had been followed in only those cases with which the staff agreed) the overall effect would have been to reduce the wide discrepancy existing among the proportion of sample cases in the various custody levels. That is, the 212 Close custody cases in the sample—52%—would have been reduced to 33% (or 38%, respectively).

The problem of "correctly" classifying inmates Classification Form was encouraging. This internal custody classification system has been implemented as a pilot project at BOP institutions in the South Central and North Central Regions. Following an assessment after a six to nine month trial period, it may (with any needed modifications) become operative on a Bureau-wide basis.

Conclusion

The preliminary evaluation of the Custody/ is a key to the entire correctional process. Over the years, many correctional workers have developed a high degree of expertise in making such judgments. However, there exists a need to make explicit the procedures by which decisions are made and to document and bring greater consistency to the considerations which go into the judging process. To this end, it is felt that the Bureau of Prisons has taken several significant steps by the developments described in this preliminary report.

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