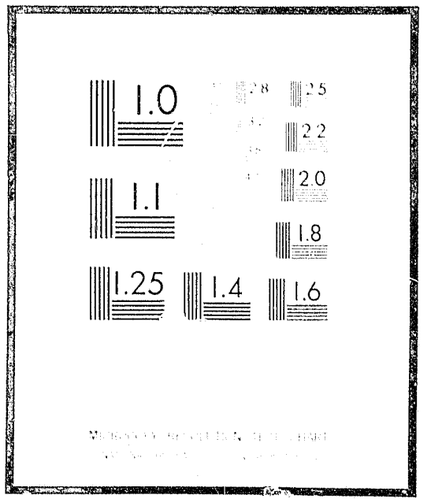
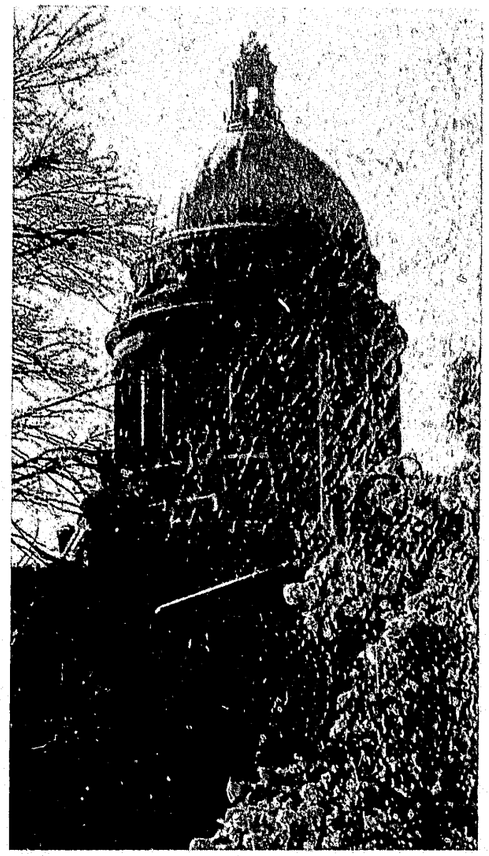





# MENTALLY RETARDED OFFENDERS IN ADULT AND JUVENILE CORRECTIONAL INSTITUTIONS



RESEARCH REPORT NO. 125



LEGISLATIVE RESEARCH COMMISSION

Frankfort, Kentucky

# MENTALLY RETARDED OFFENDERS IN ADULT AND JUVENILE CORRECTIONAL INSTITUTIONS

## Part I: Adult Offenders

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Research Report No. 125

*Legislative Research Commission*
*Frankfort, Kentucky*
*October, 1975*

This Report has been prepared by the Legislative Research Commission and paid for from state funds.

# FOREWORD

The 1974 Kentucky General Assembly adopted House Resolution 84 which directs the Legislative Research Commission to complete an evaluation of the treatment and care of mentally retarded adult and juvenile offenders in Kentucky correctional facilities. In adopting this resolution, the General Assembly recognized the special needs of this portion of the inmate population in correctional facilities across the state.

This research report, prepared in response to H.R. 84, is divided into two parts -- one dealing with adult offenders, the other with juvenile offenders. Reporting in this manner proved to be an effective approach since Kentucky correctional programs are divided along these lines.

William H. Cull, with the assistance of William Thielen, Deborah Clark, Garry E. Stage, Dale Morris, and Gregory Freedman, authored the section dealing with adult offenders. George Reuthebuck and Nancy Pape compiled the information concerning juveniles. Garnett Evins and Janie Smith typed the manuscript for publication.

PHILIP W. CONN
Director

The Capitol
Frankfort, Kentucky
October, 1975

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PART I

# MENTALLY RETARDED OFFENDERS IN ADULT CORRECTIONAL INSTITUTIONS

## FINDINGS AND RECOMMENDATIONS

I. Kentucky's prisons house a large number of persons who are mentally retarded or borderline mentally retarded.

*122 inmates, 5.2% of those tested, have IQ test scores of 70 and below. Projecting the 5.2% figure to the total population, 159 inmates should have IQ's below 71.

*437 persons, 18.9% of those tested, have IQ scores of 70-85, a category formerly known as "borderline retardation."

II. Kentucky Corrections offers no appropriate treatment to the retarded and subjects them to varied institutional abuse.

*Only 6 inmates, 5% of the known retarded, are enrolled in vocational and academic programs.

*80% of correctional staff and inmates feel Kentucky Corrections has no programs geared to the needs of the retarded, and current programs are geared beyond their abilities.

*More than 62% of correctional staff feel the retarded are taught criminal skills by more sophisticated criminals, and physically and sexually abused by other inmates.

III. The Kentucky Correctional System denies mentally retarded offenders a legal and moral right to rehabilitative treatment.

*Kentucky statutes mandate rehabilitation and non-criminal handling of mentally retarded offenders.

*Abusive treatment of the retarded, in sharp contrast to care for

other "legally incapacitated" persons, juveniles and the mentally ill, denies them a traditional legal right to treatment.

*Incarcerating the mentally retarded in Kentucky's prisons, where they receive no treatment and are subjected to abuse, is an unconstitutional "cruel and unusual" punishment.

IV The Governor should order the new maximum security prison to be used as a jointly run, Corrections-Human Resources institution for approximately 100 retarded and 200 borderline retarded inmates.

*Removal of the retarded would fulfill the major objectives in building the new prison of (1) reducing population at Eddyville and LaGrange (2) removing a group now negatively affected by institutionalization (3) providing treatment to a group not now receiving treatment.

*Neither transfer to Human Resources or use of a program unit at LaGrange for the retarded would adequately guarantee separation, treatment, and security.

*Operation of a jointly run facility for the retarded offender would be particularly efficient if the new Human Resources Forensic Psychiatry hospital is located adjacent to the maximum security prison.



## KENTUCKY CORRECTIONS: TREATMENT PROGRAMS AND FUTURE PLANS

The following discussion summarily reviews current correctional treatment programs, along with budgeted upcoming developments. While the conclusion of this research is that Corrections has little or nothing to offer the retarded, this section provides valuable assistance for one considering recommendations for treatment program development.

### A. Academic Education

In June, 1974, around 200 of Kentucky's 3,000 inmates were regularly enrolled in academic programs at all institutions. Inmate classes are divided essentially into three groups based on achievement levels: (1) literacy, (2) adult basic, and (3) GED.

Each division is structured around "programmed learning" where testing pinpoints individual strengths and weaknesses, and lesson plans are based on what each person does not know, allowing him to proceed at his own speed. Inmate instructors are extensively used.

But while programmed learning enables many inmates to make great progress, even its "literacy" level requires basic reading skills. Legislative Research Commission Research Report #102 pointed this out with particular reference to Eddyville:

> A particular example of an institutional staff need which has not been and may never be filled is that of a reading instructor. Many KSP inmates have serious reading difficulties which require special therapy only a reading instructor can provide. The funded position for a reading instructor who possesses a Master's Degree, however, is only about $7000. This salary is hopelessly non-competitive in a field of great demand.[1]

The retarded offender is clearly ill-suited for programmed learning as he lacks both the necessary reading and reasoning skills. He demands personal attention that programmed learning is not intended to provide. It is no wonder that 80% of all institutional staff felt Kentucky's prisons have no programs geared to the particular needs of the retarded and that treatment staff cited this very problem as severe.

B. Vocational Programs[2]

Vocational training is a combined program operated by Corrections, Vocational Education, Vocational Rehabilitation and follow-up services by Human Resources. Each institution has a vocational facility under the "Operation Restore" program. In the summer of 1974, some 225 inmates were enrolled, a figure which has grown due to the opening of a new, 100 inmate vocational school at Eddyville.

On paper, the vocational program appears of great potential value to the retarded. Eligibility, based on federal funding requirements, is contingent on the presence of a "disability." Vocational Rehabilitation provides counseling and psychiatric services both during and after institutionalization.

But vocational training is, apparently, not of great value to the retarded. Very few inmates are enrolled, whatever the reason. One particular problem, cited by residents of the Women's Institution, KCIW, is the fact that various vocational programs require a GED, or 8th grade diploma before one is eligible to enroll. It is obvious that the retarded person is automatically unable to benefit from such programs. The 80% of staff who saw no



correctional programs for the retarded were also including vocational training as unsuited for this grouping.

C. New Maximum Security Prison

The 1974 General Assembly appropriated some $15 million in capital construction money to Corrections to build a new maximum security prison. Though no site has been named, the state has let contracts for design of the institution. The 1974-76 Kentucky Executive Budget included the following description of the new institution.

> Maximum Security Penitentiary: This recommendation proposes that a new maximum security institution be constructed within the next biennium. This construction would fulfill a previously unmet need in rehabilitation through a new concept in correctional facilities. Not all offenders have the potential for being dealt with in a minimum security setting nor can all adapt to the medium security setting found at LaGrange, and yet these same individuals are very definitely in need of specialized programming in a secure setting. This new institution will be programmed to serve the specialized needs of 250-300 inmates presently housed at Kentucky State Penitentiary and Kentucky State Reformatory. Examples of this type offender are: (1) the exploitable, inadequate, group dependent individual; (2) poorly motivated first or second offenders with long juvenile records showing some degree of sophistication; (3) first offenders serving a long sentence or a sentence which by law precludes his being placed in a minimum security setting; and (4) non-violent multi-offenders. These 250-300 men will be determined by the Classification Committee through a careful screening process and classification system. This facility should benefit the entire correctional system in the state through:
>
> (a) More effective rehabilitation of approximately 450 inmates a year, which will reduce the overall recidivism rate in Kentucky; thus, long-run savings to the taxpayer.
>
> (b) Idleness will be reduced at Eddyville; greater staff time will be available to the hard-core, highly sophisticated, dangerous offender.
>
> (c) Continued reduction of the population at Kentucky State

Penitentiary. This will enable the Penitentiary staff to improve their effectiveness through increasing staff/inmate contact.

(d) Continued reduction of the population at the Reformatory. This will enable the Reformatory staff to improve their effectiveness through increasing staff/inmate contact.

Four criteria should determine the site: (1) central location, (2) staff availability, (3) transportation accessibility, and (4) near a university.[3]

Almost a year after the General Assembly approved the new prison, Commissioner Charles J. Holmes restated the purpose of the new institution in almost the same terms:

> Holmes said the immediate prupose of the new facility is to reduce the Eddyville prison's inmate total so the old institution can be renovated, rearranged and developed "as a suitable place for confinement and rehabilitation."Holmes said he thought the old state prison "will always have some kind of purpose" (correctional) if a smaller population will permit the state to overcome its obsolenscence and inconveniences.
>
> Holmes also pointed out that the new facility would be "excellent" for men who require maximum security but whose rehabilitation might be adversely affected by "being lumped together with all of the rest, including the most hardened criminals, at Eddyville . . ."[4]

The new institution will be located near one of Kentucky's major urban areas, very likely on lands controlled by Corrections. Though political considerations have delayed site selection, a decision should be made in the near future.

D. Forensic Psychiatry Hospital

The General Assembly allocated $4.9 million to Human Resources for construction of a new forensic psychiatry hospital on the grounds of Central State Hospital near Anchorage. The new facility is to provide 100 beds for



mentally disturbed offenders, either undergoing pre-trial competency examination, post-acquittal involuntary commitment or transferred from Corrections after imprisonment. The facility is to replace the Grauman unit, the current 50 bed forensic unit at Central State Hospital, which will then be used to house 16-22 year old disturbed persons involved in the criminal justice system.

The facility is designed as a combined undertaking of Corrections and Human Resources. Though the allocation was made before the 1974 session, interdepartmental hassles have delayed getting plans for the institution underway.

On June 25, 1975, Dr. H. MacVandivere,, Remedial Health Services Director for Human Resources, publicly asked Health Service Commissioner McElwain to attempt to build the new facility alongside the new maximum security prison. Citing cost estimate increases from $4.9 to $6.8 million, Vandivere claimed both institutions could function side by side with significant money savings.

Vandivere's position marks a total departure from that of former Commissioner Dr. Dale Farabee,who felt the location of a hospital in a correctional setting was inimical to rehabilitative treatment.

A second major change in Vandivere's statement revolved around the function of the forensic hospital. Vandivere emphasized the importance of separating the mentally ill from the retarded, something he said can not be done under the present limited system. But unlike most forensic psychiatry

units which primarily treat the mentally ill, Vandivere said the new hospital would provide comprehensive treatment for the retarded.

> In good psychiatric care, we should treat (the mentally ill and retarded) differently. Full treatment such as training the educable and trainable mentally retarded is impossible in the current facility. Such treatment will be provided in the new facility.[5]

E. Program Unit Division of the Kentucky State Reformatory

LaGrange houses more than 1,500 inmates, and therefore faces all the critical problems of big prisons. To help remedy institutional problems, Superintendent Harold Black devised a plan to divide the Reformatory into three mini-institutions inside its own fences. The 1974 General Assembly appropriated special monies to aid this institutional split-up, modeled in part on the program devised at California's Soledad Prison.

The first of the three units, the Honor Unit, opened in the spring of 1975. The unit houses inmates whose institutional records are spotless, and who are seen as model rehabilitative prospects. It houses a maximum of 380 persons.

The Special Program Unit, which when opened should house 450 inmates, will provide specific programs for specific inmate groups. Included in the unit will be drug offenders, the elderly, and other identifiable groups.

The Progressive Unit will house other inmates, and will be directed toward inmates who are not interested in program involvement, but are simply interested in serving their sentences.



## CHAPTER II - - INMATE POPULATION DATA

### Major Findings

*122 persons, 5.2% of tested inmates, have IQ scores of 70 and below, indicative of some degree of retardation. Projecting the above percentage to the total population of 2994 at the June, 1974 time of research suggests another 37, or 159 inmates would fall below 71 on IQ tests.

*The mentally retarded offenders are primarily white male, first offenders with low formal education levels serving disproportionately longer sentences.

*The retarded offender is likely to be given menial institutional maintenance assignments, as only 5.2% are in academic or vocational school.

*Mentally retarded inmates have a higher incidence of institutional rule violations and parole deferments, indicating a greater degree of adaptive difficulty within the correctional environment.

*437, or 18.9% of inmates who have been tested, have IQ scores between 70-85, a category formerly called "borderline retardation" by the American Association on Mental Deficiency. These individuals represent another group requiring special compensatory treatment, and thus, a problem group inside Corrections.

One of the primary objectives of this research is to determine the nature and scope of the problem created by the presence of mentally retarded offenders (MRO's) in the Kentucky adult corrections system. In fulfilling this objective two factors seem important: (1) to delineate the retarded population

and its characteristics, and, (2) to make some form of comparative analysis between this exceptional group and the remainder of the offender population. The retarded (whether they are criminal offenders or not) have special problems and needs over and above those of normally gifted individuals. An assessment of the similarities and/or differences between the retarded and non-retarded offenders, with respect to their movement through the corrections system, would give some idea of the system's responsiveness to these special problems and needs.

Data on the important demographic characteristics of the offenders currently incarcerated and their involvement in major aspects of institutional life was necessary.

Since the Department of Corrections maintains few statistics on its institutional population, original data had to be collected.

A small sampling of the offender population, such as that used in a similar South Carolina corrections study, was considered but rejected. It was felt that data on the entire population would be more statistically sound and could be of use in future corrections studies.

## Methodology

The necessary information was selected and incorporated into individual inmate record analysis forms (see Appendix A). This data was then extracted from the files of the inmates currently incarcerated at each of the seven adult institutions. After the collection process was completed, each item of information was assigned a code number and the data obtained on each



inmate was transferred onto a computer card. The data was then separated into categories or combinations of categories and counted by means of a mechanical counter/sorter. Simple percentages were calculated from the results. The file deck remains in possession of the Legislative Research Commission.

Just as with any statistical process, the possibility of error, whether human or mechanical, exists. The quantity of the data collected and the limitations of time necessitated that a number of individuals be involved in the collection process. While precautions were taken, problems did occur due to institutional differences in classification and semantics, and individual nuisances and oversights in recording the data. Where the problem was interpretive, and could not be corrected and standardized, the particular item for that particular inmate was dropped from the sample. Where an item was not recorded for an individual due to an oversight, this is noted in the data charts. The percentages were calculated after the exclusion of all inmates who did not have the particular bit of data being analyzed.

## The Identification Process

The single most significant piece of data is of course the IQ score as it serves to indicate that individual who is of primary concern - the mentally retarded offender. However, while it is the most significant bit of information, the IQ score is also the most suspect in terms of validity. Two factors are responsible: the testing instrument with its inherent deficiencies and the environment in which it is administered.

The Department of Corrections routinely administers the Revised Beta Examination to individuals entering the system. Another, more comprehensive, IQ test known as the WAIS (Weschler Adult Intelligence Scale) is administered to a small portion of the inmates who score poorly on the Beta exam. However, not all inmates are given an IQ test. Almost all testing is done at the Kentucky State Reformatory or in the case of women, at the womens institution at Pee Wee Valley, by the Admissions and Orientation unit. Those inmates who refuse to take the test or are unable to take it, those who are taken immediately to KSP because of particularly violent or multiple offenses and those who have been in the corrections system for a number of years are usually not tested. The data shows that 83% of the offenders presently incarcerated have at least one IQ score.

Although a detailed analysis of the problems with psychological testing instruments is not necessary here, a few points need to be mentioned. IQ tests in general and the Revised Beta in particular have been the subject of much criticism as measures of intellectual capacity. The Beta is a non-verbal group test, of little comprehensiveness, which has not been revised since 1946. The problem of an inherent racial and cultural bias has been much discussed but left unresolved. While it is not inutile as a measuring device, its value should be carefully weighed. When used as an identification device, it should be a preliminary step to be followed by more comprehensive testing in conjunction with a professional evaluation of overall functioning and adaptation.

The Department of Corrections has made progress in the area of



psychological evaluation. In sheer numbers, more of the inmate population is being tested and identified for possible programming. A greater variety of evaluative instruments are being employed by the Admissions and Orientation unit. The staff administering these instruments have some training in psychometrics. Nevertheless, there is room for much improvement. The general atmosphere of the Admissions and Orientation unit is one of disorientation and anxiety. The facilities now being used are cramped, noisy, poorly lighted and inadequately ventilated. The type of testing environment that presently exists is simply not conducive to an accurate and fair evaluation.

If the identification process is to have any viability in terms of classification and programming to meet the Department's goal of rehabilitation, changes must be forthcoming.

New and more comprehensive methods of identification administered by specially trained staff will be necessary. The immediate environment of the evaluation unit will have to be altered in a way that will better promote a fair assessment of each offender.

Though there are definite problems with the IQ tests and their administration, they are not without some merit as an evaluative tool and they do provide the only objective data, as such, available.

## Data Results

The findings presented in this section are based on information obtained from the files of 2788 offenders presently incarcerated in Kentucky's penal institutions. This represents 93.1% of the total offender population.

The total population in the adult corrections system was 2994 as of June 1, 1974, the month the data collecting began. The 206 inmates on whom data was not available were either in transit into or out of the system or in the process of being transferred from one institution to another. Seventy percent, or 144 of this number were from the KSR. The turnover for KSR during June was 403 inmates (248 admittances and 155 discharges). Two hundred were new admittances on whom files had not yet been completed when the data was collected. Consequently, the majority of the 206 inmates not represented by the data were new admittances who had not yet been fully assimilated into the corrections population.

Only those statistics which serve to delineate the retarded population or are of particular import in making comparisons with the remainder of the population will be treated in this section. The complete results across all of the variables used can be found in the appendices.

The following IQ ranges were employed for the purposes of this research: 0-24; 25-39; 40-55; 56-69; 70-85; 86-119; 120 and above. The first four categories correspond to the AAMD's (the American Association on Mental Deficienty) use of the IQ score to denote levels of retardation. The following are presently used: profound (0-24); severe (25-39); moderate (40-55); and mild (56-69).

Until recently the AAMD classified the 70-85 IQ range as a borderline range. It is felt that for the purposes of this study, this is still a valid distinction because of problems mentioned with testing instruments and



procedures; and, because the nature of this group demands that it be distinct from the normal IQ population. However, since it is no longer officially recognized, this group has been included as a part of the 70 IQ and above group as far as all data calculations are concerned. This group will be mentioned at a later point as having features distinct from the normal IQ range group.

For purposes of clarity and manageability in the discussion of the results, the IQ ranges are consolidated into two groups. The retarded population (69 IQ and below) and the non-retarded population (70 and above IQ). A third grouping consists of those offenders who had no IQ scores available.

## The Retarded Offender Population

There are at least 122 inmates in the adult corrections system that can be classified as mental retardates. These offenders have an IQ below 70 which is one of the two indicators of mental retardation (the other being maladaptive behavior, the existence of which is already evidenced by their presence in a penal institution). This number represents 5.2% of the 2312 inmates on whom IQ scores were available. A projection for the entire population, using this 5.2% figure, would place 159 inmates in mentally retarded IQ range.

The IQ's of those inmates in the retarded population range from a low of 34 to a high of 69. There were no inmates in the 0-24 or profound range of retardation. Three inmates are classified as severely retarded (25-39 IQ). Twenty-six are classified as moderately retarded (40-55 IQ). Ninety-three inmates are in the mildly retarded range (56-69 IQ).

## Characteristics

Some major demographic characteristics of the retarded population are illustrated in the table below.

Retarded Population by Institution

| | Below 70 | % of 122 below 70 | % of institutional population below 70 |
|---|---|---|---|
| KSP | 48 | 40% | 7.5% |
| KSR | 63 | 51% | 5.0% |
| Other | 11 | 9% | 2.6% |
| Total | 122 | 100% | |

It is not surprising that Eddyville and LaGrange house the vast majority of all retarded offenders. The two big institutions house all male inmates viewed as poor treatment possibilities due to longer sentences, etc. Inmates who violate rules and are seen as escape risks filter into KSP and KSR.

It is clear that any removal of retarded persons would primarily affect the populations of LaGrange and Eddyville. This fact must be considered in any recommendations considered later in this document.

The Retarded Population by Age, Sex and Race

| Age: | # | % | Race: | # | % | Sex: | # | % |
|---|---|---|---|---|---|---|---|---|
| 18-22 | 21 | 17.7 | | | | | | |
| 23-27 | 32 | 26.9 | | | | | | |
| 28-35 | 30 | 25.2 | White | 92 | 76.0 | Male | 120 | 98.4 |
| 36 and above | 36 | 30.2 | Nonwhite | 29 | 24.0 | Female | 2 | 1.6 |
| | 119* | 100.0 | | 121* | 100.0 | | 122 | 100.0 |

*Three offenders had no age reported and one offender had no race recorded.



The same characteristics for the 70 and above IQ group are shown in the following table for purposes of comparison.

The Non-retarded Population by Age, Sex and Race

| Age: | # | % | Race: | # | % | Sex: | # | % |
|---|---|---|---|---|---|---|---|---|
| 18-22 | 619 | 29.0 | | | | | | |
| 23-27 | 580 | 28.0 | | | | | | |
| 28-35 | 439 | 20.2 | White | 1535 | 70.7 | Male | 2101 | 96.3 |
| 36 and above | 532 | 22.8 | Nonwhite | 646 | 29.3 | Female | 89 | 3.7 |
| | 2170* | 100.0 | | 2171* | 100.0 | | 2190 | 100.0 |

*The total non-retarded population is 2190. 19 inmates had no sex reported and 20 inmates had no age reported.

A comparison of the tables show that whites and males are slightly over-represented in the retarded population with respect to their percentages in the non-retarded population. The retarded offenders also are older than non-retarded offenders. Forty-four and six-tenth's percent of the retarded population is 27 years of age or younger, while 57.0% of the non-retarded population is in this age category. The fact that the retarded offender usually spends more time incarcerated in a penal institution for an offense committed than the normal offender accounts for a significant part of this age differential. There are several reasons why this is true: the inability of the MRO to complete programs that are many times prerequisites for parole; the higher incidence of institutional trouble leading to loss of good time credit and parole deferments; and, the nature of the crimes committed and the resultant lengths of sentences. A comparison of the length of time served on present sentences bears out this fact. Forty-two and one-tenth percent of the

retarded population have served more than three years of their present sentences while only 23.5% of the non-retarded population have served more than three years. (See Appendix F).

The MRO is more likely to be a first offender than the non-retarded inmate. Seventy-seven or 64.7% of the mentally retarded inmates are first offenders, compared to 53.2% of the non-retarded population.

By percentage, the crime most often committed by the MRO is burglary/housebreaking, for which 21.3% of the group are currently incarcerated. Sixty-three and one-tenth percent of the retarded population are in for "person crimes" and 36.9% for "property crimes." Of those offenders who have had a previous adult incarceration, 61.9% committed crimes against property.

## Education Levels

Ninety-eight of the mentally retarded offenders, or 83.1% have an educational attainment level of eighth grade or less. The median grade level is less than six grades completed, compared to a statewide average of 10.3 grades completed. Six and eight-tenths percent of this group cannot read or write, compared to the national illiteracy rate of 1% (U.S. Bureau of the Census).

Since formal levels of education completed have traditionally been some indication of an individual's intellectual ability, it seems inconsistent to find inmates with an IQ below 70 who have completed grades above the elementary level. However, the formal grade levels reported actually give



little indication of the individual's functional ability. Reports from academic and treatment personnel within the Department of Corrections and the original data sheets collected on each inmate, which contained achievement scores, support the fact that the inmates in this group are usually functioning on a level much lower than that reported. This suggests that after a certain grade level, promotions from one grade level to the next were based on criteria other than successful completion of the requirements of that grade level (i.e. social promotions).

## Institutional Assignments

The nature of the correctional system demands that the individuals within its confines play a major role in the maintenance of its institutions. The state employs the corrections population as a source of cheap labor to help support many of its operations. As a result the greater percentage of the assignments with the institutions are "system oriented" instead of being "externally oriented". These "system oriented" assignments, for the most part, provide little in the way of constructive rehabilitation. In fact, they conflict with the rehabilitative goal. The number of rehabilitative programs are few; consequently, the time that can be spent in them is limited.

When abilities and needs are as variant as they are in Kentucky's penal institutions, the few rehabilitative programs that are available must necessarily be geared to the more "average" individual in the interest of covering as many people as possible. Those individuals at the top and bottom (such as the retarded population) of the continuum are benefited little.

The data on institutional assignments illustrates the limited access to rehabilitative programs in general and the differential degree of access afforded the retarded offenders as compared to the non-retarded population.

Comparison of Retarded and Non-retarded Offender Population by Institutional Assignment

| Institutional Assignment | Retarded Population | | Non-Retarded Population | |
|---|---|---|---|---|
| | # | % | # | % |
| Academic | 5 | 4.3 | 162 | 7.4 |
| Vocational | 1 | .9 | 202 | 9.2 |
| Industry | 11 | 9.4 | 283 | 12.9 |
| Farm | 8 | 6.9 | 182 | 8.3 |
| Segregation | 10 | 8.6 | 59 | 2.7 |
| General Maintenance | 56 | 48.3 | 1014 | 46.4 |
| Hospital, Geriatrics | 3 | 2.6 | 38 | 1.9 |
| Unassigned | 21 | 18.1 | 202 | 9.2 |
| Admission & Orientation | 1 | .9 | 19 | 2.0 |
| | 116* | 100.0 | 2182** | 100.0 |

* Assignments not reported for 6 inmates
** Assignments not reported for 7 inmates

As can be seen, the percentage of inmates in rehabilitative programs is relatively small. Only 400 of the inmates with IQ scores reported (including the No IQ score group which is not represented here) are in academic and/or vocational programs. This represents 14.3% of the 2788 inmates on whom information was gathered. The projection for the total population of 2994 is 428 inmates in academic and/or vocational programs throughout the corrections system.

Inmates in the retarded population comprise only 1.5% of all inmates with IQ scores in academic or vocational programs, but represent 5.2% of the population with IQ scores.



Only 5.2% of the retarded population are in the academic and/or vocational programs compared to 16.6% of the non-retarded population. Seventy-five percent of the MRO's are in three non-rehabilitative assignments (segregation, general maintenance and the unassigned category) while only 58% of the remainder of all inmates with IQ scores have one of these three assignments.

The lack of programs in general and the difficulty of placing the MRO in the programs that are available is made particularly evident by the high percentage of the retarded population in the unassigned category (18.1%).

Industry ranks third in assignments for the mentally retarded population with 9.4%. It can be argued that the prison industries function as a rehabilitiative program in that industrial and mechanical skills are learned. However, this is deceiving in that MRO's who have this assignment are usually relegated to menial janitorial jobs, according to the industries' management, and receive little or no benefit from any vocational skills offered.

Albert Linder, Director of Treatment Services for the department, adequately summed up the position of the MRO with respect to institutional assignments:

> Job assignments for the offenders thought to be retarded are limited. They are generally assigned to Job Supervisors who can relate effectively with this type of person and in tasks that do not require particular skills. Generally, this consists of assignment to yard detail, where they are involved in general clean-up, the gym, where they do limited maintenance work, and other areas of the institution, where people of their limitations can function adequately. (from May 3, 1974 memorandum)

## Adaptive Problems: Escapes, Incident Reports and Parole Deferments

Ten inmates in the retarded population or 8.2% had escapes or attempted escapes reported in their files as of June 1974. This compares with 111 or 5.5% of the non-retarded population. Many times the retarded offenders' inability to understand institutional rules or even the nature of the institution itself is responsible. Several personnel, during follow-up interviewing supported this inference stating to the effect: "these people, many times, just wander away not realizing they're not supposed to". The result is additional sentences and/or the loss of good time credit, which produces parole deferments.

The data shows the mentally retarded offenders as having a 3% higher rate of incident reports for violation of institutional rules than the non-retarded offenders during the six-month period prior to the data gathering. Previous to six months (for those inmates who have been incarcerated more than six months) 25.7% of the mentally retarded offenders had four or more incident reports, while only 20.1% of the non-retarded offenders had as many.

These incident reports are issued upon violation of certain institutional rules and usually result in the loss of good time credit accumulated, thereby lengthening the time spent in incarceration.

The parole board places considerable weight on a clean institutional record (i.e., the absence of incident reports or trouble otherwise reported). Although it is certainly not the only reason, a history of institutional rule violations, especially recent ones, is a justification for deferring parole.



As can be expected, the mentally retarded offenders receive parole deferments at a higher rate than the non-retarded population.

The following table presents the data on parole deferments for both the retarded and non-retarded population.

Retarded & Non-Retarded Offenders by Parole Deferments

| Number of Parole Deferments | Retarded Population (122) | | Non-Retarded Population (2,190) | |
|---|---|---|---|---|
| | # | % | # | % |
| 1 | 32 | 26.2 | 499 | 22.8 |
| 2 | 11 | 9.0 | 169 | 7.7 |
| 3 | 6 | 4.9 | 63 | 2.8 |
| 4 or more | 7 | 5.7 | 39 | 1.7 |
| | 56 | 45.8 | 770 | 35.0 |

The mentally retarded population has a 10.8% higher parole deferment rate than the non-retarded population. The combination of low IQ's, inadequate formal education and social training leaves the mentally retarded offender much less sophisticated than those offenders with normal intellectual capacity.

As a result, he is more susceptible to problem situations inherent in the closed correctional environment which ultimately interfere with his rehabilitation and transition back into society.

## The Non-Retarded Offender Population

Data on the non-retarded offenders is peripheral to the objectives of this study, except insofar as it is employed in comparison with the retarded offender population. However, a subgroup of the non-retarded population merits a brief discussion.

As mentioned earlier, the AAMD recently dropped the 79-85 IQ range as a borderline in the classification of mental retardation. Originally in the research, those offenders who fell in the 70-85 IQ range were to be treated as a separate group as far as the calculation of the data was concerned. It is felt that the individuals in this range, especially at the lower end, would exhibit sufficiently sub-average functioning to merit more intensive training in academic and vocational skills than the above 85 IQ population.

In the original calculations, a great degree of divergence was found between the 70-85 IQ population and the offenders with IQ's above 85. The former group is much more closely associated with the mentally retarded population on most of the variables. For instance, a significant difference is found in education levels: 60.1% of the 70-85 group have education levels of the eighth grade or less, compared to 33.7% of the above 85 IQ population.

Considering the inadequacies of the testing instruments it is not unlikely that several individuals in the group would fall into the mentally retarded range upon comprehensive retesting.

At any rate, a substantial percentage (18.9%) of the offenders with IQ scores fall into this range. While most of these individuals are not mentally retarded, they are functioning at a subnormal intellectual level and are deficient, to a great degree, in social and vocational skills. The pressures of competing with more intellectually gifted individuals would likely cause many offenders in the group to forego needed programs. They are more in need of intensive individualized programs which can provide basic academic, social



and vocational skills than are the above 85 IQ offenders.

For this reason, the 70-85 IQ range should be considered as distinct from both the retarded and the normal range for purposes of programming.

## The No Score Group

Four hundred and seventy-six inmates representing 17.8% of the total study population had no IQ scores available. Since the only typological variable was missing in the case of these offenders, use of the remaining data and conclusions that can be drawn from it are necessarily restricted. Nevertheless, several observations can be made about the No Score Group.

The great majority of the offenders with no IQ scores are incarcerated in either the penitentiary (69.1%) or the reformatory (23.6%). For the most part, they are repeat offenders (69.1% have been previously incarcerated) and are serving longer sentences than the average offender (39.4% are serving sentences of 15 years or more). Many of them are not tested for this reason.

An examination of the data on the No Score Group shows that this group is more closely related to the retarded than the non-retarded population on most of the variables.

This fact, coupled with the fact that a large percentage of these individuals have spent a substantial portion of their lives in the depriving environment of a penal institution (22.7% have had 4 or more previous incarcerations) leads one to believe that the percentage of mentally retardates

would likely be much higher in this group than that found in the rest of the population.

At any rate, an effort should be made to administer tests to this portion of the population.



# CHAPTER III - - STATE SURVEYS

Comparisons of the policies and programs of other states always provide insight into developing Kentucky policy. Questionnaires were sent to forty-nine state correctional agencies so that the status of mentally retarded offenders in these correctional systems could be determined. After an initial letter of April 19, 1974, followed by a reminder notice on July 1, 1974, forty-eight states returned completed questionnaires.

The questionnaire was not a detailed one, which may have contributed to the high rate of response, but was suitable to obtain pertinent information as to the presence of mentally retarded offenders in other state correctional systems.

## Key Findings

*Though many states (22) have mentally retarded offenders in their correctional systems, few have facilities, programs or plans for dealing with these individuals, who they feel constitute a significant problem.

(1) Twenty-eight states call the mentally retarded offender a "current and unmet problem."

(2) Three states have special facilities for the mentally retarded offender.

(3) Eight states have special programs for the mentally retarded in the correctional system.

(4) Fourteen states have plans formulated for dealing with the mentally retarded offender.

(5) Twenty-one states (44%) have enabling legislation to route mentally retarded offenders out of the correctional system.

Classification

1. (a) Do you classify persons as mentally retarded upon entry into your correctional institutions?

Yes_____ No_____

(b) If so, by what means is such classification made (e.g., testing, counseling, etc.)?

(c) If (a) is "yes", what percentage of the institutional population fall into the category of mentally retarded?

(a) Compilation of the data received showed that twenty-three states classified persons as mentally retarded upon entry into their correctional systems. It must be noted, however, that several states reported classification as part of their entry process, yet also reported having no special programs for the mentally retarded. It is reasonable to assume that those states do not classify this type of individual into appropriate rehabilitative programs. Along the same line, twelve of the twenty-three states that indicate use of classification measures did not cite the percentage of inmates in this category.

(b) All of the twenty-three states reporting classification procedures utilize tests in determining the presence of mentally retarded offenders. IQ tests are those most commonly administered with the Revised Beta examination and the Weschler Adult Intelligence Scales (WAIS) being generally used. Of the twenty-three, thirteen used psychological evaluations (i.e., counseling, observations, etc.), along with intelligence tests for classification purposes.

(c) Twenty-two states claimed knowledge of the percentage of



mentally retarded offenders in their systems. Fifteen states have between 1 and 5 percent mental retardates (Kentucky Corrections houses 5.3%), four have between 6 and 16 percent, and three have percentages between 16 and 30.

The questionnaire did not ask for each state's working definition of mental retardation. From their responses, however, it is clear that most states classified IQ test scores of 70 and below as indicative of retardation.

Special Facilities

2. Do you have special facilities for the mentally retarded offender?
If "yes", please describe.

Only three states reported having special facilities while a fourth is currently developing a new institution. The three states that indicated having facilities are Iowa, North Carolina and New York, while Tennessee is in the process of opening its special institution.

Iowa

Iowa seems progressive in its effort to deal with the mentally retarded offender. The recently opened Iowa Security Medical Facility houses mentally retarded offenders routed there after pre-sentencing evaluations. Here, mentally retarded offenders receive specialized treatment consisting of counseling, individual and group therapy, and academic training.

North Carolina

North Carolina presently has a 100-man complex for mentally retarded offenders. Academic, vocational, and social skills training are emphasized at the unit, where the major goal is to prepare the mentally retarded

offender for satisfactory adjustment to the outside community. North Carolina is now in the process of building a new facility that will accommodate up to 200 offenders requiring special compensatory training.

New York

New York also has a special facility for the mentally retarded offender. New York's facility houses about seventy retarded and two-hundred and fifty borderline retarded inmates. It employs 170 correctional officers, 9 teachers, 6 vocational instructors, 2 correctional counselors, 1 physician, 1 dentist and several on-call psychologists and psychiatrists. In 1972, New York budgeted $2,837,827 to operate this facility. Additional funds have recently been granted for improvements.

Tennessee

The Tennessee legislature, in its 1974 session, passed legislation providing for a special facility with all activities to be geared to the problems of the mentally retarded offender. Implementation of the legislation began in July, 1974.

Special Programs

3. Do you have special programs for the mentally retarded offender? If "yes", please describe.

Only eight states in addition to those listed above have special programs for the mentally retarded. Of the eight states that have special programs, three indicate having educational classes geared to retardation level, two states have a combination of special education and special vocational classes, while one state has only special vocational classes. Two



states have separate units for the mentally retarded on the grounds of their institutions, with special emphasis on vocational, educational and recreational rehabilitation. Both states, Massachusetts and Mississippi, feel that these programs are insufficient to effectively deal with the retarded portion of inmates in their systems, and see them merely as segregating the retarded for their own protection from the general population.

Unmet Problems and Future Plans

4. (a) Do you feel that there is a present and unmet problem concerning the mentally retarded offender?

Yes_____ No_____

(b) If "yes", what plans have been, or are being formulated to alleviate those problems?

Twenty-eight states believe that there is a present and unmet problem concerning the mentally retarded in their systems. Of these states, seven have established programs for the mentally retarded inmate.

When asked about future plans for this segment of the inmate population, thirty-four (71%) indicated that no future plans had been drafted. Five of the thirty-four states without plans do have programs at present. Of the fourteen with current plans, two will improve their academic programs, two plan to expand vocational programs, two will venture out into the community to identify resources to aid in their rehabilitation process, and two more will construct separate units at their present institutions. Also mentioned for the near future were efforts at obtaining federal grants, creating cooperative programs with their Mental Health Departments, undertaking studies to investigate the

problem and finding better means of identifying the mentally retarded.

Enabling Legislation

5. Does your state have any enabling legislation concerning the mentally retarded offender?

Yes_____ No_____

There are three factors to be included in the definition of enabling legislation:

(1) pre-trial evaluation of the defendant;

(2) pre-sentencing evaluation of the offender;

(3) transfer of the offender to the auspices of another state agency.

Twenty-one states reported having some type of enabling legislation for dealing with mentally retarded offenders. Eight states utilize pre-trial or pre-sentence involuntary hospitalization, while five transfer correctional offenders who are retarded to other agencies. Eight states provide for all three alternative methods. Nine of the twenty-six states with no enabling legislation have combined corrections-mental health agencies, and therefore would not necessarily require special legislation to authorize transfer. One state gave no answer. It is interesting to note that nine of the 21 states that have enabling legislation cite percentages of mentally retarded offenders in their correctional institutions. This fact points up the lack of success of enabling legislation in diverting mentally retarded offenders from the correctional system, a problem analogous to that of the Kentucky system.



# CHAPTER IV - - INMATE/STAFF SURVEY DATA

Extensive surveying of both inmates and staff of the Kentucky Correctional System was undertaken and completed during July, 1974. Some 290 inmates and 130 staff were interviewed, representing a sample taken from all seven institutions. The purpose of the surveying was twofold: (1) to determine the opinions of staff and inmates on the presence of and problems created by offenders in Kentucky institutions who are mentally retarded, and (2) to compare the accessibility to rehabilitative programs of offenders with below average IQ's and those in the normal range.

Two basic questionnaires were designed. "Form A" was used to discover attitudes toward mental retardation in Kentucky Corrrections, and was administered totally to all 130 staff along with approximately 146 inmates, whose recorded IQ's were 86 and above.

"Form B" was also administered to the above 146 inmates, along with an additional 145 inmates whose IQ's were below 85. This questionnaire asked the inmates various questions to determine their access to caseworker services and rehabilitative programs.

Summary of Key Findings

More than 70% of inmates and staff feel the Kentucky Correctional System:

*houses mentally retarded offenders.

*fails to classify the retarded into rehabilitative opportunities.

*has no treatment programs to meet the special needs of the retarded.

*has no institution geared to the retarded offender's needs, and should not house them in existent facilities.

*assigns the retarded person to menial maintenance jobs.

*needs a new special facility for the retarded which provides special compensatory treatment programs.

Between 62% and 85% of correctional staff feel the retarded offender:

*does not constitute a security problem.

*is more likely to be negatively influenced by more sophisticated offenders inside the institution.

*is more likely to be sexually abused.

*is more likely to be physically abused.

Though 85% of all inmates feel academic and vocational training aids them in winning parole and after release, inmates with IQ scores below 85:

*see their caseworkers less often at Eddyville, LaGrange and the Women's Institution, and

*are less likely to complete vocational and academic programs they enter.

Form A = Inmate/Staff Attitudinal Data

1. Does the Kentucky Correctional System identify and classify the mentally retarded offender?

| Inmates (85+IQ's) | Staff |
|---|---|
| yes 41 (32%) | yes 31 (26%) |
| no 88 (68%) | no 87 (74%) |



The purpose of this question was to determine whether inmates and staff believe that Kentucky identifies retarded inmates and then classifies them into programs from which they can benefit. As it has already been documented that only a very small percentage of inmates with low IQ's are in academic and vocational school, it came as no surprise that two of three inmates and three of four staff answered this question negatively.

It must be pointed out that a large number of inmates and staff did feel identification occurred, primarily through testing, but that placement did not regularly follow. These responses are recorded "no" as the question required a positive answer to both processes to be coded "yes".

2. What is your estimate of the percentage of this institution who are mentally retarded?

INMATES

| | Kentucky State Penitentiary | Kentucky State Reformatory | Small Institutions | Total |
|---|---|---|---|---|
| none | 0 (0%) | 2 (8%) | 12 (26%) | 14 (13.3%) |
| 6-15% | 8 (25%) | 4 (15%) | 7 (15%) | 19 (18%) |
| 16-30% | 2 (6%) | 5 (19%) | 8 (17%) | 15 (14.3%) |
| 31-50% | 12 (38%) | 7 (27%) | 5 (10%) | 24 (23%) |
| 51+% | 7 (22%) | 5 (19%) | 2 (4%) | 14 (13.3%) |
| | 32 (100%) | 25 (100%) | 47 (100%) | 105 (100%) |

STAFF

| | Kentucky State Penitentiary | Kentucky State Reformatory | Small Institutions | Total |
|---|---|---|---|---|
| none | 0 (0%) | 0 (0%) | 1 (2%) | 1 (1%) |
| -5% | 5 (21%) | 8 (28%) | 24 (41%) | 37 (33%) |
| 6-15% | 5 (21%) | 14 (48%) | 13 (22%) | 32 (28.5%) |
| 16-30% | 8 (33%) | 5 (17%) | 15 (25%) | 28 (25%) |
| 31-50% | 5 (21%) | 1 (3.5%) | 5 (8%) | 11 (10%) |
| 51+% | 1 (4%) | 1 (3.5%) | 1 (2%) | 3 (2.5%) |
| | 24 (100%) | 29 (100%) | 59 (100%) | 112 (100%) |

The purpose of this question was not to determine the actual percentages of mentally retarded in each correctional institution, but to use the above responses in judging which institutions house the preponderance of these offenders.

The responses of both staff and inmates clearly indicate that Eddyville penitentiary houses the largest percentage of mentally retarded. LaGrange ranks second with the small institutions housing much smaller percentages.

3. Are mentally retarded persons a security problem in the institution?

| Inmates (85+IQs) | Staff |
|---|---|
| Yes 42 (33%) | 38 (30%) |
| No 87 (67%) | 90 (70%) |

The function of obtaining staff and inmate feelings as to whether the mentally retarded is a likely security and, therefore, escape risk is twofold: (1) to aid in profiling their behavior, and (2) to determine whether these offenders would be reasonable security risks if placed in a special small facility.

The responses clearly indicate that more than two of three staff and inmates do not feel the mentally retarded are security risks. It is also worth mentioning that a large number of those who answered "yes" said that the retarded are only security risks in that they might simply "walk off" if given the chance as they are unable to comprehend that such conduct is wrong and will result in an additional three years added on to their sentence.



4. Are the mentally retarded more likely to be followers, and therefore easily influenced by others more criminally sophisticated?

| Inmates | Staff |
|---|---|
| Yes 98 (73%) | 114 (85%) |
| No 37 (27%) | 20 (15%) |

This question demonstrates the possible harm to mentally retarded offenders caused by mixing them indiscriminately with criminal sophisticates. More than three of four inmates and staff feel that the mentally retarded are followers, and therefore emulate the tougher offender and learn the tricks of the trade. This may mean that incarceration actually results in the retarded becoming more highly skilled criminals to society's future disadvantage.

The logical extension of the feeling that the retarded are followers allows one to assert that were the major influences in the correctional system positive, i.e. rehabilitative, the retarded would move in this affirmative direction. Though such an assertion is speculative, it still deserves consideration.

5. Are the mentally retarded more likely to be sexually abused?

| Inmates (85+IQs) | Staff |
|---|---|
| Yes 61 (48%) | 85 (70%) |
| No 66 (52%) | 36 (30%) |

6. Are the mentally retarded more likely to be physically or violently abused?

| Inmates | Staff |
|---|---|
| Yes 51 (40%) | 77 (62%) |
| No 76 (60%) | 47 (38%) |

Reposes to Questions 5 and 6 indicate somewhat of a dichotomy between staff and inmate attitudes as to abuses suffered by mentally retarded offenders. At least one explanation offered by many inmates relating to sexual abuse is that the mentally retarded are willing compliants in homosexual activity. Some also pointed out that their compliance may be explained as an attempt to please their partners, who might then protect them from other inmates. In this respect, the homosexual alliance might explain why most inmates do not feel that these persons are physically or violently abused; i.e., they willingly enter homosexual relationships for protection, as well as whatever pleasure they may gain.

7. Does this institution currently have programs which are adequate to deal with its mentally retarded population?

| | Inmates | Staff |
|---|---|---|
| Yes | 20 (20%) | 21 (20.6%) |
| No | 80 (80%) | 81 (79.4%) |

Four out of five staff and inmates felt programs are not adequate to aid the mentally retarded. Both staff and inmates indicated that existing programs, like academic and vocational school, are geared to a higher level than the abilities of the retarded. Treatment staff generally agreed that the retarded demand "compensatory" individualized training not available in Kentucky corrections. It logically follows as indicated in later findings that even if the retarded enter school, they will have great difficulty and often drop out.



8. What new programs would most benefit the mentally retarded offenders?

| | Inmates | Staff |
|---|---|---|
| Special Skill Academic and Vocational | 38 (43%) | 89 (94.7%) |
| Counseling | 20 (23%) | |
| Special unit facility | 26 (29.5%) | 5 (5.3%) |
| No need | 4 (4.0%) | |
| Total | 88 (100%) | 94 (100%) |

Question 8 was included to provide input as to what kinds of programs might benefit retarded offenders. Staff generally suggested the development of compensatory skill development programs modeled on the "sheltered workshop" concept. While a smaller number (43%) of inmates suggested such programs, it was still the most common inmate response. A particularly interesting result was that almost 30% of inmates who responded felt a special facility or separate unit was the only answer, and that current institutional environments precluded any program success.

9. What assignment is the retarded offender most likely to have in this institution?

| | Inmates | Staff |
|---|---|---|
| Maintenance (yard detail, janitors, kitchen) | 89 (77%) | 98 (78.4%) |
| Academic and Vocational | 9 (8%) | 13 (10.4%) |
| Farm/Industry | 2 (2%) | 2 (1.6%) |
| Unassigned | 9 (8%) | 0 (0%) |
| Segregation | 1 (1%) | 0 (0%) |
| Same as all | 5 (4%) | 12 (9.6%) |
| Total | 115 (100%) | 125 (100%) |

Answers to question 9 indicate strongly that mentally retarded offenders are likely to be given menial institutional assignments. "Yard detail," a common response, is an assignment which requires the inmate to pick up trash in the yard and do whatever work is periodically needed. At Eddyville, such an assignment makes an inmate one of those who pass the days sitting on "The Hill."

The fact that only 10% of staff and inmates believe the retarded are in academic and vocational school resubstantiates the data collected from inmate records.

10. Are the mentally retarded more likely to be idle?

| Inmates (85+IQs) | Staff |
|---|---|
| Yes 82 (66%) | 65 (50.4%) |
| No 42 (34%) | 64 (49.6%) |

Inmate response to this question strongly indicates that, even though the retarded have work assignments, they are more likely idle than other inmates. This can be partly explained by the "featherbedding" common in institutional work details.

It is somewhat interesting that staff attitudes broke 50/50 on this question. It should be pointed out, however, that 22 of 32 staff (69%) interviewed at Eddyville answered "yes" to this question.

11. Should the mentally retarded be housed in an institution of this type?

| Inmates (85+IQ's) | Staff |
|---|---|
| Yes 41 (31%) | 37 (29%) |
| No 90 (69%) | 91 (71%) |



Both groups at each institution clearly felt that the mentally retarded should not be housed therein.

12. Is there another institution in Kentucky where the mentally retarded would be better housed?

| Inmates (85+IQs) | Staff |
|---|---|
| Yes 26 (31%) | 16 (17%) |
| No 62 (69%) | 79 (83%) |

Both staff and inmates at our male institutions strongly feel that no institution currently in operation is equipped to deal with the retarded.

The following breakdown explains which institution each person who answered "yes" felt would better house the retarded. The breakdown is by institution.

Inmates By Institution Residing

| Institution Suggested | KSP | KSR | BCC | FCF | HCFC | PMFC | Total |
|---|---|---|---|---|---|---|---|
| KSR | 9 | | 1 | | | | 10 |
| BCC | | | | | 1 | 1 | 2 |
| Hospitals | 1 | | 1 | | 1 | | 3 |
| Any small facility (includes BCC) | 4 | 7 | | | | | 11 |
| Total | 14 | 7 | 2 | 0 | 2 | 1 | 26 |

Staff by Institution

| Institution Suggested | KSP | KSR | BCC | FCF | HCFC | PMFC | Total |
|---|---|---|---|---|---|---|---|
| KSR | 2 | | | | | | 2 |
| BCC | 4 | 1 | | | 1 | | 6 |
| Frenchburg | | 2 | 2 | | | | 4 |
| None specific | 2 | | 1 | | | | 3 |
| Total | 8 | 3 | 3 | 0 | 1 | 0 | 15 |

13. Do we need a special institution to house the mentally retarded offender?

| | Inmates (85+IQs) | Staff |
|---|---|---|
| Yes | 116 (89%) | 96 (76%) |
| No | 14 (11%) | 30 (24%) |

The strong positive response to this question indicates that both staff and inmates feel that the number and problem of the mentally retarded offenders merits development of a new special facility. Alternative approaches to such a facility are discussed later in this document.

Form B: Inmate Below/Above 85 Breakdown

1. How often do you see your caseworker?

A. Daily
B. More than once a week
C. Weekly
D. Bi-monthly
E. Monthly or less

| | KCIW | | KSR | | KSP | | TOTAL | |
|---|---|---|---|---|---|---|---|---|
| | Above 85 | Below 85 | Above 85 | Below 85 | Above 85 | Below 85 | Above 85 | Below 85 |
| A | 1(6.5%) | 0 | 4(11%) | 1(2.5%) | 8(18%) | 0 | 13(13.5%) | 1(1%) |
| B | 1(6.5%) | 0 | 9(25%) | 7(17%) | 6(13%) | 5(9.6%) | 16(17.0%) | 12(111%) |
| C | 2(13%) | 1(8%) | 8(23%) | 14(34%) | 6(13%) | 13(25%) | 16(17.0%) | 28(26%) |
| D | 4(27%) | 1(8%) | 2(6%) | 3(7.5%) | 4(9%) | 3(5.8%) | 10(10.5%) | 7(7%) |
| E | 7(47%) | 11(84%) | 12(34%) | 16(39%) | 21(47%) | 31(59.6%) | 40(42.0%) | 58(55%) |
| Total | 15(100%) | 13(100%) | 35(100%) | 41(100%) | 41(100%) | 52(100%) | 95(100%) | 106(100%) |



Responses to this question indicate, to some degree, that inmates in Kentucky's three more traditionally security-oriented institutions who have average IQ's have greater access to caseworker assistance. While 30.5% of inmates at KCIW, KSR and KSP with average IQ's see their caseworker more than once a week, only 12% of those with below 85 IQ's see them as often.

Findings from this question also indicate that all inmates apparently have equal access to caseworker services at our small, minimum security institutions: Blackburn, Frenchburg, Harlan and Bell County. Though certainly a factor of size and much closer inmate/caseworker ratio, this finding provides some indication that inmates with low IQ's may seek caseworker assistance in a more relaxed, rehabilitative oriented environment, thus providing support for a special facility for this group.

2. During your institutional stay, have you ever attended either academic or vocational school?

All Institutions

| | Above 85 | Below 85 |
|---|---|---|
| Yes | 93 (64.6%) | 79 (55.6%) |
| No | 51 (35.4%) | 63 (44.4%) |
| | 144 (100%) | 142 (100%) |

Though this question indicates that inmates with below 85 IQ's are only slightly less likely to have entered vocational and academic school, two additional factors must be considered: (1) Inmate records indicate that only 8% of inmates in the Below 85 group have completed high school. In contrast, 27.6% of those with average IQ's have high school educations, and (2) it is

generally accepted that a much larger percentage of the below 85 group needs training, as few possess employable skills. Therefore, rather than an equal, or in this case, somewhat lower percentage, a much larger percentage of below 85 inmates should be in skill development programs.

3. Have you obtained a vocational certificate or GED while institutionalized? (If answer to "2" was "Yes")

All Institutions

| | Above 85 | Below 85 |
|---|---|---|
| Have participated: | 93 | 79 |
| Have completed GED or vocational certificate: | 47 (51%) | 26 (33%) |

Responses to this question show that a smaller percentage of below 85 IQ inmates who enter vocational or academic school actually obtain a certificate or GED. This information supports the earlier assertion that vocational and academic schools in our prisons require more aptitude than the low IQ inmate possesses, and he therefore either drops out or fails to advance.

4. Do you believe that involvement in academic or vocational school would aid your chances of parole?

All Institutions

| Above 85 | | Below 85 | |
|---|---|---|---|
| Yes | 117 (87%) | | 115 (84%) |
| No | 39 (30%) | | 35 (28%) |
| | 131 (100%) | | 128 (100%) |



5. Do you believe that involvement in academic and vocational programs would benefit you after release?

All Institutions

| Above 85 | | Below 85 | |
|---|---|---|---|
| Yes | 117 (87%) | | 115 (84%) |
| No | 17 (13%) | | 22 (16%) |
| | 134 (100%) | | 137 (100%) |

Questions 4 and 5 clearly demonstrate that the large majority of all inmates feel that involvement in institutional vocational and academic programs would clearly help them both in winning parole and after release. This would seem to imply that the below 85 inmates' lesser involvement in these programs is either a result of the programs being geared too high, or below 85 inmates being denied equal access to them.

## CHAPTER V - - KENTUCKY STATUTORY LAW

Until the enactment of the new Penal Code, Kentucky law had no specific and comprehensive provisions to deal with the mentally retarded offender in the criminal justice system. KRS Chapter 504, effective January 1, 1975, when incorporated with Criminal Rule 8.06 and provisions of KRS Chapter 202 establishes a framework for disposition of the retarded offender. The following discussion will apply relevant statutory provisions through hypothetical case studies to illustrate the practice and inherent problems of the present system.

Suspect X has just been arrested for Dwellinghouse Breaking and he is being booked at Police Headquarters. From the data recorded on the police file one learns that Mr. X is a 27 year old first offender. He is white. He has a sixth grade education which probably took him more than six years to get or, he barely managed to get by, making low average or below on his grade report. No one is able to recognize that Mr. X is mentally retarded. Had Mr. X been given a Revised Beta IQ test, the police would know that his IQ is below 70, an indication of some level of retardation, as is the IQ of 122 of the 2,312 tested inmates in the Kentucky Correctional System.

Should Mr. X go to trial in Kentucky today, he faces four possible alternatives; (1) he may plead guilty; (2) he may be found incompetent to stand trial; (3) he may be found not guilty; or (4) he may be found guilty by the jury. Whatever the outcome, the mentally retarded offender is likely to be abused. Just how abused depends on the circumstances the attorney's knowledge of the

problem, the court's attitude and recognition of the retarded offender, and other related variables.

## Guilty Plea

Should the defense counsel fail to recognize the low mental capacity of his client,he may advise him to plead guilty and receive a lesser sentence. Plea bargaining is an acceptable process in our judicial system, but if the defendant is retarded it might be hazardous. The retarded are particularly vulnerable to an atmosphere of friendliness designed to induce confidence and cooperation. The defendant may gladly plead guilty without the least understanding of what he is doing. While the person of average intelligence may also plead guilty he does so knowing what the consequences of his action will be. He may choose to plead guilty at the risk of being convicted of a more serious offense while the retarded offender, had he understood the procedure, would have chosen an alternative course.

## Incompetency

Prior to enactment of the Penal Code, Kentucky statutory law had no specific provisions relating to competency. Criminal Rule 8.06 outlined court proceedings as follows:

> Rule 8.06. Insanity.-If upon arraignment or during the proceedings there are reasonable grounds to believe that the defendant is insane, the proceedings shall be postponed and the issue of sanity determined as provided by law. If the defendant is found to be insane, the court shall direct that he be confined in a mental institution until his mind is restored, at which time he shall be returned to the court for further proceedings.

According to the above language of this statute, anyone may raise the



issue of sanity, hence, competency to stand trial. If counsel feels that his client's best alternative is to be judged incompetent he may raise the issue in his client's interest. The judge may, of his own volition, halt the proceedings to determine the competency of the accused.

Criminal Rule 8.06 requires a determination of sanity "as provided by law." Until 1975, however, there were no statutory procedures for such determination and general practice, sanctioned by the Attorney General in 1964, was to utilize civil commitment procedures codified in KRS Chapter 202.

The Penal Code essentially codified this procedure in KRS 504.040 as follows:

> (1) No person who, as a result of mental disease or defect, lacks capacity to appreciate the nature and consequences of the proceedings against him or to participate rationally in his own defense shall be tried, convicted or sentenced for the commission of an offense, so long as such incapacity endures.
>
> (2) When a defendant is found to have a mental disease or defect, as described in subsection (1), the court may on motion of the prosecuting attorney or on its own motion proceed immediately to have the defendant committed for examination and possible detention pursuant to the provisions of KRS Chapter 202.[1]

Subsection (1) is the generally accepted competency test which the Kentucky Court of Appeals had adopted in 1964. Subsection (2) refers to the examination for civil commitment of the mentally ill under KRS 202.135. The linkage between civil commitment of the mentally ill and criminal disposition of the retarded is established in KRS 202.279:

> (1) Involuntary hospitalization or institutionalization of the mentally retarded shall take place by the same procedure as

hospitalization of the mentally ill as provided in KRS Chapters 202, 203 and 210, except that where the court appoints qualified examiners or physicians to examine the defendant, a certified clinical psychologist licensed under the provisions of KRS Chapter 319 may be substituted for one (1) qualified examiner or physician when the individual is alleged to be mentally retarded.

(2) No mentally retarded person shall be admitted to a state mental hospital without the consent of the commissioner, except for emergency admissions as provided by KRS 202.027. Additional procedure for admission to state institutions for mentally retarded shall be prescribed by the commissioner and notification given to all county and circuit courts annually. No patient or individual shall be admitted to a state institution when suitable space is not available.

(3) All rights guaranteed by KRS Chapters 202, 203 and 210 to mentally ill persons shall apply to mentally retarded persons. (Enact. Acts 1968, ch. 90, sec. 36.)

This statute leads to the logical conclusion that a mentally retarded person could also be found incompetent to stand trial, if his retardation is recognized.

Mentally retarded person is defined in KRS 202.010(2) as "a person with a defect in general intellectual function originating during the developmental period, and which impairs adaptive behavior to such a degree that he requires supervision, care, training, control or custody for his own welfare or for the welfare of others." The American Association on Mental Deficiency defines it only slightly differently in that it makes intellectual functioning and adaptive behavior more distinct categories. If this definition is accepted, there are two possibilities of injustice for a mentally retarded defendant, such as our Mr. X, if he is judged to be incompetent. First, assuming that Mr. X is severely



retarded, deficient in both adaptive behavior and intellectual functioning, he could be placed in an institution and left there indefinitely, never to come under the second section of Cr. Role 8.06. "until his mind is restored, at which time he shall be returned to the court for further proceedings." Thus had Mr. X pleaded guilty, he may have served 1 year of a five year sentence and been released on parole, but because of his incompetency, spend 10 years or more in a mental institution because he could never be competent to stand trial. The possibility that he may have been civilly committed exists, but more than likely, had Mr. X not been taken into the criminal process, he would have been left alone.

The second harmful situation may arise in this manner. Mr. X is found incompetent to stand trial and has been committed to an institution. He is only mildly retarded, slightly deficient in both intellectual functioning and adaptive behavior. While institutionalized, he is habilitated to a point at which he is no longer considered incompetent to stand trial. He is released from the institution and sent back to the court for further proceedings. On conviction he is sentenced to a state penal institution for a 5 year sentence without receiving any consideration for the period of time he was institutionalized. Some judges do dismiss charges against an accused who is found incompetent but it is not required.

Not Guilty

The third possible consequence of Mr. X's indictment is that he be found not guilty by the jury. This could have no harmful repercussions for

Mr. X unless he is found not responsible due to mental disease or defect. To raise this defense, KRS 504.050 requires that defense counsel file written notice at least 20 days prior to trial. The court may then appoint psychiatrists or commit the defendant to a state mental institution to determine his mental status. Though the Court will utilize medical testimony in its evaluation, the final determination of responsibility is a legal question , its criteria stated in KRS 504.020:

> (1) A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.
>
> (2) As used in this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.
>
> (3) A defendant may prove mental disease or defect, as used in this section, in exculpation of criminal conduct.

While it is generally felt that Courts do not favor this type defense, Chapter 504 clearly directs that those who are not responsible for their conduct shall not be criminally committed. Following an acquittal for lack of criminal responsibility by reason of mental disease or defect, KRS 504.030 authorizes the Court by its own motion or that of the prosecuting attorney to order examination and possible civil committment of the acquitted defendant under the already outlined procedures of KRS Chapter 202. If the Court feels the defendant potentially dangerous, and has reasonable grounds for that belief, it may order him hospitalized in a state institution for up to 7 days while his examination is being completed to determine whether civil commitment



is necessary.

Guilty

Finally, the jury might return a verdict of guilty against Mr. X, with the issue of incompetency or retardation never having been raised or considered by the defense counsel or the court. This is most likely to happen with an inmate whose retardation is borderline or, if severe, is due to the adaptive behavior of the individual and not to his intellectual functioning. If such is the case, the defendant is sentenced to a correctional institution like any other convicted criminal.

After being institutionalized the inmate is treated as any other member of the general population is treated. He is given an institutional assignment, housed with the other inmates, and given no special attention. This can cause him additional problems.

One obvious area of concern is the retarded inmates being abused by other inmates. From data observed in this study based on interviews with staff members and inmates in Kentucky correctional institutions, the general consensus is that retarded inmates are more likely to be abused than normal inmates; 1) by being led into breaking institutional rules, 2) by being sexually abused, and 3) by being physically abused. This could cause the retarded inmate to withdraw and disintegrate into more serious retardation.

Another noticeable area of weakness is that those retarded inmates whose major problem is adaptive behavior have no special opportunities to be trained for a more productive future. If habilitation (and that is the proper term

for a discussion of the retarded offender) is the goal of institutionalization, this should be a grave concern. Data collected from inmate files in all of Kentucky's correctional facilities indicate that only 14.67% of the inmates with IQ's below 70 are in academic, vocational, and industrial programs, with only 5.17% of those being academic and vocational. An inmate whose problem is adaptive might at least gain some training essential to a productive existence outside the correctional system if more energy was put into and emphasis was placed on helping the mentally retarded.

> The moderately retarded can be taught to take care of themselves physically and can learn some manual skills. Though the moderately retarded cannot master formal school work, the mildly retarded can reach the sixth grade and can also learn to do and to hold simple jobs.[2]

For the severely retarded inmate or the inmate whose capacity is slowly deteriorating due to his incarceration,there is at present only one route to being helped. This is found in KRS 202.380:

> (1) Whenever an inmate of any penal and correctional institution is reported by the staff of that institution to the commissioner as being so mentally defective or mentally ill that he cannot be properly treated with the facilities at the disposal of the physician, the commissioner shall have a mental examination conducted on such inmate, either by the commissioner himself or some physician of the regular state hospital service designated by the commissioner for that purpose.
>
> (2) If this examination reveals that the inmate is in need of observation and treatment on account of mental deficiency or mental illness, and that such observation and treatment cannot be properly carried out in the institution in which he is incarcerated, the commissioner may then order his transfer to a state hospital, where he shall remain untill the staff of the hospital which received him advises the commissioner



> that his condition has so far improved that he may be returned to the institution from which he came without special jeopardy to his mental health or to the discipline and conduct of the institution. The commissioner shall then authorize his return. If the sentence expires during his stay in the mental institution and he is still mentally ill or mentally defective and fit subject for commitment to a state hospital or institution, the staff of the hospital shall notify the court which sentenced him to the penal institution, accompanying such notification with a petition for inquest.
>
> (3) During the time of prisoner's stay in a state hospital or institution his legal status as a prisoner shall remain unchanged until the termination of his sentence. The hospital staff shall have no authority to parole him, grant him permission to visit relatives or friends outside the hospital, or discharge him. The time a prisoner spends in the state hospital or institution shall be counted as a part of his prison sentence.

This statute has been used occasionally in transferring retarded inmates from the penal institution to a state mental hospital, but both the Director of Treatment for the Kentucky Department of Corrections and the Executive Assistant to the Commissioner of the Bureau for Health Services agree that it is not used frequently. The main reason given for this is insufficient security in mental health facilities. Obviously, when the only existing statute is not being used advantageously and at least 122 inmates who may be retarded are housed in our correctional institutions, something needs to be changed. New legislation is only one alternative.

## Suggestions

Of utmost importance in providing effective treatment for the mentally retarded offender is education. The number of individuals who work within the correctional system who cannot distinguish the mentally retarded from

the mentally ill, as well as the number who have little or no knowledge of the problem, is surprising. But education cannot begin there. It must begin with those who invoke the criminal process; lawyers, policemen, judges, etc. Once these individuals are able to recognize the retarded offender, they may be able to prevent that person from being incarcerated in a correctional institution by suggesting alternative dispositions of the case. While society demands punishment for those who commit crimes, it is totally inappropriate to lock retarded offenders in our prisons, where the absence of understanding, facilities and programs result in their virtual self-destruction.

But education is a long-range goal. Something is needed now to help alleviate the problem as it exists today. For those who have not yet been incarcerated, a more proficient testing mechanism to determine competency, and for those already in our correctional system, such as our Mr. X, a little better appreciation of the problem, a more specialized system of assigning institutional positions, more emphasis on the education of the retardate, and a more effective means of removing the severely retarded inmate to a more appropriate facility would be helpful.

## Conclusion

The basic conclusion of this research is that there is a definite need to alter Kentucky's present system for commitment of the mentally retarded offender, and for his habilitation. If nothing else, a more definite procedure is required to assure consistency in the enforcement of the process. The one thing made unavoidably clear is this:



> Every retarded person, no matter how handicapped he is, is first of all in possession of human, legal and social rights. As much as possible, retarded persons, whether institutionalized or not, should be treated like other ordinary persons of their age are treated in the community. Every effort should be made to 'normalize' the retarded person, to emphasize his similarity to normal persons and to diminish his deviant aspects.[3]

# CHAPTER VI - - LEGAL TRENDS TOWARD A RIGHT TO REHABILITATION

## Introduction

The law governing the rights of incarcerated offenders and the prerogatives of officials administering correctional facilities have undergone rapid and profound development within the past fifteen years. This development has been marked by increased acceptance of modern penological theory, which emphasizes rehabilitation of the offender as the primary goal of corrections, and by increased recognition of and concern for the protection of prisoners' rights, thus having produced increased judicial intervention in the area of internal prison administration. In the context of this changing legal climate, it has been asserted that rehabilitation is not only a privilege which should be accorded the incarcerated offender, but also a right to which the offender is entitled.

A parallel, but more rapid development has been an increased recognition and protection of the rights of the mentally handicapped. This development is exemplified by the assertion, and jurisdictional legal acceptance, of a "right to treatment" for the involuntarily committed mentally ill and retarded.

It is apparent that these developments have particular impact upon the status and rights of those who are both mentally retarded and incarcerated offenders. The purpose of the following discussion is to examine the asserted "right to rehabilitation," with emphasis on its implications for the mentally retarded offender.

At the start, it must be clear, however, that while a "right to rehabilitation" for the criminally incarcerated has been asserted in several recent cases and widely advocated in academic journals, no court has as conclusively recognized such a right.

I. Court Cases: A Right to Correctional Rehabilitation?

The issue of whether incarcerated offenders are entitled to rehabilitative opportunities as a matter of right was first presented in Wilson v. Kelly. In this case Georgia prisoners unsuccessfully sought to obtain a judicial declaration that sentencing convicts to county work camps, where no effort was made to rehabilitate them, constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The three-judge District Court held that ". . . a work camp per se does not constitute such 'inhuman, barbarous or tortuous punishment' as to violate the Eighth Amendment."[1]

The Court also rejected the argument, supported ". . . by the fact that Georgia's penal system includes an avowed 'program of rehabilitation'," that because other institutions offered academic and vocational programs, the work camps should also offer such opportunities. Noting the prohibitive financial cost of a complete system of rehabilitative facilities, the Court concluded:

> Other than the constitutional rights which follow a man into confinement, no other duty is absolutely owed a prisoner other than to exercise ordinary care for his protection and to keep him safe and free from harm. Humane efforts to rehabilitate should not be discouraged by holding that every prisoner must be treated alike in this respect . . . . To order the maximum



> for each and every person confined as sought by plaintiffs here, would be financially prohibitive for this state and could result in a reduction of rehabilitative efforts rather than an implementation.[2]

The issue of a "right of rehabilitation" was presented again, in a different context, in Smith v. Schneckloth. This was an action filed under the Federal Civil Rights Act in which the plaintiff, a drug addict, "alleged that the failure to provide him either medical treatment for his addiction or adequate vocational training amounted to cruel and unusual punishment." The Court held that the plaintiff failed to state a cause of action under the Civil Rights Act, in that "[n]othing expressed or implied in the complaint may be viewed as alleging that the defendant had access to any such treatment or could have provided it to the plaintiff," such an allegation being a prerequisite to an action under the Act. Again, the Court emphasizes the pragmatic financial limitations on correctional reform.

The Court also addressed the issue of a "right to rehabilitation," rejecting the ". . . plaintiff's broader contention that defendant's failure to provide rehabilitative vocational training, combined with the failure to treat his addiction, constituted cruel and unusual punishment." The Court concluded: "The Eighth Amendment 'must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.' Whatever our hopes for the future, we cannot hold at present that the treatment described in the complaint constitutes cruel and unusual punishment."[3]

A third case in which the issue of a "right to rehabilitation" has been considered is Holt v. Sarver, in which a Federal District Court sustained

". . . the claim that conditions and practices in the [Arkansas] Penitentiary System are such that confinement of persons therein amounts to a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments." One of the factors prompting the Court to reach this conclusion was "the absence of rehabilitation services and facilities." However, the Court emphasized that this was merely one of several factors, stating that "[g]iven an otherwise unexceptional penal institution, the Court is not willing to hold that confinement in it is unconstitutional simply because the institution does not operate a school, or provide vocational training, or other rehabilitative facilities and services which many institutions now offer." Nevertheless, the Court recognized that "[a]bsence of an affirmative program gains significance where in the absence of such a program conditions and practices exist which actually militate against reform and rehabilitation."[4]

It is apparent from a reading of these cases that there is, as yet, no judicially recognized "right to rehabilitation." There are, however, several additional implications that may be drawn from these cases. First, all three opinions recognize the importance of rehabilitation as a fundamental, legitimate objective of corrections. Second, the Smith decision implies that although the incarcerated offender has no "right to rehabilitation" at present, such a right might be recognized in the future. Third, the Holt opinion qualifies its conclusion that there is no constitutional "right to rehabilitation" by stating that the absence of rehabilitative programs "may have constitutional significance" if the environment within the correctional facility is such as to "actually militate against reform and rehabilitation." These implications lend credence to the



theory that as this area of law continues to develop, the concept of a "right to rehabilitation," will receive increasingly favorable treatment and probable eventual recognition in the courts.

## II. Genesis of the "Right to Rehabilitation" Concept

The concept of a "right to rehabilitation" for the incarcerated offender is apparently the product of three interrelated factors: (A) increased judicial intervention in the internal administration of correctional facilities; (B) increased acceptance of modern penological theory emphasizing rehabilitation as the primary purpose of corrections; and (C) recognition of a "right to treatment" in the area of civil commitment of the mentally ill and retarded.

### A. Judicial Arising: The Activism Undercurrent

The courts have traditionally adhered to a policy of abstention from matters of internal administration of correctional facilities, a policy termed the "hands-off" doctrine. The "hands-off" doctrine was grounded upon three theories of judicial restraint: (1) the separation of powers - the administration of correctional facilities was viewed as a function of the executive branch requiring wide discretion in policy formulation and decision-making; therefore, matters concerning internal administration were considered outside the province of the judiciary; (2) the belief that the courts lacked sufficient expertise in the field of penology to allow judicial intervention in matters of internal administration; and (3) the fear that judicial intervention would subvert discipline within correctional institutions. Based on these theories of judicial

restraint, the basic tenet of the "hands-off" doctrine was that ". . .prisoners have no constitutional rights other than to be free from cruel and unusual punishment . . ."[5]

In the 1960's, however, judicial activism in the areas of civil rights and the rights of the accused led the courts into the area of prisoners' rights and resulted in the recognition of a number of such rights. Thus the "hands-off" doctrine was replaced by the principal that "[a] prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken away from him by law."[6]

It must be emphasized, however, that despite the demise of the "hands-off" doctrine, the courts remain reluctant to interfere with correctional authorities in matters of internal institutional management. This attitude was evident in all three cases discussed above [Wilson, Smith & Holt]. The prevailing policy is probably best described in the following quote from Smith:

> Of course, it is well established that prisoners do not lose all their constitutional rights and that the Due Process and Equal Protection Clauses of the Fourteenth Amendment follow them into prison and protect them there. It is also settled, however, that correctional authorities have wide discretion in matters of internal prison administration and that reasonable action within the scope of this discretion does not violate a prisoner's constitutional rights.[7]

One result of the changed judicial philosophy with its increased recognition of prisoners' rights is that, while correctional authorities still have wide latitude in providing rehabilitative programs



and access to them, today there is growing debate as to whether access to rehabilitative programs is a right or a privilege.

B. Correctional Acceptance of Rehabilitative Ideal

"Nearly all penologists agree that the most effective way to combat recidivism and protect society is to rehabilitate prisoners while they remain confined to prison."[8] This penological theory emphasizing rehabilitation as the primary goal of corrections--the "rehabilitative ideal"--has gained increasing recognition and acceptance in recent years. This trend is a second factor that has contributed to the creation of the concept that rehabilitation is a right to which incarcerated offenders are entitled.

It has already been noted that the Wilson, Smith, and Holt cases discussed above all recognized rehabilitation as a legitimate goal, although not the primary goal of corrections. The trend toward judicial acceptance of the "rehabilitative ideal" is exemplified by the following quotation from an opinion of the Federal District Court for the Northern District of Texas:

> Rehabilitation must be the overriding goal of our correctional institutions. Unless society subordinate all of the correctional purposes to the goal of rehabilitation, it faces the paradox of of promoting the production rather than the reduction of crime.[9]

There are, however, alternative theories as to the primary purpose(s) which corrections should serve. The most prominent of these are retribution, protection of society by incapacitation of the offender, and deterrence of crime. Although these alternative theories have been subordinated to the concept of rehabilitation by penologists, and to a certain extent by the courts,[10] the fact that access to rehabilitation is not recognized as a right indicates that these

alternative theories retain vitality. For example, the Holt decision concluded that under normal conditions in a correctional facility, those incarcerated have no right to rehabilitative programs. The court prefaced that conclusion with the following statement on penological theory:

> Many penologists hold today that the primary purpose of prisons is rehabilitation of convicts and their restoration to society as useful citizens; those penologists hold that other aims of penal confinement, while perhaps legitimate, are of secondary importance. That has not always been the prevailing view of what penitentiaries are for, if, indeed, it is today. In years past many people have felt, and many still feel, that a criminal is sent to the penitentiary to be punished for his crimes and to protect the public from his further depredations. Under that view, while there is no objection to rehabilitation, it is not given any priority.[11]

Thus, it is apparent that the "rehabilitative ideal" advocated by most penologists is not always accepted by society and the judiciary as the predominant theory of corrections. Nevertheless, the importance of rehabilitation and the "rehabilitative ideal" itself are gaining increased recognition and acceptance. It is this trend that accounts, in part, for the creation of "right to rehabilitation" concept.

C. Parallel Development: Right to Treatment for the Involuntarily Committed Mentally Ill and Retarded

The third factor contributing to creation of the "right to rehabilitation" concept has been the development of a right to therapeutic and rehabilitative treatment in areas of law closely connected to adult corrections. A "right to treatment" for the involuntarily committed mentally ill was first proposed in 1960,[12] but it was not until 1966 that such a right was recognized in the courts. The right was initially based on statutory language and pertained only to the



mentally ill. Subsequently, however, the right has been extended to other areas of civil commitment and accorded constitutional as well as statutory status.

The first case recognizing the existence of the "right to treatment" was Rouse v. Cameron,[13] in which the court considered the issue of "[w]hether a person involuntarily committed to a mental hospital on being acquitted of an offense by reason of insanity has a right to treatment. . .". The court held that "Congress established a statutory 'right to treatment' in the 1964 Hospitalization of the Mentally Ill Act" which provides that "[a] person hospitalized in a public hospital for mental illness shall, during his hospitalization, be entitled to medical and psychiatric care and treatment . . ."[14] It should also be noted that after basing the decision on statutory grounds, the opinion suggested possible constitutional bases for the "right to treatment".

In the wake of this landmark decision, courts have found a statutory "right to treatment" in civil commitment statutes relating not only to the mentally ill,[15] but also sexual psychopaths[16] and chronic alcoholics.[17] In addition, statutory bases have been utilized in recent cases to extend this right to drug addicts,[18] juvenile delinquents,[19] and defective delinquents.[20]

Although several of the cases establishing a statutory "right to treatment" suggested that the right could possibly rest on constitutional grounds,[21] the 5th Circuit was first, in three cases, to hold that involuntarily committed mentally ill and retarded have a constitutional right to treatment.[22]

In Donaldson v. O'Connor, decided by the 5th Circuit on April 26, 1974. Kenneth Donaldson had been civilly committed in 1957 to a state mental hospital

in Florida after being diagnosed as a "paranoid schizophrenic." He remained confined for more than 14 years, during which time he received "little or no psychiatric care or treatment." Following his release, Mr. Donaldson brought an action in federal district court under the Civil Rights Act, contending that he possessed a constitutional right to receive treatment or to be released and seeking damages against certain hospital officials who, he alleged, had deprived him of this right. He charged that these officials had "acted in bad faith . . . and with intentional, malicious, and reckless disregard of his constitutional rights." After being instructed that the plaintiff was indeed possessed of a constitutional right to treatment, a jury found that Mr. Donaldson had been denied this right and awarded him $28,500 in compensatory damages and $10,000 in punitive damages.

The defendants appealed to the Fifth Circuit Court of Appeals contending that the district court had erroneously instructed the jury. The Fifth Circuit affirmed the jury's verdict, holding that the instructions were proper and ". . . that a person involuntarily civilly committed to a state mental hospital has a constitutional right to receive such individual treatment as will give him a reasonable opportunity to be cured or to improve his mental condition." This holding was based upon a "two-part theory" of due process similar to that utilized in Wyatt.

The Fifth Circuit in Donaldson had cited the District Court opinion in Wyatt with approval. The Wyatt decision had utilized both procedural and substantive due process theories in finding a constitutional right to treatment. On the issue of procedural due process, the court stated:



> When patients are so committed [involuntarily, through noncriminal proceedings, and without the constitutional protections afforded criminal defendants] for treatment purposes they unquestionably have a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition. Adequate and effective treatment is constitutionally required because, absent treatment, the hospital is transformed 'into a penitentiary where one could be held indefinitely for no convicted offense.' The purpose of involuntary hospitalization for treatment purposes is treatment and not mere custodial care or punishment. This is the only justification, from a constitutional standpoint, that allows civil commitments to mental institutions . . . .[23]

The essence of the substantive due process theory is that "[t]o deprive any citizen of his or her liberty upon the altruistic theory that the confinement is for humane therapeutic reasons and then fail to provide adequate treatment violates the very fundamentals of due process".[24]

Finally, the District court recognized that in the area of the right to treatment ". . . no viable distinction can be made between the mentally ill and the mentally retarded." Thus, it held that the same due process theories were applicable to both classes of patients, stating that "[p]eople involuntarily committed through noncriminal procedures to institutions for the mentally retarded have a constitutional right to receive such individual habilitation as will give each of them a realistic opportunity to lead a more useful and meaningful life and to return to society."[25]

The Supreme Court, however, held that the Donaldson case did not present the question of a right to treatment. Instead, the court based its decision on the legal conclusion that a person, who is not dangerous to the community,

or himself, can not be involuntarily committed. As hospital officials had admitted that Donaldson was not dangerous, he had been illegally held. As Wyatt and Burnham are still pending before the Supreme Court, the question of a right to treatment may still be soon resolved.

Nevertheless, the "right to treatment," both statutory and constitutional, is apparently continuing to develop. The case of Martarella v. Kelley[27] exemplifies extension of a "right to treatment" to civilly committed juveniles. The court found that such juveniles clearly have a right to treatment based on the Eighth and Fourteenth Amendments. In addition, however, the court made the following statement on the "right to treatment:"

> In sum, the law has developed to a point which justifies the assertion that: 'A new concept of substantive due process is evolving in the therapeutic realm. This concept is founded upon a recognition of the concurrency between the state's exercise of sanctioning legal powers and its assumption of the duties of social responsibility. Its implication is that effective treatment must be the quid pro quo for society's right to exercise its parens patriae controls. Whether specifically recognized by statutory enactment or implicitly derived from the constitutional requirements of due process, the right to treatment exists."

The existence of the right to treatment has played a key, possibly decisive, role in producing the "right to rehabilitation" concept and in transforming the right to rehabilitation from "a penologists pipe dream" into a serious legal issue.



## III. Legal Grounds for a Rehabilitative Right

Based on the proceeding discussion of the present status and origins of the right to rehabilitation concept, there appear to be four legal arguments that have been advanced in support of a right to rehabilitation for incarcerated offenders. Three arguments are constitutional in nature, being based on the Cruel and Unusual Punishment Clause of the Eighth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The fourth argument would base the right to rehabilitation on statutory language.

### A. Cruel and Unusual Punishment

One argument in support of a right to rehabilitation that was advanced in Wilson, Smith and Holt is based upon the Eighth Amendment, which prohibits "cruel and unusual punishments." The term "cruel and unusual punishments" has no precise, specific definition. Instead, "[i]t is flexible and tends to broaden as society tends to pay more regard to human decency and dignity and becomes, or likes to think that it becomes, more humane."[28] Nevertheless, it is possible to identify three general approaches to the definition of what constitutes cruel and unusual punishment,[29] any one of which can be used to support an argument that incarcerated offenders, particularly those who are mentally retarded, have a right to rehabilitative treatment.

The first approach is to determine whether, under all circumstances, the punishment is "of such character . . . as to shock general conscience or to be intolerable to fundamental fairness."[30] This is a judgment that ". . . must be made in light of developing concepts of elemental decency."[31] In light of

contemporary penal knowledge, which emphasizes rehabilitation as the primary goal of corrections, it can be argued that incarceration unaccompanied by efforts to rehabilitate the offender is both shocking and fundamentally unfair, and that incarcerated offenders therefore have a right to access to rehabilitative programs. Furthermore, it can be contended that incarceration of mentally retarded offenders in a correctional facility where the rehabilitative opportunities available to them are minimal, at best, is likewise shocking and fundamentally unfair. Thus, if such incarceration of mentally retarded offenders is found to be cruel unusual punishment, mentally retarded offenders have a right to rehabilitation.

A second approach defines a punishment as cruel and unusual if it is ". . .greatly disproportionate to the offense for which it is imposed."[32] Again, in terms of modern penological theory, it is arguable that confinement without meaningful rehabilitation unjustifiably exceeds the punishment required for any crime. The impact of this argument is magnified when viewed in terms of the mentally retarded offender, who is most in need of rehabilitation yet has the least access to rehabilitative opportunities.

Under the third approach to the definition of "cruel and unusual punishment," a punishment may be cruel and unusual, even if applied in pursuit of a legitimate penal objective, when it goes beyond what is necessary to achieve that objective. That is, a punishment is cruel and unusual if it is "...unnecessarily cruel in view of the purpose for which it is used."[33] Utilizing this approach it can be asserted that, although it may on occasion be necessary to restrict the



access of individual offenders to rehabilitative programs in order to further legitimate penal objectives (e.g., the objective of maintaining discipline within the institution), it is neither necessary nor justifiable to deprive mentally retarded offenders, as a group, of the opportunity to participate in meaningful rehabilitative programs. Thus mentally retarded offenders are entitled to rehabilitation, because incarceration accompanied by the failure to provide meaningful rehabilitative programs constitutes cruel and unusual punishment.

The most obvious drawback of basing the argument for a right to rehabilitation on the Eighth Amendment is that this argument has been rejected in the only three cases in which it has been considered. It must be noted, however, that in none of these cases was the argument presented in terms of the mentally retarded offender. In addition, the Holt opinion constitutes only a qualified rejection of the argument, in that the court recognized that deprivation of access to rehabilitative opportunities could have "constitutional significance" if the environment in the correctional facility "...actually militate[s] against reform and rehabilitation."[34] Nevertheless, the fact remains that this argument has yet to obtain judicial affirmation.

B. Due Process

The second constitutional argument that has been formulated in support of a right to rehabilitation is based upon the Due Process Clause of the Fourteenth Amendment, which states: "...[n]o state shall deprive any person of life, liberty, or property without due process of law..." The due process argument for a right to rehabilitation is analogous to the substantive due process theory of Wyatt and rests on the principle that "[a]t the least, due process requires that

the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed."[35] If one accepts the theory that the primary purpose of corrections is rehabilitation of the offender, it can be asserted that incarceration without access to meaningful rehabilitative opportunities deprives the incarcerated offender of due process.

Like the argument based upon the Eighth Amendment, the persuasiveness of this argument is enhanced when it is viewed in terms of the mentally retarded offender. The Wyatt opinion cited a resolution adopted in 1971 by the General Assembly of the United Nations entitled "Declaration on the Rights of the Mentally Retarded," which reads in pertinent part: "...The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential."[36] Using this innate right, it can further be argued that failure to provide mentally retarded offenders with meaningful rehabilitative opportunities is a deprivation of this right and a denial of due process.

The first, and most fundamental, objection which can be raised to the due process argument is that, again, it assumes acceptance of the theory that rehabilitation of the offender is the primary purpose of corrections The weakness of this assumption as the basis for an argument that there is a right to rehabilitation has been fully discussed in relation to the cruel and unusual punishment argument.



C. Equal Protection

A third argument that has been formulated in support of a constitutional right to rehabilitation is founded upon the Equal Protection Clause of the Fourteenth Amendment, which guarantees that "[n]o State shall . . .deny to any person within its jurisdiction the equal protection of the laws." The Equal Protection Clause is essentially a prohibition on "state action" which invidiously discriminates. As interpreted by the Supreme Court, this clause requires that ". . .the state's action be rationally based and free from invidious discrimination."[37] Stated differently, the Equal Protection Clause does not require that all citizens be treated exactly alike, but it does require that if a state treats citizens dissimilarly, the classification created must "...bear some reasonable relationship to a legitimate state purpose."[38]

With the Equal Protection Clause as its foundation, the thesis of this argument is that by providing rehabilitative programs for incarcerated offenders, correctional officials assume a constitutional obligation to guarantee substantial equality of access to such programs. The objective of this argument is not to assert that rehabilitative programs are a constitutional imperative. The objective is merely to limit the amount of discretion that correctional officials may exercise in the establishment and administration of such programs. Furthermore, it would not be contended that all offenders within the corrections system must be accorded exactly equal treatment in this respect. Instead, there must only exist a rational basis upon which rehabilitative programs are implemented and access to them is provided. If mentally retarded offenders, as a group, are denied opportunities generally provided inmates of our Kentucky prisons, the argument may be made that they are denied equal protection.

The first response which can be made to this argument is analogous to that which the court in Wilson made to a similar argument. The Constitution does not require that rehabilitative opportunities be made available to incarcerated offenders. Therefore, "[h]umane efforts to rehabilitate should not be discouraged by holding that every prisoner must be treated alike in this respect. . . ." The court concluded that such a decision "...would be financially prohibitive...and could result in a reduction of rehabilitative efforts rather than an implementation."[39]

There are, however, several problems with this response. First, the argument presented in Wilson was not a formal equal protection argument asserted on behalf of mentally retarded offenders. The argument which the Wilson decision rejected was based on a state statute and presented on behalf of those incarcerated in county work camps. Second, this response fails, in part, to answer the equal protection argument because the point of the argument is not "...that every prisoner must be accorded substantial equality of access to rehabilitative programs." Third, lack of state resources is no justification for a deprivation of constitutional rights. The Holt opinion invoked this principle when it concluded:

> Let there be no mistake in the matter...If Arkansas is going to operate a Penitentiary System, it is going to have to be a system that is countenanced by the Constitution of the United States.[40]

Nevertheless, this initial response to the equal protection argument is noteworthy because it points out the fact that this argument might demand too much. Unless and until there is a right to rehabilitation, acceptance of this



argument possibly could result in the elimination of rehabilitation programs for all offenders rather than the implementation of new programs for mentally retarded offenders.

A second response that can be made to the equal protection argument is that state action does not violate the Equal Protection Clause merely because it fails to address all aspects of a particular problem simultaneously and in the same way. If the classification thus created is not irrational and invidiously discriminatory, the Equal Protection Clause is not offended.[41] Thus it can be argued that by providing rehabilitation programs accessible to the general class of incarcerated offenders, a reasonable start has been made toward fulfillment of the rehabilitative goal of corrections. The fact that some offenders are unable to benefit from these programs does not constitute a denial of equal protection because there is a practical distinction, in terms of types of rehabilitation programs, between mentally retarded offenders and the general class of offenders.

The primary objection to this second responsive argument is that in view of the recognized role of rehabilitation in corrections and the critical needs of mentally retarded offenders for such rehabilitation, the rationality of failing to provide rehabilitative programs suited for the mentally retarded is open to question. Nevertheless, this is a meaningful response to the equal protection argument for a right to rehabilitation, and it is a response which must be recognized and accounted for by advocates of a right to rehabilitation.

D. Statutory

In addition to the constitutional bases on which a right to rehabilitation

could be established, it is possible that such a right could be founded upon a statutory basis. As previously noted, a statutory right to therapeutic and rehabilitative treatment has already been developed in the fields of civil commitment and juvenile corrections. The development of this right has obvious implications for the possible creation of a statutory right to rehabilitation.

The clearest, most direct way to create a statutory right to treatment is, of course, by a definitive legislative enactment specifying that incarcerated offenders have a right to rehabilitation. In addition, however, a right to rehabilitation could be established on the basis of existing statutes, in a way similar to that in which a statutory right to treatment was recognized.

The first decision to recognize the existence of a statutory right to treatment was Rouse v. Cameron, a case involving the involuntarily committed mentally ill. Drawing on this precedent, subsequent cases have used statutory language to extend the right to treatment to involuntarily committed sexual psychopaths, chronic alcoholics, drug addicts, and defective delinquents and to juvenile delinquents.[42] Analysis of these cases reveals two common characteristics. First, embodied in the statutes upon which the right to treatment was based, is the recognition that the purpose of confinement is rehabilitation and treatment. Second, these statutes contained broad language expressing a duty to treat or a legislative purpose from which such a duty may be implied. It is significant that the statutes in most states, including Kentucky [KRS 196.110, 196.610, 197.065], pertaining to adult corrections contain such



language. These statutes can thus be utilized to establish a statutory right to treatment for incarcerated adult offenders.

It must be recognized, however, that as of yet, no such statutory right to rehabilitation exists. And, in Wilson v. Kelley the court rejected an argument for a right to treatment that was based on a Georgia statute. As was evident in the discussion of the other arguments for a right to rehabilitation, the pivotal factor is acceptance of the rehabilitative ideal. Although the statutes dealing with corrections can be interpreted in the manner indicated, the impetus for adopting such an interpretation can only come after acceptance of the theory that the primary purpose of corrections is rehabilitation of the offender.

# CHAPTER VII - - THE DENIAL OF LEGAL RIGHTS TO KENTUCKY'S MENTALLY RETARDED OFFENDERS

This chapter is legal argument for development of specialized treatment facilities and programs for the mentally retarded in Kentucky's Correctional System. The study's substantive data, Kentucky statutes, and case law will be woven into a framework that mandates a legal right of the retarded to treatment. Though this study can only have persuasive impact, the arguments can be used to support an inmate's suit which could produce court compelled reform.

I. Kentucky Corrections knowingly houses a significant number of mentally retarded persons who have no real access to appropriate treatment opportunities and who are abused by criminal incarceration.

The study identified 122 inmates with an IQ score of 70 and below, 5.3% of 2312 who have been tested. Projecting the 5.3% figure to an average population of over 2900 produces an additional 37 inmates, who if tested would have scored below 71, or 159 total in the category.

Though IQ tests are only one major variable in measuring retardation, it is clear from staff and inmate statements that a number of inmates are truly retarded. In some cases, the judicial system should have diverted them to Mental Health. Yet a close review of the records of these inmates provided little information as to whether competency played a major role in judicial proceedings. In a few cases where competency was at issue, it appeared that societal pressures to punish the defendant due to the severity of his offense precluded such a determination. It must also be noted that the Courts are

CONTINUED

1 OF 3

often unaware of mental deficiencies in defendants, a psychological evaluations are seldom provided. Perhaps greater use of the required pre-probation report to be prepared by the "probation and parole officer" will strengthen Court decision making in this area.

Corrections, however, is aware of those inmates who are retarded. Test scores and day-to-day dealings provide conclusive information to staff of the presence of mentally retarded. Survey results indicated that 80% of correctional staff interviewed felt their institutions offered no rehabilitative programs for the retarded, and that many retardates are abused. Inmate data showed that only 5 of the 122 inmates with IQ's below 70 are in vocational and academic programs, which, ironically, may well be geared beyond their abilities.

II. Mentally retarded persons who are involuntarily committed by the Courts to mental health facilities have a right to rehabilitative treatment.

The previous discussion of case law trends indicated a growing recognition that the involuntarily committed mentally retarded have a right to treatment. Rouse v. Cameron found that "a person involuntarily committed to a mental hospital on being acquitted of an offense by reason of insanity" must be offered rehabilitation.

Wyatt and Burnham found that the retarded have a constitutional right to treatment, without which "the hospital is transformed into a penitentiary where one could be held indefinitely for no convicted offense."

While this area of law is still unsettled, as the Supreme Court's decision in Donaldson vested on other grounds, strong pressures toward a Constitutional right to treatment will inevitably continue.



III. Kentucky Corrections must either develop specialized treatment for the retarded or transfer them to health services based on the following arguments:

A. The mentally retarded and mentally ill offenders, and their juvenile counterparts, are members of a class of persons viewed as "legally incapacitated." It is inconsistent to afford special handling to juveniles and the mentally ill and yet not provide these same protections to the mentally retarded.

Persons who have not yet reached the legal age of majority and those adjudged mentally ill or deficient have always been afforded special care by statute and the courts. Both groups are seen as composing a class of persons who are "legally incapacitated," which Black's Law Dictionary says "implies that a person in view has the right vested in him, but is prevented by some impediment from exercising it; as in the case of minors, femes covert, lunatics, etc." A Federal District Court, early in this century, substantiated this notion by defining incompetence as "implying legal incapacity due to nonage, imbecility or insanity."

The Kentucky General Assembly indicated its recognition of a class of legally incapacitated persons, as defined above, in enacting the new Penal Code. KRS Chapter 504 provides that immaturity and mental disease or defect are complete defenses to any criminal prosecution, and that any individual who is a member of either group is exempt from criminal responsibility.

Juvenile offenders are protected under the provisions of KRS Chapter 208 which require creation of a special juvenile division of each fiscal court. Each county must provide separate detention facilities for juveniles. No

juvenile may be prosecuted in the circuit court unless the juvenile court, on its own motion, transfers a juvenile to its jursidiction who either is over 16 and charged with a felony or under 16 and charged with rape or murder.

The juvenile system also provides community alternatives to an institutional system of small facilities geared toward special groups. Though it does not house all juveniles who are retarded, it is geared to their particular needs.

In addition to these protections, the Federal Circuit Court of the District of Columbia and Ohio's highest court have held that the purpose of the juvenile system is treatment and each person must be handled in a manner "tailored to meet the peculiar needs of the peculiar needs of the child."[1]

Concern for mentally ill offenders has been recognized by the opening of a Forensic Psychiatry Unit at LaGrange and funding for a new forensic psychiatry hospital. These facilities are geared toward the mentally ill and are not equipped for the retarded.

In spite of this, Human Resources' regulations, 902 KAR 6:040 provides that inmates transferred to Human Resources from correctional institutions are to be admitted to Central State's Forensic Unit. This means that any inmate, mentally ill or retarded, if transferred, is transferred to a unit solely for the mentally ill. The disparity in care and consideration for the retarded offender is evident.

The status of the mentally retarded in Kentucky's prisons stands in stark contrast to that of their juvenile and mentally ill counterparts. It is inconsistent for the Commonwealth to know that a "legally incapacitated" group



is denied the proper protection of the law, and make no effort to provide a remedy.

B. Kentucky's statutory scheme indicates a strong state interest in diverting the retarded from traditional criminal incarceration.

Kentucky law provides three procedures for removing the retarded offender from the criminal justice system:

(1) pre-trial incompetency examination;

(2) not guilty by virtue of mental disease or defect;

(3) transfer from Corrections to Health Services.

(1) Pre-trial Incompetency Examination

Prior to enactment of the Penal Code, the Court took the primary initiative in protecting the retarded. In a 1929 case, Deegans v. Commonwealth,[2] the Court of Appeals held that no mentally irresponsible person could ever be punished as a criminal, even if Kentucky provided no alternative confinement.

But it was the General Assembly who made an even stronger statement in KRS 504.040(1) that mentally diseased or defective persons should not be tried:

> No person who, as a result of mental disease or defect, lacks capacity to appreciate the nature and consequences of the proceedings against him or to participate rationally in his own defense shall be tried, convicted or sentenced for the commission of an offense, so long as such incapacity endures.

The above provision makes it mandatory that such individuals not be criminally disposed. Yet it is readily apparent that mentally deficient persons have been and probably are still "tried, convicted or sentenced."

(2) Not Guilty By Virtue of Mental Disease or Defect

As with an incompetency proceeding, KRS 504.020 provides that no mentally diseased or defective person is responsible for his criminal conduct, and that he must be found not guilty. The General Assembly again has strengthened previously unclear provisions of the law, emphatically illustrating state interest in alternative disposition of the retarded.

(3) Transfer from Corrections to Health Services

Recognizing judicial fallibility along with the possible regression of inmates of our correctional institutions into states of mental defectiveness or illness, the Kentucky legislature provided for transfer of these individuals to mental health facilities.

Whenever correctional staff report such an individual to the Commissioner, he conducts a hearing into the individual's mental condition. Though the examination is mandatory, the decision to transfer rests with the Commissioner. Human Resources may accept him if they have an empty bed, and he will remain in their supervision until "he may be returned to the institution from which he came without special jeopardy to his mental health or to the discipline and conduct of the institution."

Conclusion

It is a logical conclusion that the enactment of three means of diverting the retarded, two of them mandatory, indicates that legislative intent, and thus, the state interest are only served by non-criminal disposition. The incarceration of retarded offenders in a non-rehabilitative prison system stands in sharp contradiction to that obvious statutory design.



C. The incarceration of the retarded offender in Kentucky's prisons is a "Cruel and Unusual Punishment", violating individual Constitutional rights.

While no state correctional system has been found to constitute cruel and unusual punishment simply for not rehabilitating its inmates, the courts have not yet dealt with a specific inmate population, the mentally retarded, in making such a determination. The previous chapter presented three procedures for defining cruel and unusual punishment. Applying these to Kentucky mentally retarded offenders, the conclusion that penal incarceration for these individuals constitutes cruel and unusual punishment is logical and almost inescapable.

(1) Does the punishment of mentally retarded offenders in Kentucky Corrections shock general conscience and stand intolerable to fundamental fairness?

This study has presented strong legal precedent for a right to rehabilitation of the involuntarily committed mentally retarded. As legislation and court action profile evolving concepts of societal decency, it can be concluded that society wants the retarded to be treated.

Kentucky law and rule seeks to divert the mentally retarded offender to Health facilities, where his status would be that of the involuntary committed, deserving of treatment. For those individuals who the Courts or Corrections have directed to Health Services, this right has been fulfilled.

Corrections, however, does house a significant number of retarded persons. Prison life for these individuals, according to both staff and inmates, consists of abuse which would unquestionably "shock general conscience." Not only does the criminal justice system's failure to divert the retarded deny

them a right to treatment, but their incarceration in an environment where they cannot function subjects them to abuse. Surely it can be said that their presence in Corrections with no pretense of treatment defies all concepts of "fundamental fairness."

Surely society would be shocked to learn that persons of limited intelligence who are easily subject to the influence of others are taught criminal ways in our institutions when implementation of existing law would remove them from such influence. Surely Kentuckians would be appalled to know that the retarded are sexually abused, sometimes forming homosexual alliances for protection against societal abuse. Surely society would be repulsed if it saw Eddyville's neuro-psychiatric unit which houses mentally ill and retarded with little pretense of treatment. What more would be required to awake societal anger?

(2) Is the punishment of the mentally retarded offender greatly disproportionate to the offense for which it is imposed?

Persons convicted of crime are punished by incarceration periods during which they are only guaranteed freedom from cruel and unusual punishment. No right to rehabilitation follows them into prison. Yet in the dictum of Holt v. Arkansas, the Court argued that the absence of treatment could have "constitutional significance," perhaps constituting cruel and unusual punishment, if it "actually militate(s) against reform and rehabilitation."

Evidence presented in this study indicates that the needs of the mentally retarded exceed those of the average offender. He is less likely to be able to function in society. He is unskilled and unemployable. He is easily manipulated and may have been led into criminal conduct for which he is incarcerated.



This study indicates that the retarded offender is more likely to be mistreated by the courts. He may not have realized his conduct to be criminal. He could not participate adequately in his defense and may have pleaded guilty to an offense he did not commit.

After entering prison, he faces a bleak future. His weaknesses in adaptability and skill development are only confounded by a correctional system where no programs exist from which he can benefit. He is assigned to maintenance details where he is often idle.

Thus he begins to disintegrate, regressing into more severe retardation. Treatment staff at Eddyville cite various examples of known mentally retarded inmates who become virtually helpless vegetables. One inmate who upon entry could perform simple work skills gradually reverted to the point that he could not even take care of his own body functions. Another did not talk for a period of four years. A third instinctively turns circles before sitting, like an animal, and then sits with a blank, expressionless stare.

While punishment through incarceration is a proper sanction, it becomes abusive and disproportionate for the retarded. It is inconceivable that society would condone punishment that actually destroys the individual, and therein, violates all laws of decency.

(3) Does punishment of the mentally retarded go beyond what is necessary to achieve valid penal objectives?

Analysis of Kentucky law has already pinpointed the general impropriety of housing the mentally retarded in our prisons. Though certain mentally retarded offenders may be so dangerous as to demand maximum security, most should be

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## CHAPTER VIII - - PROPOSED TREATMENT PLAN

*The new maximum security institution should be composed of two program units: one should house approximately 100 retarded persons, the second, 200 inmates in the old "borderline" 70-85 IQ range.

Housing the two groups in the new prison would fulfill Corrections' objection of (1) reduction of population at LaGrange and Eddyville, (2) removal of specific inmates who require security, but are adversally affected by being lumped with the most hardened criminals, and (3) provide rehabilitative treatment to a group of inmates not now receiving effective treatment.

### Alternative Proposals

Before focusing on the above recommendation, it is necessary to evaluate other possible alternatives. There are two major alternatives: (1) transfer all retarded inmates to the Department for Human Resources, and (2) use the Special Program Unit at LaGrange to house the retarded.

### (1) Transfer to Human Resources

Transfer has initial appeal in that it can already be accomplished under KRS 202.380. Though the statute's use hinges on the approval of two commissioners which occurs seldom, it could be amended by the Legislature to make it mandatory or the Governor could order its use.

Even if transfer of 122 retarded inmates was ordered, however, there is no guarantee that Human Resources is prepared to handle them. Present regulations (902 KAR 6:040) require such transferees to be sent to forensic psychiatry unless the Health Service Commissioner says otherwise.

This facility is not structured to house the retarded, nor will the new forensic hospital be so staffed. There are no plans to build a facility for retarded offenders and the forensic hospital has already been delayed for two years. Rather than having an open suggestion for the General Assembly to spend more millions on another institution, utilization of already funded capital construction monies makes far more sense.

(2) Use of LaGrange's "Special Program Unit"

Some of the correctional staff at LaGrange and in the central office in Frankfort suggested that trained staff in special education be hired and that one of LaGrange's proposed three units be used for the retarded.

Rejection of this recommendation is based on the crucial fact that the retarded should be totally separated from the institutional population. Even with a separate unit for 300 retarded and borderline retarded persons, the environment of a big prison is not lost. Contact can occur and rehabilitative opportunities are severely limited. It must be remembered that 70% of inmates and staff interviewed felt the retarded should not be housed in any of our present institutions, where they are abused.

THE MAXIMUM SECURITY PRISON

The major reasons for recommending use of the new institution for the retarded are as follows:

(1) the retarded offender is a pressing legal and moral problem. Something needs to be done. As the new prison is funded, its use represents a more rapid solution.



(2) it would be unwise to fund more new correctional facilities until evaluation of other future needs is complete.

(3) the objectives of the new prison are wholly met by its use as a facility for the retarded.

(4) the facility can adequately meet the special needs of the retarded offender.

(5) should utilization of the new Penal Code result in pre-trial removal of the retarded, legislation could be enacted to allow such persons to be housed under civil proceedings. Even without legislation, the facility could still serve the many inmates who require compensatory training.

(6) the facility can guarantee security, which, due to the high percentage of violent crimes committed by the retarded, will likely be deemed essential, at least politically.

A. Facilities

The Accreditation Council for Facilities for the Mentally Retarded has published Standards for the Mentally Retarded. These standards, though rigid, should be considered in designing the facility and are included in the Appendices.

B. Inter Agency Cooperation

It is essential that the new facility be planned and staffed through a combined effort of Corrections, Health Services, Vocational Education and Vocational Rehabilitation. Corrections should provide security with the other agencies providing treatment staff. As each agency has a legal duty to the retarded, each must provide help.

A particular reason to operate the facility on an inter-departmental basis is the current recommendation of Health Services' Dr. Vandivere that the new prison be fused with the forensic hospital. Both facilities could utilize staff of Corrections and Health Services, producing money and administrative savings. As both mental illness and retardation comprise the courtroom concept of incompetency, a fused, yet divided facility for both groups would be reasonable.

C. Release and Reintegration of the Retarded

It is crucial that Corrections and Health Services devise effective follow-up community programs for the retarded offender after release. The Comprehensive care centers and other community programs could provide assistance to the retarded essential to his successful societal reintegration.



# FOOTNOTES

## CHAPTER I

### MENTALLY RETARDED ADULT OFFENDERS IN ADULT CORRECTIONAL INSTITUTIONS

1. Legislative Research Commission, Report # 102; p. 65 (1963).
2. See: Operator Restore: A Comprehensive Correctional Rehabilitation Plan (1972).
3. Kentucky Executive Budget; 1974-76; Vol. 1 (1974).
4. The Louisville Courier-Journal, Feb. 16, 1975.
5. The Lexington Herald, June 25, 1975.

## CHAPTER V

### KENTUCKY STATUTORY LAW

1. See: KRS 504.040.
2. Dennis E. Haggerty, Lawrence A. Kane, Jr., and David K. Udall, "An Essay on the Legal Rights of the Mentally Retarded; 58, Family Law Quarterly 59 (1972).
3. Civil Rights Act of 1964, 42 U.S.C. §§2003(e) (1964).

## CHAPTER VI

### LEGAL TRENDS TOWARD A RIGHT TO REHABILITATION

1. 294 F. Supp. 1005 (N.D. Ga. 1968), aff'd per curiam, 393 U.S. 266 (1969) p. 1012.
2. Wilson v. Kelley (citing Ga. Code 77-319) p. 1012.
3. 414 F.2d 680 (9th Cir. 1969) p. 681.
4. 309 F. Supp. 360 (C.E.D. Ark. p. 970), aff'd, 442F.2d 304 (8th Cir. 1971) p. 379.

5. South Carolina Department of Corrections Emerging Rights of the Confined (1972), p. 28; Goldfarb and Singer, Redressing Prisoner's Grievances, 39 Geo. Wash. L. Rev. 175 (1970); Comment, A Jam in the Revolving Door: A Prisoner's Right to Rehabilitation, 60 Geo. L. J. 225 (1971); Note: Judicial Intervention in Prison Administration, A Wm. and Mary L. Rev. 178 (1967).

6. Coffin v. Reichard, 143 F. 2d 443, 445 (6th Cir. 1944).

7. 414 F. 2d at 681.

8. A Jam in the Revolving Door p. 225-6, See: Nat'l Advisory Comm. on Crime; Justice Standards and Goals; Corrections (1973); Singer, The Coming Right to Rehabilitation in Prisoners' Rights Sourcebook (M. Hermann and M. Haft eds. 1973); S. C. Dept. of Corrections, supra note 16; Goldfarb and Singer, supra note 16.

9. Taylor v. Sterret, 344 F. Supp. 411, 420 (N.D. Tex. 1972).

10. E.g., Williams v. N.Y., 337 U.S. 241 (1949) ("Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation have become important goals of criminal jurisprudence." p. 248) But cf. Powell v. Tex., 392 U.S. 514 (1968) ("The Court has never held that anything in the constitution requires that penal sanctions be designed solely to achieve therapeutic or rehabilitative effects . . ." p. 530).

11. 309 F. Supp. at 379.

12. Birnbaum, The Right to Treatment, 46 A.B.A.J. 499 (1960).

13. Rouse v. Cameon, 373 F.2d 451 (D.C. Cir. 1966) p. 452.

14. D.C. Code §21-562 (Supp. V. 1966).

15. Covington v. Harris, 419 F. 2d 617 (D.C. Cir. 1969); Dobs v. Cameron. 383 F. 2d 519 (D.C. Cir 1967); Poure v. Cameron, 373 F. 2d 451 (D.C. Cir. 1966); Maatallah v. Warden, Nev. State Prison, 470 P. 2d 122 (Nev. 1970).

16. Millard v. Cameron, 373 F. 2d 468 (D.C. Cir. 1966); Davy v. Sullivan, 354 F. Supp. 1320 (M.D. Ala. 1973); People ex rel. Ceschini v. Warden, 30 App. Div. 2d 649, 291 N.Y.S. 2d 200 (1968).



17. Easter v. D.C. 361 F. 2d 50 (D.C. Cir. 1966).

18. People ex rel. Blunt v. Narcotic Addiction Control Comm., 295 N.Y.S. 2d 276 (Sup. Ct.), aff'd. mem., 296 N.Y.S. 2d 533 (App. Div. 1968).

19. In re Elmore, 382 F. 2d 125 (D.C. Cir. 1967); Creek v. Stone, 379 F. 2d 106 (D.C. Cir. 1967); In re Tsesmilles, 24 Ohio App. 2d 153, 265 N.E. 2d 308 (1970).

20. Sas v. Md., 334 F. 2d, 506 (4th Cir. 1966); McCray v. State, 10 Crim. L. Rptr. 2132, 40 U.S.L.W. 2306 (Montgomery Cty., Md. Cir. Ct. 1971).

21. Rouse v. Cameron, 373 F. 2d 451 (D.C. Cir. 1966); Nason v. Superintendent of Bridgewater State Hospital, 353 Mass. 604, 233 N.E. 2d 908 (1968); Maatallah v. Warden, Nev. State Prison, 470 P. 2d 122 (Nev. 1970).

22. Donaldson v. O'Conner, 493 F. 2d 507 (1974); Wyatt v. Aderholt, 503 F. 2d, 1305 (1974); Burnhaur v. Dept. of Public Health, 503 F. 2d, 1319 (1974).

23. Wyatt, 325 F. Supp at 784.

24. Id. at 785.

25. 344 F. Supp at 390.

26. Donaldson, at 517.

27. 349 F. Supp., 575 (S.D.N.Y. 1972).

28. Holt v. Sarver, 309 F. Supp 360, 380 (E.D. Ark. 1970).

29. Jordan v. Fitzharris, 257 F. Supp. 647 (N.D. Cal. 1966).

30. Lee v. Tahash, 352 F. 2d 970, 972 (8th Cir. 1965); Jordan v Fitzharris, at 679.

31. Trop v. Dulles, 356 U.S. 86, 100-101 (1958)(Opinion of Warren, (J); Weems v. United States, 217 U.S. 349, 378 (1910); Jordan at 679.

32. Robinson v. Cal., 370 U.S. 660, 676 (1962) (Concurring opinion of Douglas, J.); Weems at 378; Jordan at 679.

33. Robinson v. Cal., at 677; Weems at 370; Jordan at 679.

34. Holt, 309 Fed. Supp. at 379.

35. Jackson v. Indiana, 406 U.S. 715, 738 (1972).

36. 344 F. Supp. at 390-91.

37. Dandridge v. Williams, 397 U.S. 471, 487 (1969).

38. Weber v. Aetna Casualty and Surety Co., 406 U.S. 164, 172 (1972).

39. 294 F. Supp at 1012-13.

40. 309 F. Supp. at 385. Accord, Wyatt v. Stickney, 325 F. Supp. 781, 334 F. Supp. 1341, 344 F. Supp. 373, 387.

41. Dandridge v. Williams; S. C. V. Katzenbach, 383 U.S. 301 (1966); Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483 (1955).

42. Cases cited notes 15-20 supra.

## CHAPTER VII

## THE DENIAL OF LEGAL RIGHTS TO KENTUCKY'S MENTALLY RETARDED OFFENDERS

1. In re Elmore, 382 F. 2d 125 (D. C. Cir. 1967); Creek v. Stone, 379 F. 2d 106 (D. C. Cir. 1967); In re Tsesmilles, 24 Ohio App. 2d 153, 265 N. E. 2d 308 (1970).

2. Deegans v. Commonwealth, 155 SW 201 441, 228 KY 664.



## APPENDIX A

### INMATE RECORD ANALYSIS

1. Institution: KSP_____ KSR_____ KCIW_____ Blkbn_____ Frbg_____ PMt_____ Har_____
2. Inmate #:_____
3. Date Received:_____
4. Age:_____
5. Sex: Male_____ Female_____
6. Race: Caucasian_____ Negro_____ Other_____
7. I. Q. Test: Beta_____ Wais_____ Both_____
8. Beta I. Q. Score: (1st)_____ Date_____ (2nd)_____ Date_____
9. Wais I. Q. Score: _____
10. Other Test Scores: SAT_____ Other_____
11. Current Offense: _____
12. Length of Sentence: _____
13. Prior Incarcerations: 1_____ 2_____ 3_____ 4 or more_____
14. Prior Offenses: Property_____ Person_____ (offenses for which incarceration resulted only)
15. Incarcerated as a Juvenile: Yes_____ No_____
16. Previous Probations: Yes_____ No_____ #_____
17. Parole Deferments: #_____ Mos._____
18. Parole Revocations: #_____ Tech. Violation_____ New Convict._____
19. Level of Education:_____ G. E. D.: Yes_____ No_____

20. Institutional Assignment: _____

21. Incident Reports and Problems: (within last 6 mos.) _____
Previously _____

Comments: _____
_____
_____

Institution
Inmate Number
Age
The individuals age at the time the data was collected.

Sex
Race
I.Q. Test Designation
The name(s) of all I.Q. tests administered to the individual were recorded.

I.Q. Score(s)
Many inmates had more than one I.Q. score. It was necessary to select one since only one score could be recorded. The Wais, since it is an individualized and more comprehensive test was selected first. If an inmate did not have a Wais I.Q. score the Beta score was used. Finally, if there was no Wais or Beta score available any other I.Q. score available (i.e. the O.P.C.T.) was recorded. If an inmate had been administered the same I.Q. test on different occasions, the latest score was used.

Escape or Attempted Escape

Current Offense
The offense for which the individual was currently incarcerated. If an individual was convicted and incarcerated for more than one offense, the offense for which the greatest sentence could be meted was recorded as the current offense. (e.g., if an inmate was convicted of murder, housebreaking, fraud and auto theft, the current offense was listed as murder)

Length of Sentence
The total number of years to which the individual was sentenced plus any additions to his sentence since his incarceration.

Prior Incarcerations (Adult)
Only time spent in an adult penal institution was recorded as a prior incarceration. Time spent in a jail was not included.



Prior Offenses
If an individual had a prior criminal record, the offenses were categorized as either person, property or both.

Prior Incarcerations (Juvenile)
Any prior commitment by the courts to a juvenile corrections facility was recorded.

Previous Probations
A yes or no was recorded to denote prior probations.

Parole Deferments
The number of parole deferments from 1 to 4 or more was recorded.

Parole Revocations
Treated in the same manner as parole deferments.

Education Level
The years of formal education completed by each inmate was recorded. Where an inmate had obtained an educational equivalency certificate the equivalent grade level was listed as the education level.

Institutional Assignment
The institutional assignments were narrowed to eight major categories: Academic; Vocational; Industry; Farm; Segregation; General Maintenance (which includes: Food Service, Laundry, Governmental Services, Athletic Department and all other institutional services.); Hospital and Geriatrics; Unassigned (The unassigned category includes the neuro-psychiatric unit and pre-release unit at Blackburn ); and Admittance and Orientation unit.

Incident Reports
Those instances where an inmate was penalized for violating institutional rules were recorded. This category was broken down into incident reports within past 6 months and incident reports prior to 6 months.

Time Served on Present Sentence
The time served was computed from the date of incarceration to the date the data was collected.

G.E.D. Information
If an inmate had obtained a high school equivalency certificate within the corrections system this was recorded.

## APPENDIX B

KENTUCKY ADULT OFFENDERS BY I.Q. CATEGORY FOR AGE, SEX AND RACE

| AGE: | Retarded | | Non-Retarded | | No I.Q. Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| 18-22 years | 21 | 17.7 | 617 | 28.3 | 50 | 10.6 |
| 23-27 years | 32 | 26.9 | 590 | 27.1 | 76 | 16.1 |
| 28-35 years | 30 | 25.2 | 439 | 20.2 | 138 | 29.2 |
| 36 years & up | 36 | 30.2 | 532 | 24.4 | 208 | 44.1 |
| # Inmates | 119 | | 2178 | | 472 | |
| # Inmates with No Age Reported | 3 | | 12 | | 4 | |
| TOTAL | 122 | | 2190 | | 476 | |

| RACE: | Retarded | | Non-Retarded | | No I.Q. Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| White | 92 | 76.0 | 1535 | 70.4 | 338 | 71.2 |
| Non-White | 29 | 24.0 | 646 | 29.6 | 136 | 28.8 |
| # Inmates | 121 | | 2181 | | 474 | |
| # Inmates with No Race Reported | 1 | | 9 | | 2 | |
| TOTAL | 122 | | 2190 | | 476 | |

| SEX: | Retarded | | Non-Retarded | | No I.Q. Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| Male | 120 | 98.4 | 2101 | 95.9 | 465 | 97.8 |
| Female | 2 | 1.6 | 89 | 4.1 | 11 | 2.2 |
| # Inmates | 122 | | 2190 | | 476 | |
| # Inmates with No Sex Reported | 0 | | 0 | | 0 | |
| TOTAL | 122 | | 2190 | | 476 | |



## APPENDIX C

Education Levels of Kentucky Adult Offenders By I.Q. Category

| Education Levels: | Retarded | | Non-Retarded | | No I.Q. Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| Cannot read or write | 8 | 6.8 | 2 | .1 | 8 | 1.7 |
| 1st-2nd Grade | 8 | 6.8 | 14 | .6 | 10 | 2.1 |
| 3rd-4th Grade | 24 | 20.3 | 74 | 3.4 | 30 | 6.4 |
| 5th-6th Grade | 18 | 15.3 | 171 | 7.9 | 64 | 13.7 |
| 7th-8th Grade | 40 | 33.9 | 585 | 27.2 | 138 | 29.6 |
| 9th-11th Grade | 14 | 11.9 | 796 | 36.9 | 138 | 29.6 |
| 12th Grade | 5 | 4.2 | 429 | 19.9 | 66 | 14.1 |
| Above 12th Grade | 1 | .8 | 86 | 4.0 | 13 | 2.8 |
| # Inmates | 118 | | 2157 | | 467 | |
| # Inmates on whom ed. levels not reported | 4 | | 33 | | 9 | |
| TOTAL | 122 | | 2190 | | 476 | |

FOR G.E.D.'S OBTAINED

| Retarded offenders who have obtained G.E.D.'s | | Non-Retarded Offenders who have obtained G.E.D.'s | | No I.Q. Score offenders who have obtained G.E.D.'s | |
|---|---|---|---|---|---|
| 1 | 0.8% | 237 | 10.8% | 36 | 7.6% |

## APPENDIX D

Institutional Assignment of Kentucky Adult Offenders By I.Q. Category

| Institutional Assignments: | Retarded | | Non-Retarded | | No I.Q. Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| Academic | 5 | 4.3 | 162 | 7.4 | 17 | 3.6 |
| Vocational | 1 | .9 | 202 | 9.3 | 13 | 2.8 |
| Industry | 11 | 9.5 | 283 | 13.0 | 53 | 11.3 |
| Farm | 8 | 6.9 | 182 | 8.3 | 63 | 13.4 |
| Segregation | 10 | 8.6 | 59 | 2.7 | 31 | 6.6 |
| General Maintenance | 56 | 48.2 | 1014 | 46.5 | 214 | 45.5 |
| Hospital/ Geriatrics | 3 | 2.6 | 38 | 1.7 | 10 | 2.1 |
| Unassigned | 21 | 18.1 | 202 | 9.3 | 55 | 11.8 |
| Admissions & Orientation | 1 | .9 | 40 | 1.8 | 4 | .9 |
| # Inmates | 116 | | 2181 | | 460 | |
| # Inmates with no Institutional Assignments reported | 6 | | 9 | | 16 | |
| TOTAL | 122 | | 2190 | | 476 | |



## APPENDIX E

CURRENT OFFENSES OF KENTUCKY ADULT OFFENDERS BY I.Q. CATEGORY

| Current Offense: | Retarded | | Non-Retarded | | No I.Q. Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| Murder | 24 | 19.7 | 172 | 7.9 | 70 | 15.0 |
| Manslaughter | 13 | 10.7 | 214 | 9.8 | 35 | 7.5 |
| Rape/Sex Crimes | 16 | 13.0 | 174 | 8.0 | 45 | 9.6 |
| Armed Robbery | 9 | 7.4 | 344 | 15.7 | 72 | 15.4 |
| Assault | 15 | 12.3 | 138 | 6.2 | 25 | 5.3 |
| House Breaking/ Burglary | 26 | 21.3 | 431 | 19.7 | 95 | 20.3 |
| Forgery/Fraud | 4 | 3.3 | 188 | 8.6 | 32 | 6.8 |
| Robbery/Larceny | 13 | 10.7 | 255 | 11.7 | 43 | 9.2 |
| Drug Offenses | 0 | 0 | 146 | 6.7 | 37 | 7.9 |
| Miscellaneous Property Crimes | 2 | 1.6 | 125 | 5.7 | 14 | 3.0 |
| # Inmates | 122 | | 2187 | | 468 | |
| TOTAL | 122 | | 2190 | | 476 | |

## APPENDIX F

### LENGTH OF SENTENCES OF KENTUCKY ADULT OFFENDERS BY I.Q. CATEGORY

| Length of Sentence: | Retarded | | Non-Retarded | | I.Q. No Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| 1 to 3 years | 26 | 21.3 | 607 | 27.9 | 79 | 17.0 |
| 3+ - 9 years | 23 | 18.9 | 552 | 25.4 | 104 | 22.4 |
| 9+ - 15 years | 26 | 21.3 | 418 | 19.3 | 98 | 21.2 |
| 15+ - 21 years | 8 | 6.6 | 236 | 10.9 | 51 | 11.0 |
| 21 + years | 5 | 4.1 | 50 | 2.3 | 15 | 3.2 |
| Life | 31 | 25.4 | 293 | 13.4 | 98 | 21.2 |
| Life Without Parole | 3 | 2.5 | 11 | .5 | 16 | 3.4 |
| Death | 0 | 0 | 1 | .04 | 3 | .6 |
| # Inmates | 122 | | 2168 | | 464 | |
| # Inmates on Whom No Length of Sentence Reported | 0 | | 22 | | 12 | |
| TOTAL | 122 | | 2190 | | 476 | |



## APPENDIX G

### KENTUCKY ADULT OFFENDERS BY I.Q. CATEGORY FOR TIME SERVED ON PRESENT SENTENCE

| Time Served: | Retarded | | Non-Retarded | | I.Q. No Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| 6 mos. or less | 17 | 14.3 | 539 | 24.6 | 100 | 21.1 |
| 6 mos. - 1 year | 17 | 14.3 | 443 | 20.3 | 76 | 16.0 |
| 1+ - 3 years | 35 | 29.4 | 691 | 31.6 | 138 | 29.1 |
| 3+ - 10 years | 36 | 30.3 | 431 | 19.7 | 126 | 26.6 |
| 10+ - 15 years | 5 | 4.2 | 39 | 1.8 | 17 | 3.6 |
| 15 years & over | 9 | 7.6 | 44 | 2.0 | 17 | 3.6 |
| # Inmates | 119 | | 2187 | | 474 | |
| # Inmates on Whom Time Served Not Reported | 3 | | 3 | | 2 | |
| TOTAL | 122 | | 2190 | | 476 | |

## APPENDIX H

### INCIDENT REPORTS OF KENTUCKY ADULT OFFENDERS

### BY I.Q. CATEGORY

| Incident Reports Within 6 Months | Retarded | | Non-Retarded | | No I.Q. Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| 1 | 23 | 18.9 | 319 | 14.6 | 73 | 15.3 |
| 2 | 7 | 5.7 | 142 | 6.5 | 30 | 6.3 |
| 3 | 2 | 1.6 | 55 | 2.5 | 7 | 1.5 |
| 4 or more | 3 | 2.5 | 46 | 2.1 | 7 | 1.5 |
| TOTAL | 35 | 28.7 | 562 | 25.7 | 117 | 24.6 |
| Incident Reports Prior to 6 Months | | | | | | |
| 1 | 11 | 10.8 | 243 | 14.7 | 61 | 16.3 |
| 2 | 7 | 6.9 | 144 | 8.7 | 35 | 9.4 |
| 3 | 8 | 7.8 | 91 | 5.5 | 17 | 4.5 |
| 4 or more | 27 | 26.5 | 332 | 20.1 | 87 | 23.3 |
| TOTAL | 53 | 52.0 | 810 | 49.1 | 200 | 53.5 |
| # Inmates Who Have Been Incarcerated 6 Months or Less | 17 | | 539 | | 100 | |



## APPENDIX I

### PAROLE DEFERMENTS OF KENTUCKY ADULT OFFENDERS

### BY I.Q. CATEGORY

| Parole Deferments: | Retarded | | Non-Retarded | | I.Q. No. Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| 1 | 32 | 26.2 | 499 | 22.8 | 120 | 25.2 |
| 2 | 11 | 9.0 | 169 | 7.7 | 27 | 5.7 |
| 3 | 6 | 4.9 | 63 | 2.9 | 14 | 2.9 |
| 4 or more | 7 | 5.7 | 39 | 1.8 | 16 | 3.4 |
| TOTAL | 56 | 45.9 | 770 | 35.2 | 177 | 37.2 |

## APPENDIX J

Parole Revocations of Kentucky Adult Offenders By I. Q. Category

| Parole Revocations: | Retarded | | Non-Retarded | | I.Q. No. Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| 1 | 20 | 16.4 | 342 | 15.6 | 62 | 13.0 |
| 2 | 3 | 2.5 | 32 | 1.5 | 13 | 2.7 |
| 3 | 1 | .8 | 7 | .3 | 2 | .4 |
| 4 or more | 0 | 0 | 3 | .1 | 2 | .4 |
| TOTAL | 24 | 19.7 | 384 | 17.5 | 79 | 16.6 |



## APPENDIX K

Kentucky Adult Offenders By I.Q. Category For Prior Incarcerations

| Prior Incarcerations: | Retarded | | Non-Retarded | | I.Q. No. Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| 0 (1st offender) | 77 | 64.7 | 1187 | 54.2 | 137 | 28.8 |
| 1 | 18 | 15.1 | 443 | 20.2 | 80 | 16.8 |
| 2 | 8 | 6.7 | 254 | 11.6 | 83 | 17.4 |
| 3 | 9 | 7.6 | 112 | 5.1 | 58 | 12.2 |
| 4 or more | 7 | 5.9 | 132 | 6.0 | 108 | 22.7 |
| # Inmates | 119 | | 2128 | | 465 | |
| # Inmates with no prior incarceration record reported | 3 | | 62 | | 11 | |
| TOTAL | 122 | | 2190 | | 476 | |

## APPENDIX L

KENTUCKY ADULT OFFENDERS BY I.Q. CATEGORY FOR TYPE OF PRIOR OFFENSES COMMITTED

| Prior Offenses: | Retarded | | Non-Retarded | | I.Q. No. Score | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| Property | 26 | 61.9 | 697 | 74.1 | 219 | 67.0 |
| Person | 6 | 14.3 | 106 | 11.3 | 31 | 9.5 |
| Both | 10 | 23.8 | 138 | 14.6 | 77 | 23.5 |
| TOTAL | 42 | | 941 | | 327* | |

* 329 offenders with no I.Q. score have committed prior offenses. The nature of the offenses was not reported for 2 offenders.



## APPENDIX M

Kentucky Adult Offenders by I.Q. Category for (A) Prior Juvenile Commitments, (B) Previous Probations, and (C) Records of Previous Escapes or Attempted Escapes

| | Retarded Offenders | | Non-Retarded Offenders | | No I.Q. Score Offenders | |
|---|---|---|---|---|---|---|
| A. **Had prior** juvenile committments | 24 | 19.7% | 575 | 26.3% | 124 | 26.1% |
| B. Had previous probations | 21 | 12.2% | 474 | 21.6% | 84 | 17.6% |
| C. Had records of previous escapes or attempted escapes | 10 | 8.2% | 111 | 5.1% | 29 | 6.1% |

## APPENDIX N

Data Summary for the Entire Inmate Population*

| | No | % |
|---|---|---|
| Total Number of Inmates: | 2788 | 93.1 |
| KSP | 982 | 96.4 |
| KSR | 1381 | 90.6 |
| KCIW | 102 | 93.6 |
| BBC | 146 | 89.0 |
| Frbg | 105 | 97.2 |
| Harlan Co. | 33 | 110.0*** |
| Bell Co. | 39 | 100.0 |

Footnote

* The entire population referred to is the 2788 inmates represented by the data. The base figures used for population were those of the Department of Corrections as of June 1, 1974. For an explanation of the 206 inmates not represented see Chapter II.

** The 110% for Harlan County occurred as the result of transfers to Harlan County after the population figures for May were released but before the data on Harlan County was collected.

| Age: | No | % |
|---|---|---|
| 18-22 years | 688 | 24.8 |
| 23-27 years | 698 | 25.2 |
| 28-35 years | 607 | 21.9 |
| 36 years and up | 777 | 28.1 |
| | 2770 | 100.0 |
| 18 offenders had no age reported | | |

| Sex: | No | % |
|---|---|---|
| Male | 2686 | 96.3 |
| Female | 102 | 3.7 |
| | 2788 | 100.0 |

| Race: | No | % |
|---|---|---|
| White | 1965 | 70.8 |
| Non-White | 811 | 29.2 |
| | 2776 | 100.0 |
| 12 offenders had no race reported | | |



| I.Q. Scores: | No | % |
|---|---|---|
| 0-24 | 0 | .0 |
| 25-39 | 3 | .1 |
| 40-55 | 26 | 1.1 |
| 56-69 | 93 | 4.0 |
| 70-85 | 437 | 18.9 |
| 86-119 | 1655 | 71.6 |
| 120 and above | 98 | 4.3 |
| | 2312 | 100.0 |

| Inmates with no I.Q. Scores: | No | % |
|---|---|---|
| | 476 | 17.1 |

| Current Offense: | No | % |
|---|---|---|
| Murder | 266 | 9.6 |
| Manslaughter | 262 | 9.4 |
| Rape/Sex Crimes | 235 | 8.5 |
| Armed Robbery | 425 | 15.3 |
| Assault | 177 | 6.4 |
| Burglary/House Breaking | 552 | 19.9 |
| Forgery/Fraud | 224 | 8.1 |
| Robbery/ Larceny | 312 | 11.2 |
| Drug offenses | 183 | 6.5 |
| Misc. Property Crimes | 141 | 5.1 |
| | 2777 | 100.0 |
| 11 offenders had no offense reported | | |

| Length of Sentence | No | % |
|---|---|---|
| 1-3 years | 712 | 25.9 |
| 3-9 years | 679 | 24.7 |
| 9-15 years | 541 | 19.7 |
| 15-21 years | 295 | 10.7 |
| 21 years and above | 70 | 2.5 |
| Life | 422 | 15.3 |
| Life without Parole | 30 | 1.1 |
| Death | 4 | .1 |
| | 2753 | 100.0 |
| 35 offenders had no length of sentence reported | | |

| Escapes or Attempted Rapes: | 150 | 5.4 |
|---|---|---|

| Prior Incarcerations: | No | % |
|---|---|---|
| 0 (1st offenders) | 1400 | 51.6 |
| 1 | 541 | 20.0 |
| 2 | 345 | 12.7 |
| 3 | 178 | 6.6 |
| 4 or more | 247 | 9.1 |
| | 2711 | 100.0 |

77 offenders had nothing reported for prior incarcerations

| Prior Offenses: | No | % |
|---|---|---|
| Property | 947 | 72.6 |
| Person | 138 | 10.6 |
| Both | 1304 | 100.0 |

| Prior Juvenile Commitments: | No | % |
|---|---|---|
| | 724 | 26.0 |

| Previous Probations: | No | % |
|---|---|---|
| | 577 | 20.7 |

| Parole Deferments: | No | % |
|---|---|---|
| 1 | 651 | 23.4 |
| 2 | 207 | 7.4 |
| 3 | 84 | 3.0 |
| 4 or more | 61 | 2.2 |
| | 1003 | 100.0 |

| Parole Revocations: | No | % |
|---|---|---|
| 1 | 424 | 15.2 |
| 2 | 47 | 1.7 |
| 3 | 10 | .4 |
| 4 or more | 5 | .2 |
| | 486 | 17.4 |



| Education levels: | No | % |
|---|---|---|
| Cannot read or write | 18 | .7 |
| 1st-2nd Grade | 32 | 1.2 |
| 3rd-4th Grade | 128 | 4.7 |
| 5th-6th Grade | 253 | 9.2 |
| 7th-8th Grade | 763 | 27.8 |
| 9th-11th Grade | 948 | 34.6 |
| 12th Grade | 500 | 18.2 |
| Above 12th Grade | 100 | 3.6 |
| | 2742 | 100.0 |

46 offenders had no education level reported

| Institutional Assignments: | No | % |
|---|---|---|
| Academic | 186 | 6.7 |
| Vocational | 216 | 7.8 |
| Industry | 347 | 12.5 |
| Farm | 253 | 9.1 |
| Segregation | 100 | 3.6 |
| Hospital/Geriatrics | 51 | 1.8 |
| General Maintenance | 1284 | 46.4 |
| Unassigned | 278 | 10.0 |
| Admissions & Orientation | 55 | 2.0 |
| | 2770 | 99.9 |

18 offenders had no Institutional Assignment reported

| Incident Reports: (within past 6 months) | No | % |
|---|---|---|
| 1 | 415 | 14.9 |
| 2 | 179 | 6.4 |
| 3 | 64 | 2.3 |
| 4 or more | 56 | 2.0 |
| | 714 | 25.6 |

| Time Served on Present Sentence: | No | % |
|---|---|---|
| 6 months or less | 656 | 23.6 |
| 6 months-1 year | 536 | 19.3 |
| 1 year-3 years | 864 | 31.1 |
| 3 years-10 years | 593 | 21.3 |
| 10 years-15 years | 61 | 2.2 |
| 15 years and up | 70 | 2.5 |
| | 2780 | 100.0 |

8 offenders had nothing reported for time served

# IN HOUSE

REGULAR SESSION, 1974

HOUSE RESOLUTION NO. 84

THURSDAY, MARCH 7, 1974

Representatives Larry J. Hopkins and John Swinford introduced the following bill, which originated in the House, was ordered to be printed.





A RESOLUTION directing the Legislative Research Commission to cause to be conducted a study of Mentally Retarded Offenders in Kentucky Adult and Juvenile Correctional Institutions.

WHEREAS, Mentally Retarded Offenders account for a large portion of the population of Kentucky Correctional Institutions; and

WHEREAS, the Retarded Offenders have an impact on the discipline in such institutions; and

WHEREAS, the Retarded Offender has special needs not provided for in Kentucky's Correctional Institutions; and

WHEREAS, Mentally Retarded Offenders are not at this time receiving services which are specifically designed to intervene in their criminal behavior; and

WHEREAS, parole services are not currently provided to meet the needs of the Mentally Retarded Offender; and

WHEREAS, it is in the best interest of all the citizens of the Commonwealth to provide corrective and rehabilitative services to insure that the public safety is kept;

NOW, THEREFORE,

Be it resolved by the General Assembly of the Commonwealth of Kentucky:

Section 1. That the Legislative Research Commission is directed to make or cause to be made a comprehensive study of:

(1) The overall problem of Mentally Retarded Offenders in Kentucky Adult and Juvenile Correctional Facilities;

(2) What services such as, academic and vocational education, counseling, and parole follow-up services might be provided;

(3) What type of facility Mentally Retarded Offenders should be housed;

(4) The training needs for staff who deal with the retarded;

(5) Realistic vocational training programs for the Mentally Retarded Offender;

(6) The necessary considerations for services for Mentally Retarded Offenders returning to the community on parole; and

(7) Publish said study together with recommendations by December 1975.

Section 2. All cabinets and agencies and departments of state government are directed to provide full assistance and information to the Legislative Research Commission upon request.

Section 3. The Kentucky Association for Retarded Children, the Blue Grass Association for Mental Retarda-





tion will provide technical assistance and staff support and the Department of Corrections Research Division will provide staff support.

Section 4. The approximate cost of this study is estimated to be $6,000.

PART 2

# MENTALLY RETARDED OFFENDERS IN JUVENILE CORRECTIONAL INSTITUTIONS

# CHAPTER I - - INTRODUCTION

## PURPOSE

House Resolution 84, passed by the 1974 General Assembly, directed the Legislative Research Commission (LRC) to study factors associated with mentally retarded offenders in Kentucky adult and juvenile correctional facilities. The objectives to be accomplished by the LRC as set forth in HR 84 were to study:

1. The overall problem of mentally retarded offenders in Kentucky correctional facilities;
2. The services which might be provided for the mentally retarded offender;
3. The type of facility in which mentally retarded offenders should be housed;
4. The training needs of staff working with the mentally retarded offender;
5. Realistic vocational training programs for the mentally retarded offender; and
6. The needs associated with community-based services for the mentally retarded offender on parole.*

* The General Assembly Report of the Health and Social Services Facilities Review Commission, and the Legislative Research Commission Report Number 112 may be referenced for further discussion in regard to mental retardation programs and facilities.

BACKGROUND

History

According to Brown and Courtless (1971), interest in and responses to the mentally retarded offender in the United States may be arbitrarily broken down into three periods: Early Enthusiasm, 1890-1920; Denial and Neglect, 1921-1960, and the Contemporary Scene, 1961 - present.

Early Enthusiasm

Two phases may be noted within the period of Early Enthusiasm: A pre-testing phase (1890-1914), and an early testing phase (1915-1920). In the pre-testing phase, it was believed that mental retardation, poverty, insanity, and physical and moral degeneracy indicated crime-associated, deviant behavior, and thus mental retardation was the cause of criminal behavior.

The early testing phase of this period immediately preceded World War I, with the popularization of intelligence testing. During this phase, mental retardation was no longer categorized with crime, insanity and degeneracy as resulting in deviancy, as it had been in the pre-testing phase, but it was regarded as a separate but major cause of crime and delinquency.

Denial and Neglect

The period of Denial and Neglect rejected the idea that most offenders were retarded. This movement resulted, in part, from studies indicating that the intelligence of the general adult population of the United States was not significantly higher than the intelligence of the population of incarcerated offenders. Consequently, the prominent feature of this period was a general lack of concern



for the relation of mental retardation to criminality.

The Contemporary Scene

The present period of the Contemporary Scene began in 1961 with a renewed interest in the relationship between mental retardation and criminal behavior. In that year, the American Bar Foundation published Mentally Disabled and the Law, and the late President John F. Kennedy appointed a panel to study mental retardation. Both the American Bar Foundation's publication and the Presidential Panel's Task Force on Law focused much attention on the mentally retarded offender, which led to new research efforts in this area.

Mental Retardation and Intelligence Testing

At present, the American Association on Mental Deficiency (1973) (AAMD) defines mental retardation as ". . . significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period."

One may note that "cause" is disregarded in this definition and the current functions of the individual are stressed. Intellectual functioning as reflected by a score on a standardized intelligence (IQ) test and adaptive behavior are taken into account equally when assessing mental retardation. Table 1 displays the concepts involved in the diagnosis of mental retardation. It seems significiant to reiterate that both intellectual functioning and adaptive behavior must be considered retarded before an individual may be classified "mentally retarded."

Table 1
Interaction of Intellectual Functioning and Adaptive Behavior
In Determining Mental Retardation

| Adaptive Behavior | Intellectual Functioning: Not Retarded | Intellectual Functioning: Retarded |
|---|---|---|
| Not Retarded | | |
| Retarded | | X |

These two key factors in the determination of mental retardation are both subject to psychological testing. Intellectual functioning may be measured adaptive behavior may be measured by intelligence tests such as the Wechsler Scales and the Stanford-Binet, and adaptive behavior may be measured by such tests as the Vineland Social Maturity Scale, the Fairview Self-Help Scale and the Adaptive Behavior Scale.

Within the general classification of mental retardation, diagnostic categories reflect the degree of mental retardation, which, according to AAMD standards, are mild, moderate, severe and profound (1973). Table 2 compares AAMD terminology with its roughly equivalent educational terminology.

Table 2
Levels of Mental Retardation as Measured by
The Wechsler Intelligence Scale
in AAMD and Education Terminology

| AAMD | Education | Measured IQ (Wechsler) |
|---|---|---|
| Mild | Educable | 55-69 |
| Moderate | Trainable | 40-54 |
| Severe | Dependent-Custodial | 25-39 |
| Profound | Dependent-Custodial | -24 |



Although mental retardation lends itself to psychological testing, the many inadequacies and controversies inherent in the present conceptions of diagnostic tests necessitate further discussion and explanation. One strong criticism of psychological tests is their use without the explicit recognition that tests do not fully describe "human intellect." Sarason and Doris (1969) argued that tests are not necessarily invalid or diagnostically useless for the assignment of the label "mentally retarded," but rather incomplete. The AAMD, additionally, has made it clear that mental test scores should be used in conjunction with all possible information about the individual: For each time that an environmental change (transient factors such as fatigue, a common cold, or permanent impairments like asphyxia, cerebral palsy, test composition, cultural-economic factors, examiner's performance, etc.) can be shown to affect a test score, one can legitimately question whether only the score has been changed or whether there have been other changes in the subject's intellectual functioning. The affect of such factors on an individual's basic intelligence largely depends upon one's definition of intelligence and expectations about the reflection of intelligence in tests. For example, Blatt and Garfunkel (1965), as reported by Sarason and Doris, concluded from their studies that school tests of problem-solving behavior for the mentally retarded reflect a greater degree of out-of-school (i.e., social and vocational) success than in-school performance and psychological test predictions. This type of finding lends further doubt to the soundness of attempts to understand the etiology of mental retardation by depending solely on intelligence test data.

Liverant (1960) added that the most crucial failure of test predictions lies in the lack of systematic specification of the effect(s) of situational variables on behavior.

Other current positions taken on psychological tests hold that they are used too rigidly, in that anyone interested in labeling people can have a "field day" with test results; tests may become self-fulfilling prophecies, as poor test results may yield poor behavior, since one believes that a poor behavior is expected of him; tests discriminate against some individuals in that they are not designed for the culturally disadvantaged who may perform at a lower level; tests may invade privacy; and intelligence tests may be measuring an untestable concept. Finally, the assumption that for most children's IQ's tend to become fairly stable by school age, may result in neglecting to reassess mental status. While the majority do tend to remain rather stable in their IQ's over time, a sizeable minority shows drastic change. Fisher (1964), as reported by Webb (1960), has concluded that the Wechsler Adult Intelligence Scale (WAIS), in particular, in invalid for the assessment of intelligence of the mentally retarded due to the discrepancy between initial Wechsler Intelligence Scale for Children (WISC) IQ's and later WAIS, Wechsler-bellevue, and Standford-Binet IQ's, as the WAIS consistently yields higher IQ estimates than the WISC with mentally retarded subjects.

Fulfilling the criteria for the diagnosis of mental retardation may be hindered by inadequate tests or the inadequate use of conventional tests. However, Sarason and Galdwin (1958), as reported by Sarason and Doris, have



noted the inability to focus on and assess the level and quality of problem-solving behavior outside the test situation. Empirical guidelines for standardized testing procedures with carefully documented normative data, therefore, seem to be needed in order to determine intellectual status.

## CHAPTER II - - CURRENT PROVISIONS

The juvenile courts have primary jurisdiction over matters concerning minors. As set forth in Kentucky Revised Statutes (KRS) 208.020, the juvenile court has exclusive jurisdiction in proceedings concerning any child under eighteen years of age who has committed a public offense (excluding moving motor vehicle violations), is out of parental control, habitually truant, or is dependent, neglected, needy or abandoned.

Before disposing of a case, the court must cause an investigation to be made concerning the nature of the complaint against the child (KRS 208.140). The court is further charged to have a child examined by an appropriate professional if there is reason to believe the child may be "mentally ill" or "defective" (KRS 208.150). If a child is determined to be mentally ill or defective, the court is then required to proceed "...in accordance with the law governing inquests concerning sanity." Since the antiquated term "sanity" and its associated provisions were replaced by "Incompetency Proceedings" and 'Hospitalization of Mental Patients" statutes (KRS Chapters 202 and 203), the court would probably initiate incompetency or hospitalization proceedings. However, if the court does not detect "mental illness" or "defectiveness," and commits a child to the Department for Human Resources, the Department must observe and classify the case. If the Department determines the child to be mentally ill or defective, then "the Department may use state mental hospital facilities or other resources for observation of mental conditions" (KRS 208.460).

The statutory provisions charge the Department for Human Resources with the responsibility for the treatment of juvenile offenders (KRS Chapter 208), and the treatment of the mentally ill and mentally retarded (KRS Chapters 202,

203 and 210). The Bureau for Health Services and the Bureau for Social Services, within the Department for Human Resources, are responsible for mental retardation programs and juvenile offender programs, respectively. The juvenile offender programs currently delivered by the Bureau for Social Services were previously delivered by the former Department of Child Welfare, and the mental retardation programs currently delivered by the Bureau for Health Services previously were provided by the former Department of Mental Health.

Juvenile courts apparently commit juvenile offenders to the Bureau for Social Services in a manner similar to higher courts committing the mentally retarded to the Bureau for Health Services on an involuntary basis.

Upon being adjudicated by a juvenile court, a child may be sent to one of two reception and diagnostic facilities: the Central Kentucky Reception Center in Louisville, or the Northern Kentucky Reception Center in Crittenden. At either reception center, a child receives social, educational, vocational aptitude, physical, and psychological diagnostic tests. He also receives any medical, dental, or psychiatric services that may be needed. Personal and religious counseling, and recreational programs are also offered to the child during his stay at a reception center. The average length of stay at a reception center was reported to be approximately thirty to forty-five days. (See the "Current Facilities" section for a more detailed description of the reception centers).

Categorically, a child leaving a reception center may be returned to his home, to a foster home, to a community-based group home, to a treatment facility operated by the Bureau for Social Services or, in cases of extremely



mentally retarded children, to a residential facility operated by the Bureau for Health Services.

The Bureau for Health Services currently operates three residential facilities for the mentally retarded: Oakwood, Outwood, and Hazelwood. Oakwood and Outwood provide programs for ambulatory mentally retarded juveniles and adults, and Hazelwood provides care for the non-ambulatory mentally retarded. Oakwood and Outwood were designed for longer periods of treatment (i.e., approximately three years) than the facilities operated by the Bureau for Social Services.

Additionally, the Bureau for Health Services operates a Diagnostic and Evaluation Center to provide diagnostic services for children who may be mentally ill or retarded.

## CURRENT SERVICES AND FACILITIES

The following are general descriptions of the services provided by treatment facilities, along with specific descriptions of each facility. It is important to note that facility services and programs change periodically and that facilities are described as they appeared to be at the time of data-gathering for the study.

### Services

Medical and dental services usually are provided to treatment center residents by nurses, physicians, and dentists within the community. Medications needed by residents are purchased at local pharmacies, stored at the facilities under security and distributed by residential aides.

Psychological services are provided by only one treatment facility, Lynwood Treatment Center, which employs one psychologist. At the time of drafting this report, no treatment facility had a psychiatrist (each of the two reception centers employ both a psychologist and a psychiatrist).

Each facility provides an academic program in which their residents participate. The intensity of the programs vary with each facility in respect to program involvement as well as the number of teachers employed.

Vocational training is perhaps the most varied of the services provided by the treatment facilities. Five facility superintendents indicated that they had no vocational training programs, two indicated that they offer "part-time" vocational training, and only one facility, Frenchburg Boys' Center, had a relatively complete vocational training program.

Every facility offers some type of religious program to their residents. The facilities either employed chaplains who provide services for the residents at the facilities, or the children are transported to local churches. Either church or Sunday school attendance appears to be mandatory at each facility.

Either individual or group counseling, or both, is provided to the residents of every facility.

Table 5 indicates the types and number of staff employed by each facility in conjunction with the delivery of services.

Reception Centers

1. Central Kentucky Reception Center

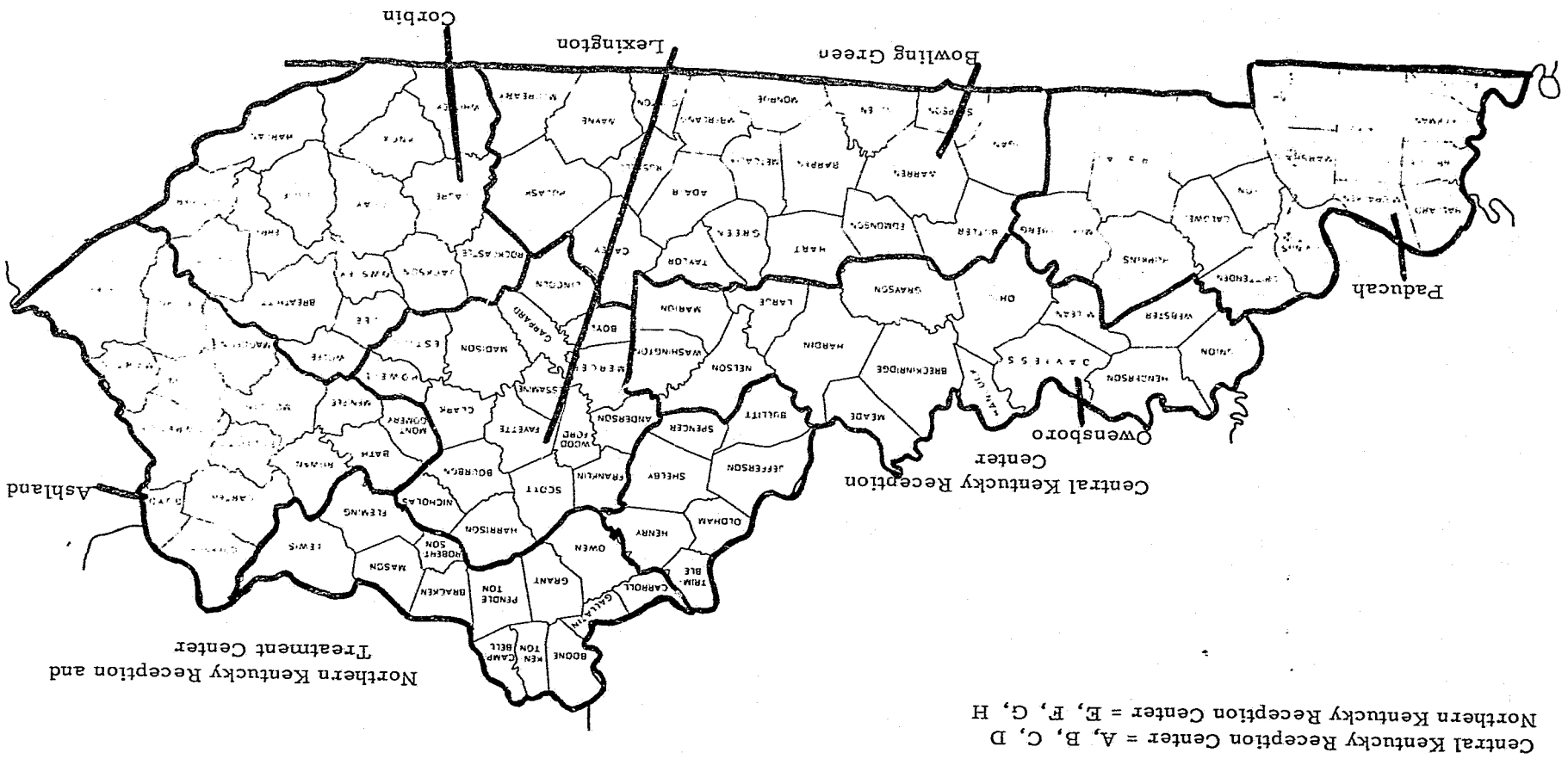
The Central Kentucky Reception Center, located in the Louisville area, began operations in 1955 to accommodate approximately fifty male and female



TABLE 5

Type and Number of Staff Employed By
The Department of Social Services Treatment Facilities

| | Northern Kentucky Reception Center | Daniel Boone Youth Center | Green River Boys' Camp | Lake Cumberland Boys' Camp | Lynwood Treatment Center | Morehead Treatment Center | Woodsbend Boys' Camp | Frenchburg Boys' Camp |
|---|---|---|---|---|---|---|---|---|
| Chaplain | 1 | 0 | 0 | 1 | 1 | 1 | 0 | 1 |
| Juvenile Counselor/ Social Worker | 5 | 4 | 3 | 1 | 4 | 4 | 2 | 3 |
| Kitchen Personnel | 3 | 3 | 3 | 3 | 3 | 3 | 3 | 3 |
| Maintenance Worker | 4 | 2 | 1 | 0 | 5 | 2 | 1 | 4 |
| Psychiatrist | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Psychologist | 3 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| Recreation Leader | 2 | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Residential Aide | 24 | 14 | 8 | 8 | 34 | 15 | 10 | 26 |




Source: Department for Human Resources

Figure 1 - Areas for Reception Center Intake of Adjudicated Delinquents

Central Kentucky Reception Center = A, B, C, D
Northern Kentucky Reception Center = E, F, G, H

B-17

TABLE 5 (Continued)

Type and Number of Staff Employed By
The Department of Social Services Treatment Facilities

| | Northern Kentucky Reception Center | Daniel Boone Youth Center | Green River Boys' Camp | Lake Cumberland Boys' Camp | Lynwood Treatment Center | Morehead Treatment Center | Woodsbend Boys' Camp | Frenchburg Boys' Camp |
|---|---|---|---|---|---|---|---|---|
| Teacher Academic Education | 5 | 4 | 4 | 5 | 8 | 3 | 3 | 1 |
| Arts and Crafts | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 1 |
| Vocational Training | 0 | 0 | 0 | 1 part-time | 0 | 3 | 0 | 3 |
| Teacher Aide | 0 | 3 | 0 | | 4 | 1 | 0 | 0 |

B-16

adjudicated youth. The Central Kentucky Reception Center serves as an intake point for all juveniles from the westermost fifty-nine counties in Areas A, B, C, and D (as displayed in Figure 1) who have been committed as delinquents to the Department for Human Resources.

Treatment begins with a child's entrance into the reception center. Each child is evaluated by trained professionals from medical, dental, educational, vocational, psychological, psychiatric, religious and interpersonal (through individual and group counseling, and recreational interaction) points of view.

At the end of the diagnostic phase, usually thirty to forty-five days, the staff prepares a comprehensive written report and specific treatment plan for each child and decides which treatment facility the child should be sent in order to best implement the treatment plan.

Until December, 1973, both the Central Kentucky Reception Center and the Northern Kentucky Reception Center operated treatment programs for children who had been assigned to one of the treatment facilities, but for any number of reasons had been unable to function adequately at that facility. In December, 1974, the Central Kentucky Reception Center terminated their treatment program and began assigning this type of child to the treatment unit of the Northern Kentucky Reception Center. Additionally, those youth whom the staff of the Central Kentucky Reception Center deem mentally retarded are sent to the Northern Kentucky Reception Center's treatment unit.

At the time of data collection, the Central Kentucky Reception Center was in the process of being phased-out as a reception center, with plans to



to convert it to a maximum security facility.

2. Northern Kentucky Reception Center

The Northern Kentucky Reception Center, located in Crittenden, Kentucky, began operations in 1972 to accommodate approximately fifty male and female youth. The Northern Kentucky Reception Center serves as a regional intake point for all juveniles committed as delinquents to the Department for Human Resources in areas E, F, G, and H (as designated in Figure 1). The services provided by the Northern Kentucky Reception Center include diagnosis of social, educational, physical and psychological problems, in addition to vocational evaluation and individual and group counseling. Living quarters are divided into two units: Diagnostic and evaluation, and treatment. The diagnostic and evaluation unit houses new admissions who are under continual observation while participating in daily activities (i.e., academic education, limited use of facilities, and the performance of minor custodial jobs in the facility). After approximately three weeks in the diagnostic and evaluation unit, youth are transferred to one of the treatment facilities. Approximately fifteen percent of the youth who passed through the diagnostic and evaluation unit during the 1972-73 fiscal year were moved to the treatment unit at the Northern Kentucky Reception Center. The remaining eighty-five percent were transferred to one of the seven other treatment facilities.

Treatment Facilities

1. Daniel Boone Youth Center

The Daniel Boone Youth Center, opened in 1967 with a rated capacity of thirty, serves males and females ages eleven to seventeen. The day treatment

program is reported to be a flexible educational system, consisting of regular academic and remedial instruction. Also offered are recreational and physical educational programs, individual and group counseling related to school attitudes, interests and participation, and counseling in family involvement. Referrals to the Daniel Boone Youth Center included youth with a serious pattern of school truancy and school drop-outs residing in Kenton, Campbell, or Boone Counties. These youth are referred by public and/or private agencies to the Juvenile Court.

2. Green River Boys' Camp

The Green River Boys' Camp, serving thirteen to sixteen-year-old males, opened in 1972 with a rated capacity of fifty. Referrals for admission include boys who have a relatively high probability of returning to their homes. The camp offers services in group and individual counseling, religious counseling, vocational rehabilitation counseling, and recreation programs. An educational program is offered to help prepare boys to return to regular junior high and high school studies; for those not returning to high school, adult education is offered.

3. Lake Cumberland Boys' Camp

Opened in 1965, the Lake Cumberland Boys' Camp serves a rated capacity of forty males whose ages range from fourteen to eighteen years. Included among the services are group and individual counseling, work skills training, education for boys returning to regular junior high and high school studies, adult education for those not returning to high school, vocational rehabilitation counseling, religious counseling, and recreational programs.



Referrals include boys who have a relatively high probability of returning to their homes.

4. Lynwood Treatment Center

With a rated capacity of fifty, the Lynwood Treatment Center opened in 1969 to serve males and females aged eleven to eighteen years. Lynwood offers diagnosis and treatment for children committed for status offenses (i.e., truancy, runaway, incorrigibility), or for whom no immediate community placement is available. Lynwood offers group and individual counseling, along with psychological and medical services. Lynwood's school program is provided through the Jefferson County Board of Education.

5. Morehead Treatment Center

The Morehead Treatment Center has separate units for males and females. The girls' unit, opened in 1971, has a rated capacity of twenty-four, serving girls twelve to eighteen years of age. The vocational and educational programs are geared to each girl's individual needs, with special emphasis on attainment of Graduate Equivalent Degrees (GED). Group and individual counseling are provided, along with recreational and religious programs. The girls' unit accommodates culturally or academically deprived girls who have been committed as delinquent children to the Department.

In 1973, the boys' unit opened with a rated capacity of twenty-four, to serve boys eleven to fourteen years old. In the educational program, emphasis has been placed on the boys' successful re-entry into the regular academic school program in their respective communities through the group and individual counseling provided. Boys are admitted to Morehead who exhibit mild patterns

of delinquency which are reportedly causing them to be dysfunctional in their community settings. The facility does not treat boys suffering from severe emotional disturbance or aggressive delinquent behavior.

6. Woodsbend Boys' Camp

Woodsbend Boys' Camp serves fourteen to eighteen year old males; however, boys may be slightly younger than fourteen if they are functioning at an older emotional age and are physically comparable. Woodsbend has a rated capacity of fifty, and was opened in 1964 for boys with a high probability of returning to their own homes. The services offered by Woodsbend include group counseling, individual counseling when appropriate, an educational program designed to prepare the boys to return to regular high school studies, vocational rehabilitation counseling relative to on-the-job training, religious counseling, recreational programs, and adult education programs for those boys who may not be likely to return to high school.

7. Frenchburg Boys' Center

The Frenchburg Boys' Center was acquired by the former Department of Child Welfare in 1969, to accommodate delinquent boys.

The Frenchburg Boys' Center, currently operated by the Department for Human Resources, houses a maximum of fifty adjudicated delinquent boys approximately fifteen to eighteen years old who have been identified as culturally or academically deprived. Criteria for admission into Frenchburg Boys' Center generally is based on a child's level of functioning. Frenchburg Boys' Center is the facility designated for boys deemed mentally retarded. However, as indicated in Table 6, the majority of boys referred to Frenchburg have IQ



scores which indicate that they are not mentally retarded.

Two major programs in existence at Frenchburg are Job Readiness and a Prevocational Workshop. All boys participate in the Job Readiness program which is designed to utilize special and adult basic education concepts. Each day a different group of six to eight boys spend six hours in the academic classroom, with emphasis on the boys' preparation for future employment. Many of the boys reportedly receive their Graduate Equivalent Degrees. The types of studies included in Job Readiness are remedial reading, arithmetic, current events, typing, and obtaining drivers' permits. Also included are discussions on intangible aspects such as how to talk to one's supervisor, and what to do if one becomes angry with his supervisor. Through a contract with the Bureau of Rehabilitation Services, Department of Education, Frenchburg has three part-time remedial teachers year-round to provide individual tutoring to those boys in need of additional attention. A library is available for use one day per week.

The boys are permitted to choose the Prevocational Workshop program in which they wish to participate; however, the vocational staff makes the final decision about the boys' placements. In somewhat of a hierarchy, the first of these programs is Small Engine Repair, geared to those with lower functioning levels and consisting of eight boys working thirty hours per week. The Auto Mechanics Program, consisting of two groups of six to eight boys each, is designed for higher functioning boys. Each of the two groups spends a total of thirty hours every two weeks in Auto Mechanics. Alternating each week, one group participates in Auto Mechanics two days a week, six hours per day, while

TABLE 6

CATEGORIZATION OF IQ LEVELS OF RESIDENTS
REFFERED TO FRENCHBURG BOYS' CENTER
FROM RECEPTION CENTERS

REFERRED FROM
NORTHER KENTUCKY RECEPTION CENTER
TO FRENCHBURG BOYS' CENTER

| IQ Score | 70 or Below | 71-80 | 81-90 | 91 or above |
|---|---|---|---|---|
| Total | 7 | 17 | 18 | 5 |

REFERRED FROM
CENTRAL KENTUCKY RECEPTION CENTER
TO FRENCHBURG BOYS' CENTER

| IQ Score | 70 or Below | 71-80 | 81-90 | 91 or above |
|---|---|---|---|---|
| Total | 4 | 13 | 7 | 18 |

Source: Northern Kentucky Reception Center
Central Kentucky Reception Center



the other group spends three days a week, six hours per day. On the days when the boys are not in Vocational Workshop classes, they attend Job Readiness, complete general work assignments on campus, or work off campus. Carpentry and Brick Laying, the third program, consists of two classes of seven boys each, on the same two-day, three-day alternating schedule as previously described.

Frenchburg also has a part-time instructor providing classes in Auto Body Work; in addition, general programs such as Arts and Crafts, Recreation, and Religious and Psychological Counseling are offered.

Group Homes

Another type of facility utilized by the Bureau for Social Services is the group home. Typically, group homes provide a sheltered living situation for individuals who apparently are not capable of independent living. Group homes seem to be older private houses located in residential districts which have been purchased or leased by state agencies for the purpose of being converted into group homes. Basically, group homes are found to be small facilities usually housing between seven and fifteen persons of either sex in need of relatively structured supervision in daily living. These individuals are capable of working in a setting such as a sheltered workshop and of functioning in the community. Group homes are usually sponsored by local Mental Health/Mental Retardation Boards.

The descriptions of the following group homes are typical of most of those presently in existence in Kentucky.

1. Chaney House

The Chaney House, located in Henderson, Kentucky, is a home for

males ten through seventeen years of age. At the time of review, the Chaney House is operating at full capacity with eight boys. Admissions include pre-delinquents and mental retardates capable of benefiting from vocational training or attendance in a public school, while living in a group home. At the time of the study, seven of the eight Chaney House residents (non-retarded) attended public school, and one retarded resident attended vocational school. According to the director, mentally retarded individuals could function well at the Chaney House if not "too" mentally retarded, in good physical health, capable of functioning in a family setting, and capable of benefitting from some type of vocational training.

2. Cumberland River Group Home for Girls

The Cumberland River Group Home for Girls, located in Harlan, Kentucky, houses a maximum of seven women aged seventeen years and older who are mentally retarded, delinquent, or have emotional problems. Cumberland River Group Home for Girls is an affiliate of the local Comprehensive Care Center.

3. Phoenix House

The Phoenix House, located in Corbin, Kentucky, sponsored and staffed by the local Mental Health/Mental Retardation Center, has a capacity for twelve persons and accepts residents of either sex. At the time of review, the Phoenix House was apparently operating at maximum capacity, with a waiting list of three people. The ages of Phoenix House residents range from sixteen years to fifty-five years. Sleeping areas are located on the upper floor for females and on the lower floor for males. The Phoenix House accepts alcoholics, drug addicts,



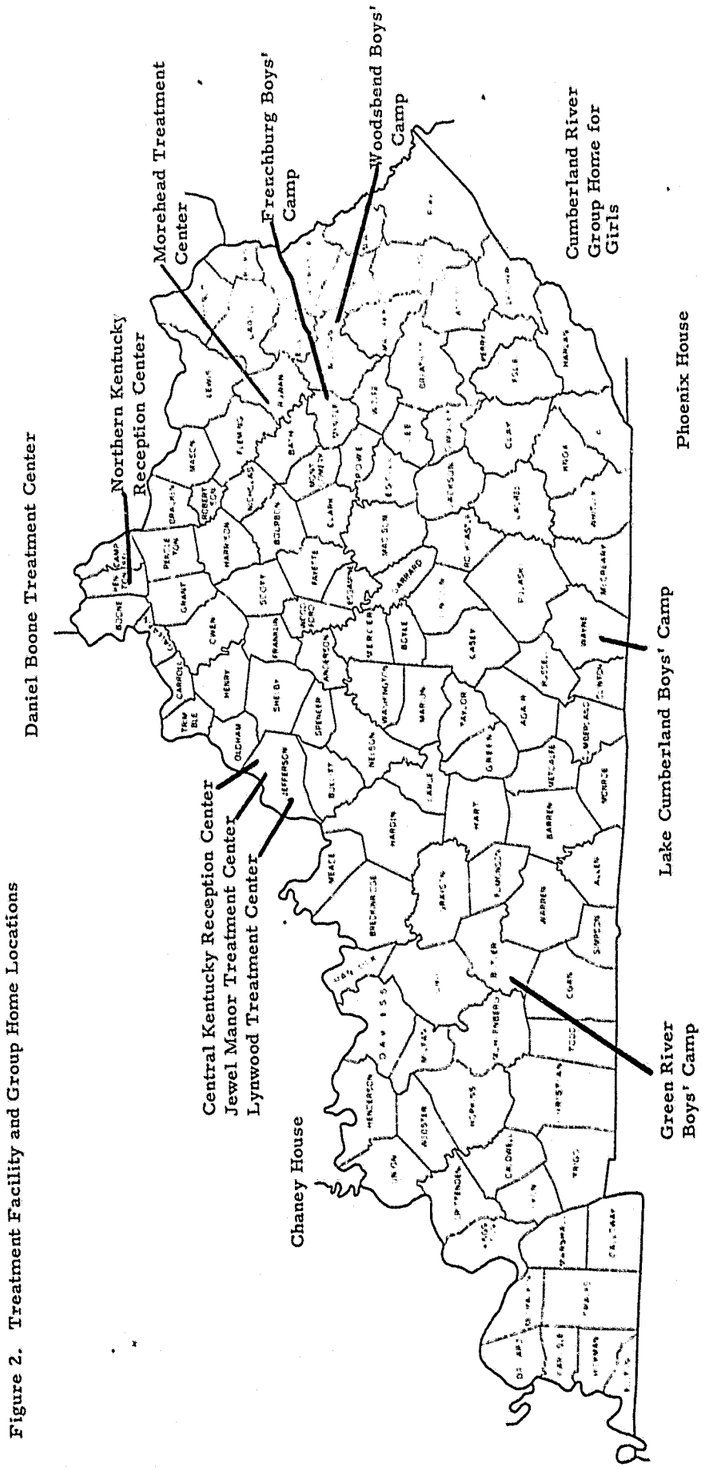



Figure 2. Treatment Facility and Group Home Locations

Source: Department for Human Resources

criminal offenders, mental retardates and psychiatric referrals. Residents attend a sheltered workshop during the day, and appear to be relatively free to come and go at their discretion.

Figure 2 shows the locations of the reception centers, treatment facilities, and group homes.

Training Needs for Staff Working With Mentally Retarded Juvenile Offenders

The Kentucky Department of Personnel is responsible for establishing training requirements for staff employed by the Commonwealth, including employees in facilities for juvenile offenders.

The Department of Personnel requirements have been compared with those promulgated by the Joint Commission on Accreditation of Hospitals, Accreditation Council for Facilities for the Mentally Retarded. The requirements of the latter seem to be more stringent with respect to academic requirements than those of the Department of Personnel. However, the Department of Personnel requirements are such that persons not meeting the precise academic training requirements as set forth by the Joint Commission on Accreditation of Hospitals, but possessing those characteristics estimated by facility superintendents as most beneficial to effective job performance (i.e., warmth, concern, understanding, caring, empathy, consistency, firmness, stability, tolerance, dediction) are eligible for certain level staff positions. The Kentucky Department of Personnel and the Joint Commission on Accreditation of Hospitals requirements are listed in the Appendices.

Community Services for Juveniles on Supervised Placement

Upon leaving either of the reception centers, approximately ninety



percent of the youth are placed in one of the Bureau for Social Services' treatment facilities. The remaining ten percent, are either sent back to their homes, placed in foster homes or community-based group homes, or, on rare occasions, children with severe mental retardation are placed in one of the residential facilities operated by the Bureau for Health Services (Oakwood, Outwood or Hazelwood).

After spending approximately four to six months in treatment facilities, these youth are referred to their homes, to foster homes, or to group homes. Community placement, whether from reception centers or treatment facilities, is termed "supervised placement." Supervised placement for juvenile offenders is equivalent to parole for adult offenders. Youth on supervised placement are under the supervision of community social workers from local Comprehensive Care Centers. The social workers determine the formality or informality of supervised placement, but it is supposedly formal, lasting approximately six months, with youth reporting to their social worker once or twice a month. However, it was reported that social workers are often quite lax in their involvement with their assigned juveniles, sometimes to the extent of "forgetting" about them (i.e., losing contact and never officially releasing them from supervised placement).

Although there is no single "overall problem," it is apparent that several major recommendations may alleviate a number of problems associated with mentally retarded juvenile offenders.

## CHAPTER III - - FINDINGS

### PROBLEMS ASSOCIATED WITH MENTALLY RETARDED JUVENILE OFFENDERS

Problems associated with mentally retarded offenders may be small in absolute numbers, but large in significance and difficult to address. In a mentally retarded offender, two major, but rather nebulous variables, intelligence limitations and anti-social behavior, must be considered. These variables must be assessed in relation to the effect each has regarding the child. A primary question must be answered in assessing the severity of retardation and the frequency and severity of anti-social behavior, and both cause difficulty in the underlying problem in each case. The question, "Is the primary cause in this case mental retardation or anti-social tendencies?", and other factors associated with mentally retarded offenders indicate that there is no single "overall problem." While there is no simple solution to the condition or mental retardation, a number of problems concerning the mentally retarded juvenile offender are apparent.

#### Identification of Mentally Retarded Offenders

One problem lies in the difficulty of identifying mentally retarded offenders within the system. At best, IQ scores may be obtained, although they alone may not be adequate to determine mental retardation. Throughout these findings, then, mental retardation as diagnosed in juvenile offenders has been estimated by the facility superintendents in conjunction with IQ scores. For the purposes of this investigation, a test score of 75 or below was chosen to designate mental retardation. The reader will note that the score of 75 is

slightly higher than the 69 score used by the AAMD to denote mental retardation. However, a score of 75 allows for a measurement error in testing. Regardless of test score accuracy, the superintendents' estimations are significant in themselves because some juveniles are identified as mentally retarded, indicating that special needs of certain juvenile offenders are not currently being met.

Facility Placement of the Mentally Retarded Juvenile Offender

Although the Bureau for Social Services operates seven treatment facilities for adjudicated delinquents, the Frenchburg Boys' Center is the only facility which is staffed to accept mentally retarded juveniles. Regardless of staffing patterns, every treatment facility has reported a number of mentally retarded children (See Table 3). Although a mentally retarded child could benefit to some degree, from the existing programs at facilities other than Frenchburg, such programs admittedly were not designed to deal with mentally retarded offenders. The programs are such that their level of sophistication may have prevented mentally retarded juveniles from full participation and its resultant benefits.

Segregation of Retarded and Non-Retarded Offenders

As shown in Table 4, attempts by the facilities to separate the mentally retarded from their more sophisticated peers are seldom made. The consequence of grouping retarded with non-retarded youth may be deprivation of specialized treatment and handling measures for the mentally retarded. As a result of this deprivation, oftentimes retarded children tend to isolate themselves. Frustration and an eventual lowering of motivation may occur due to the peers'



TABLE 3

Total Populations and Numbers of Mentally Retarded Youth
In Bureau for Social Services Facilities

| | Frenchburg Boys' Center | Daniel Boone Youth Center | Lynwood Treatment Center | Green River Boys' Camp | Lake Cumberland Boys' Camp | Morehead Treatment Center | Woodsbend Boys' Camp | TOTAL |
|---|---|---|---|---|---|---|---|---|
| Number in Facility | 42 | 19 | 54 | 44 | 31 | 40 | 25 | 255 |
| Number of Mentally Retarded* | 14 | 6 | 5 | 2 | 6 | 3 | 3 | 39 |
| Percent of Mentally Retarded | 33.3 | 31.58 | 9.26 | 4.55 | 19.35 | 7.5 | 12.0 | 15.29 |

* Based upon superintendents' estimations in conjunction with IQ test scores

TABLE 4

Estimated Frequency of Separating Mentally Retarded and Non-Retarded Juvenile Offender

| | Separate Sleeping Area | | | Separate Recreational Area | | | Separate Vocational Training | | | Separate General Education | | | Separate Group Counseling | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Always | Sometimes | Never | A | S | N | A | S | N | A | S | N | A | S | N |
| Frenchburg | | X | | | | X | | X | | | | X | | X | |
| Daniel Boone | | | X | | X | | | | X | X | | | X | | |
| Lynwood | | | X | | X | | | | X | X | | | X | | |
| Green River | | | X | | | X | | | X | | | X | | | X |
| Lake Cumberland | | | X | | | X | | | X | | | X | | | X |
| Morehead | | | X | | | X | | | X | | | X | | | X |
| Woodsbend | | | X | | | X | | | X | | | X | | | X |
| Northern Kentucky Reception Center | | | X | | | X | | | X | | | X | | | X |



higher level of functioning.

Staff Turnover in Treatment Facilities

A problem mentioned frequently by facility superintendents is the high rate of staff turnover. The turnover of staff may be attributed primarily to the low salaries paid (e.g., the beginning salary for a Residential Aide I is $305 per month). In addition to inducing a large staff turnover, low salaries are likely to result in a poor attitude as it relates to effective job performance.

Education

Statistical findings obtained from the 1972-73 Annual Reports of the reception centers indicate that children at the reception centers performed on an academic level far below that of average school children.

At the Central Kentucky Reception Center the average age of children received during the 1972-73 fiscal year was approximately fifteen years. The average reading level (as obtained through the Informal Reading Inventory and the Stanford Diagnostic Test, Level I and II) was a 4.12 grade level (fourth grade), while the average arithmetic grade level (obtained through the use of the Stanford Diagnostic Test, Level I and II) was 3.92 (third grade). Average reading levels ranged from 3.0 (third grade) for the twelve-year-old group to 5.97 (between fifth and sixth grade level) for the seventeen-year-old group, giving a grade differentiation of only 2.97 years despite a five-year discrepancy in age levels. The average grade equivalent (i.e., the average of the reading levels and math levels) was 4.02 grade level, indicating that the average child's academic skills would allow adequate functioning at a beginning fourth grade level.

The average age for the children at Northern Kentucky Reception Center was 15.89 years. The same children averaged at a fourth grade reading (4.59) and math (4.46) level. The combined average grade equivalent was 4.54 grade level.

Generally speaking, the average child at the reception centers was fifteen-years-old and in the eighth grade; however, in relation to academic skills, the average child was able to function on the fourth grade level. Over sixty percent of the children were dropouts. When viewed in combination, these figures point to an apparent need for intense academic training.



# CHAPTER IV - - RECOMMENDATIONS

## SUB-NETWORK TO THE JUVENILE JUSTICE SYSTEM

An alternative to present institutional settings should be established to divert the mentally retarded juvenile offender from unnecessary participation in the juvenile justice system. This is not to suggest that a child should be totally diverted from the courts, since juveniles are entitled to participate in judicial proceedings.

An alternative may be accomplished through the establishment of a sub-network to the juvenile justice system, which would address the problems associated with mentally retarded juvenile offenders rather than non-retarded offenders.

The sub-network should be designed to inform those involved with juvenile offenders of the special needs of juvenile offenders who are mentally retarded, and establish means of diverting the mentally retarded youth from any unnecessary participation in the juvenile justice system.

The Department for Human Resources (which would establish the sub-network) should first develop an inter-bureau communication system between the Bureau for Health Services and the Bureau for Social Services. The two Bureaus must work jointly in developing the sub-network.

Next, the Department for Human Resources should make an intensive effort to communicate the special needs of the mentally retarded juvenile offender to the communities. Information disseminated to the communities should first reach the courts. The

courts, in conjunction with local Department for Human Resources staff, could then work toward preventing mentally retarded juveniles' offenses, thus promoting a primary diversion from the juvenile justice system.

## FACILITY FOR THE MENTALLY RETARDED

Ideally, a new facility should be constructed for the mentally retarded offender. The facility should be designed to provide a "normalized" residential situation and provide treatment more for a child's mental retardation than for his anti-social behavior. One should not discount the possibility that the anti-social component does exist, however, at the extreme, mental retardation and anti-social behavior should be treated equally.

The Bureau for Health Services and the Bureau for Social Services should combine expertise jointly in the planning and administration of a new facility. Combining expertise could be accomplished by a six-person advisory/ regulatory board, with three board members having expressed interests in the field of juvenile delinquency, and three having expressed interests in the field of mental retardation.

Any new facility should at least meet the standards promulgated by the Joint Commission on Accrediation of Hospitals/ Accrediation Council for Facilities for the Mentally Retarded, and provide an appropriate security system in that facility, if needed. This is not to suggest deficiencies in services at Frenchburg Boys' Center (the primary facility for mentally retarded juveniles); however, a facility for the mentally retarded should be readily



assimilated in a community (i.e.), neither isolated from nor disproportionate to the community), and a facility needs community resources which may be utilized in order to expose juveniles to a broad range of experiences. Frenchburg apparently has no community resources which could provide juveniles with a sufficient range of experiences. As an alternative to building a new facility for the mentally retarded offender, modifications in an existing facility could be made.

Emphasis in any facility for the mentally retarded should be on special education and vocational training, in order to best prepare the mentally retarded juvenile to return to his community and become a self-sufficient, productive citizen whenever possible.

## STAFF TRAINING AND SALARIES

With respece to training requirements for staff, the requirements set forth by the Joint Council on Accrediation of Hospitals/ Accrediation Council for Mental Retardation are recommended. Recommended in regard to staff turnover are higher salaries for treatment facility staff.

## SUPERVISED PLACEMENT

Supervised placement, the term used for juveniles "on parole," was described in the "Findings." Recommendations in this area, expecially concerning the juvenile offender who is mentally retarded, are as follows: (1) that the community social worker in charge of such children enforce rules concerning supervised placement; (2) that the Department for Human Resources deliver all services conducive to placement within the community; (3) that

the Department for Human Resources further schooling or vocational training, (4) and that the adjustment of re-entry into the community and the well-being of these youth in general be the prime considerations of the Department for Human Resources.



## REFERENCES

American Association on Mental Deficiency, Manual on Terminology and Classification in Mental Retardation. Baltimore: Garamond/Pridemark Press, 1973.

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Sarason and Doris, Psychological Problems in Mental Deficiency. New York, Evanston, and London: Harper and Row, 1969.

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APPENDIX A

Recreation Group

Code No. 4110

CLASS TITLE: Recreation Leader

CHARACTERISTICS OF THE CLASS: Under supervision, organizes, plans, supervises, and coordinates recreational activities; and does related work as required.

EXAMPLES OF DUTIES: Plans, organizes, supervises, or instructs in a program of sports, social activities, dramas music, and outings for State Park guests or uses these required skills in working with groups of patients. Interviews referred patients and plans recreation activities modified for patients' limitations and needs. Keeps clinical notes, records, and reports on progress of patients in recreation activities. Keeps records of attendance, time supplies, and equipment. Reports need of recreation equipment and maintenance repairs. Instructs volunteers and other personnel who assist in recreation activities. Plans and directs special holiday programs for patients. Reviews and interprets departmental rules, regulations and policies. Assists in the establishment of new techniques and procedures.

MINIMUM QUALIFICATIONS

Training and Experience: Graduate of an accredited college or university with a bachelor's degree in recreation, physical education, or a related field. Responsible recreational experience may substitute for the college on a year-for-year basis.

Special Knowledge, Skills and Abilities: Knowledge of modern principles and practices of group and individual recreation. Considerable knowledge and understanding of typical and human personality. Working knowledge of departmental rules and regulations affecting recreation therapy for mentally handicapped. Ability to examine, assign, plan and supervise and inspect the work of others. Ability to write routine reports. Ability to work with the general public.

(Rev. 7-1-72)



Recreation Group

Code No. 4125

CLASS TITLE: Chief Recreation Leader

CHARACTERISTICS OF THE CLASS: Under administrative direction, serves as chief consultant to the state-wide recreation program of a state department; and does related work as required.

EXAMPLES OF DUTIES: Consults with institution superintendents, clinical and recreation directors, in planning a recreation program designed to offer therapeutic activities for all institution residents. Assists the individual facilities in requests for budgets, personnel, equipment, supplies, and development of facilities. Assist the individual facilities in recruitment of recreation personnel. Plans and directs state-wide recreation training programs. Interprets state-wide policies to the individual institution directors. Makes reports on the progress of the recreation program at each facility. Attends professional meetings and keeps abreast of developments in the recreation therapy field. Speaks before civic groups, volunteer and community leaders.

MINIMUM QUALIFICATIONS

Training and Experience: Graduate of an accredited college or university with a Bachelor's Degree in Recreation, Physical Education or a related field and three years of responsible experience. Responsible experience in the area of recreation may be substituted for the college education on a year-for-year basis up to a maximum of two years.

Special Knowledge, Skills, and Abilities: Thorough knowledge and understanding of the principles and practices involved in a modern-day program of either group or individual recreation. Considerable knowledge of departmental rules and regulations affecting recreation therapy for mentally handicapped. Ability to plan, organize, assign, supervise, and inspect the work of others. Ability to write professional reports and papers. Ability to speak effectively before the public.

(Rev. 6-1-72)

Recreation Group

Code No. 4119

CLASS TITLE: Principal Recreation Leader

CHARACTERISTICS OF THE CLASS: Under general supervision, plans and directs the recreational therapy program of a large state institution or facility; and does related work as required.

EXAMPLES OF DUTIES: Plans, directs, coordinates, and integrates the recreational therapy program. Prepares budget estimates for recreation program, personnel, equipment, supplies, and facilities. Conducts staff meetings, in-service training, supervises and evaluates recreation personnel. Prepares reports on progress of the recreation program for administrative personnel. Interprets recreation program to staff, volunteers, and the public. Conducts studies and experiments for developing new techniques and adaptation of procedures and methods. Attends staff conferences with regard to overall programs. Meets with medical authorities and social service personnel in order to develop and conduct approved plans and policies which will meet the needs, capabilities, and interests of institution residents, and which will assist in their rehabilitation. Maintains contact with other recreation agencies to aid residents after their discharge.

MINIMUM REQUIREMENTS

Training and Experience: Graduate of an accredited college or university with a bachelor's degree in recreation, physical education, or a related field and two years of responsible experience; or an equivalent combination of related training and experience.

SPECIAL KNOWLEDGE, SKILLS, AND ABILITIES: Thorough knowledge and understanding of the principles and practices involved in a modern-day program of either group or individual recreation. Considerable understanding of the human personality as applied to the need for recreation and relaxation. Ability to plan, organize, assign, supervise, and inspect the work of others. Ability to keep and prepare professional reports. Ability to work with other professional people. Ability to speak effectively before the public.

(Rev. 5-1-75)



Recreation Group

Code No. 4115

CLASS TITLE: Senior Recreation Leader

CHARACTERISTICS OF THE CLASS: Under general supervision, plans and directs a recreational program; and does related work as required.

EXAMPLES OF DUTIES: Plans, directs, and coordinates recreational activities to meet the specific needs, interests, and abilities of individuals or groups. Assigns and supervises recreation personnel in specific program areas and activities to assure a well-rounded, effective total program. Directs a planned recreation program for an intensive treatment unit or selected groups of patients. Interviews referred patients, keeps records and reports to the medical staff on patient progress. Instructs and participates in an in-service training program for recreation staff. Directs maintenance and compilation of records and statistics of the recreation program. Conducts studies and experiments for developing new techniques and adaptation of procedures and methods. Attends staff conferences with regard to overall programs. Maintains contact with appropriate authorities in order to develop and conduct approved plans and policies which will meet the needs, capabilities, and interests of individuals and groups. Speaks before civic and volunteer groups.

MINIMUM REQUIREMENTS

Training and Experience: Graduate of an accredited college or university with a bachelor's degree in recreation, physical education, or a related field; or an equivalent combination of related training and experience.

SPECIAL KNOWLEDGE, SKILLS, AND ABILITIES: Thorough knowledge and understanding of the principles and practices involved in a modern-day program of either group or individual recreation. Considerable understanding of the human personality as applied to the need for recreation and relaxation. Ability to plan, organize, assign, supervise, and inspect the work of others. Ability to keep professional records and to make operational and professional reports and papers. Ability to perform work involving physical strain requiring good physical condition.

(Rev. 5-1-75)

Recreation Group

Code No. 4141

CLASS TITLE: Recreation Specialist

CHARACTERISTICS OF THE CLASS: Under general direction is responsible for the supervision of the operation of all pool and beach operations throughout the State Park System. Works with the individual park superintendents and their designated staff in carrying out the aquatics program; and performs other related duties as required.

EXAMPLES OF DUTIES: Responsible for the condition and appearance of the beach, swimming pools, and bath areas. Responsible for developing and/or recommendation of rules, regulations, and policies relating to the aquatics area. Responsible for the training and equipment of guards prior to the opening of the season. Maintains proper records and reports relating to water quality, health and safety standards, proper chemical allocations. Maintains up-to-date inventories of equipment and supplies on hand and those needed. Represents the Division of Recreation in the promotion of its program to the public through the media of speeches, correspondence, radio, television, and film slide programs for various organization groups.

MINIMUM REQUIREMENTS

Training and Experience: Graduate of an accredited college or university with a major in Park and Recreation Administration, Physical Education, or related field supplemented by three years of responsible experience in the field of aquatics or recreation. A master's degree in Parks and Recreation Administration or a related field may substitute for the required experience on a year-for-year basis.

SPECIAL KNOWLEDGE, SKILLS, AND ABILITIES: A thorough knowledge and understanding of the principles and practices involved in a modern day aquatic program. Working knowledge of departmental rules and regulations. Ability to plan, organize, assign, supervise, and instruct the work of subordinates. Ability to keep professional records and to make operational and professional reports. Ability to make decisions on the usual daily operation of the facility. Firmness and impartiality. Ability to speak effectively before the public.

(5-16-74)



Correctional Group

Code No. 9136

CLASS TITLE: Residential Aide I

CHARACTERISTICS OF THE CLASS: Under immediate supervision of experienced counselors, learns to assist in the care, rehabilitative training, and constructive control of children in a residential treatment facility for dependent, delinquent, handicapped, or emotionally disturbed children; and does related work as required. Participates in a training program administered by the agency.

EXAMPLES OF DUTIES: Learns to assist in cottage operations pertaining to discipline, personal habits, living conditions, clothing and dress, eating arrangements, and work and study assignments. Learns to assist in interpreting policy to youth and providing a secure and therapeutic experience for youngsters in the program.

MINIMUM REQUIREMENTS

Training and Experience: Ability to read and write supplemented by one year of responsible general work experience. One year of education above the tenth grade may substitute for the one year of work experience.

Special Knowledge, Skills, and Abilities: Should have some knowledge of conditions in the inner-city or other deprived areas from which many committed youngsters come. Must relate easily both to adults and to youth, understand and respond to simple instructions, and learn quickly from supervision and experience.

(Rev. 4-1-73)

Correctional Group

Code No. 9137

CLASS TITLE: Residential Aide II

CHARACTERISTICS OF THE CLASS: Under direct supervision, assists in the care, rehabilitative training, and constructive control of children in a residential treatment facility for dependent, delinquent, handicapped, or emotionally disturbed children; and does related work as required.

EXAMPLES OF DUTIES: In coordination with other staff, assists in the management of cottage living situations pertaining to discipline, personal habits, living conditions, and work and study assignments. Assists in interpreting policy, mediating differences in operational matters, and supporting the positive actions of the operational team in the delivery of rehabilitative services.

MINIMUM REQUIREMENTS

Training and Experience: Ability to read and write supplemented by one year of related work experience. One year of education above the tenth grade is equivalent to one year of work experience.

Special Knowledge, Skills and Abilities: Elementary knowledge of practical psychology and sociology. Working knowledge of general health, safety and personal hygiene. Sympathetic understanding of children, young people, adults and their problems. Ability to deal effectively and firmly with children and adults. High moral standards and good personal habits. Good judgment and emotional stability. Calmness in emergencies. Alertness and impartiality.

(Rev. 7-1-74)



Correctional Group

Code No. 9138

CLASS TITLE: Residential Aide III

CHARACTERISTICS OF THE CLASS: Under general supervision and direction, has responsibility for the care and rehabilitative training of children in a residential treatment facility for dependent, delinquent, handicapped, or emotionally disturbed children; and does related work as required.

EXAMPLES OF DUTIES: In coordination with other staff, keeps in order cottage operations. Maintains a close liaison with the professional treatment staff and supervisors. Interprets policy, mediates differences in operational matters, and supports the positive actions of the operational team in the delivery of rehabilitative services. May assist in the orientation of new staff.

MINIMUM REQUIREMENTS

Training and Experience: Ability to read and write supplemented by two years of related work experience. Additional education above tenth grade is equivalent to the required experience on a year-for-year basis.

SPECIAL KNOWLEDGE, SKILLS, AND ABILITIES: Working knowledge of general health, safety, and personal hygiene. Knowledge of practical psychology and general sociology. Ability to obtain and maintain confidence, cooperation, and obedience of young people. High moral standards and good personal habits. Alertness and impartiality.

(Rev. 7-1-74)

Correctional Group

Code No. 9139

CLASS TITLE: Residential Aide IV

CHARACTERISTICS OF THE CLASS: Under general direction, supervises a small group of residential aides in the care, rehabilitative training, and discipline of children in a residential treatment facility for dependent, delinquent, handicapped, or emotionally disturbed children.

EXAMPLES OF DUTIES: Explains and implements policy and directives originating in both the treatment and management sections of administration. Makes staff assignments. Performs periodic evaluation of subordinate residential services aides. Serves as a consultant in solving problems that may arise in the living areas. May assist in the orientation and training of new staff.

MINIMUM REQUIREMENTS

Training and Experience: Ability to read and write supplemented by three years of related work experience. Additional education above tenth grade is equivalent to the required experience on a year-for-year basis.

SPECIAL KNOWLEDGE, SKILLS, AND ABILITIES: Considerable knowledge of practical psychology and sociology. Working knowledge of general health, safety, and personal hygiene. Ability to deal effectively and firmly with children, young people, or adults in enforcing rules and regulations and in assisting with their regular and extracurricular activities. Emotional stability and good personal habits. Impartiality and alertness. Initiative and resourcefulness.

(Rev. 7-1-74)



Correctional Group

Code No. 9142

CLASS TITLE: Residential Aide V

CHARACTERISTICS OF THE CLASS: Under general supervision and direction, supervises small groups of residential aides in the care, rehabilitative training and discipline of youth in a residential treatment facility for dependent, delinquent, handicapped, or emotionally disturbed children.

EXAMPLES OF DUTIES: Is responsible for subordinate staff efficiency and morale. Disseminates and assists in implementing policy and directives. Assists in orientation of new staff and may assist in staff in-service training. Helps insure that administrative and operational supplies are available on a timely basis. Mediates differences in operational matters.

MINIMUM REQUIREMENTS

Training and Experience: High school graduate or GED equivalency, supplemented by four years of related work experience. Additional education above high school is equivalent on a year-for-year basis for two years of the work experience.

SPECIAL KNOWLEDGE, SKILLS, AND ABILITIES: Considerable knowledge of practical psychology and sociology. Working knowledge of general health, safety, and personal hygiene. Ability to motivate staff toward proficiency in dealing effectively and firmly with youth in enforcing rules and regulations. Emotional stability and good personal habits. Impartiality and alertness. Initiative and resourcefulness.

(7-1-74)

Correctional Group

Code No. 9143

CLASS TITLE: Residential Aide VI

CHARACTERISTICS OF THE CLASS: Under general direction, supervises other residential aides on a unit basis. Insures the care, rehabilitative training and discipline of youth in a residential treatment facility for dependent, delinquent, handicapped, or emotionally disturbed children.

EXAMPLES OF DUTIES: Is responsible for subordinate staff efficiency and morale. Disseminates and implements policy and directives originating in both the treatment and management sections of administration. Schedules and assists in staff orientation and proficiency training. Responsible for emergency staff coverage. Performs periodic evaluation of subordinate staff. Serves as consultant in solving problems that may arise in the unit. Insures that administrative and operational supplies are ordered and received on a timely basis.

MINIMUM REQUIREMENTS

Training and Experience: High school graduate or GED equivalency, supplemented by five years of related work experience. Additional education above high school is equivalent to three years of the work experience on a year-for-year basis.

SPECIAL KNOWLEDGE, SKILLS, AND ABILITIES: Extensive knowledge of practical psychology and sociology. Working knowledge of general health, safety, and personal hygiene. Ability to motivate staff toward proficiency in dealing effectively and firmly with youth and/or adults in enforcing rules and regulations. Emotional stability and good personal habits. Impartiality and alertness. Initiative and resourcefulness.

(7-1-74)



Social Worker and Veterans Service Group

Code No. 4218

CLASS TITLE: Social Worker I

CHARACTERISTICS OF THE CLASS: Under direct supervision, performs social work services on a beginning level for those having emotional, social, economic, physical, or mental problems; and does related work as required.

EXAMPLES OF DUTIES: Interviews children or adults admitted to state institutions. Secures and evaluates social histories and assists in personal adjustments to institutional life. Interprets child or adult welfare programs to courts, municipal officials, and the general public and offers services to children, adults, and their families referred from courts, schools, and other agencies. Prepares and maintains or supervises the maintenance of case record files, application processing, and other required records and reports. Analyzes case records and makes recommendations from same. Serves at intake or carries a general caseload of agency clients and makes social studies for services.

MINIMUM REQUIREMENTS

Training and Experience: Graduate of an accredited college or university.

Special Knowledge, Skills, and Abilities: Working knowledge of current social, economic, physical, and mental problems and of federal and state laws, rules, and regulations pertaining thereto. Ability to prepare concise case histories. Skill in obtaining and analyzing case information and ability to reach sound judgment on basis of such information. Understanding of individual, family, and community problems and resources. Ability to meet and deal successfully with the public. High moral standards. Good judgment. Impartiality.

(Rev. 12-1-72)

CONTINUED

2 OF 3

Social Worker and
Veterans Service Group

Code No. 4227

CLASS TITLE: Social Worker II

CHARACTERISTICS OF THE CLASS: Under general supervision, performs professional social work services on an operating level for children or adults having emotional, social, economic, physical, or mental problems or disorders; or supervises a small group of workers providing social services; and does related work as required.

EXAMPLES OF DUTIES: Interviews clients with emotional, social, physical, or mental problems or disorders, securing and evaluating case histories, making recommendations from same and providing the appropriate professional social work services directly. Reviews case records to determine compliance with established policies and procedures. May assign, supervise and evaluate the work of a small group of social and clerical workers, and makes recommendations for the improvement of operations and services therein. Conducts group treatment sessions with more difficult patients or inmates when feasibility for same has been indicated. Performs juvenile placement functions. Participates in the training of new workers, and in community meetings for the purpose of explaining programs and initiating interest and action by communities.

MINIMUM REQUIREMENTS

Training and Experience: Graduate of an accredited college or university supplemented by at least one year of professional responsible social work experience. Graduate training in an accredited school of social work may substitute for the one year of required experience. For promotional purposes, social work related experience may substitute for the college education on a year-for-year basis up to two years if the position is one without supervisory responsibility.

Special Knowledge, Skills, and Abilities: Knowledge of contemporary social, economic, physical, emotional, or mental problems or disorders and of federal and state laws, rules, and regulations pertaining thereto. Demonstrated ability to prepare concise case histories, analyzing same, and reaching sound judgement on the basis of such information. Understanding and knowledge of individual, family, and community problems and resources. Ability to meet and deal successfully with the public. High moral standards. Good judgement. Impartiality. Supervisory ability when required.

(Rev. 12-1-72)



Social Worker and
Veterans Service Group

Code No. 4230

CLASS TITLE: Social Worker III

CHARACTERISTICS OF THE CLASS: Under general supervision, performs social work services on a senior-level basis for those having emotional, social, economic, physical or mental problems or disorders; and serves as the head of a centralized case review and evaluation section; and does related work as required.

EXAMPLES OF DUTIES: Interviews children and adults referred having more difficult emotional, social, economic, physical or mental problems analyzing same and implementing treatment recommendations in collaboration with psychiatric, psychological and other available services. Meets with professional, medical and technical personnel in planning and conducting programs of group therapy, treatment, placement and guidance. Interprets programs to the courts, governmental officials, organizations and the general public. Conducts pre-release investigations to evaluate the suitability of conditions under which releasee will live. Ascertains cases of error or fraud and develops procedures for eliminating same. Assists in initial or in-service training programs, and evaluates and rates employee performance. Assigns, supervises, and evaluates the work of a small group of social and clerical workers, and makes recommendations for improvement.

MINIMUM QUALIFICATIONS

Training and Experience: Graduation from an accredited college or university supplemented by two years of professional social work experience. A year of graduate training in an accredited school of social work may be substituted for one of the specified years of experience.

Special Knowledge, Skills and Abilities: Considerable knowledge of social case work methods and principles. Considerable knowledge of federal and state laws, rules and regulations. Considerable knowledge of current social and economic problems and resources. Ability to write concise case histories. Analytical ability. Sympathetic understanding of human nature. Ability to meet and deal successfully with the public. High moral standards. Initiative and resourcefulness. Impartiality. Good judgment. Supervisory ability.

(Rev. 10-1-67)

Social Worker and Veterans
Service Group

Code No. 4248

CLASS TITLE: Social Worker IV

CHARACTERISTICS OF THE CLASS: Under general direction, provides professional social work services and consultative services; supervises a social service unit or institution serving welfare clientele; and does related work as required.

EXAMPLES OF DUTIES: Under supervision, assigns, supervises, and evaluates the work of social workers through visits, reports, staff meetings, and other media of review. Interprets administrative policies and procedures, analyzes same and makes recommendations for their improvement and applicability to local conditions. Participates in the formulation of policies and procedures and in conferences with representatives of other services, and governmental and community agencies and resources. Participates in planning, developing, and conducting initial and in-service training programs. Utilizes professional social work techniques in dealing with persons having difficult problems or disorders requiring intensive services from several fields of knowledge. Prepares complex administrative and technical records and reports. Speaks before clubs and other interested organizations on particular programs. Coordinates agency functions and resources with those of other governmental and private jurisdictions.

MINIMUM REQUIREMENTS

Training and Experience: Graduate of an accredited college or university and three (3) years responsible professional social work experience. A year of graduate training in an accredited school of social work may be substituted for one of the specified years of experience. For promotional purposes, social work related experience may be substituted for the college education on a year-for-year basis up to two (2) years, if the position is one without supervisory responsibility.

SPECIAL KNOWLEDGE, SKILLS, AND ABILITIES: Thorough knowledge of social service principles and practices. Thorough knowledge of applicable state and federal laws. Exceptional ability to meet and deal successfully with the public. Analytical ability. Good judgment. Initiative and resourcefulness. Sympathetic understanding of human nature. Ability to write and speak clearly and effectively. High moral standards. Demonstrated supervisory ability.

(Rev. 9-1-73)



Probation and Placement Group

Code No. 9510

CLASS TITLE: Juvenile Counselor I

CHARACTERISTICS OF THE CLASS: Under immediate supervision and at a beginning level, performs individual and/or group counseling for juvenile delinquents in a community or at a departmental institution or similar facility; and does related work as required.

EXAMPLES OF DUTIES: Cooperates and consults with local courts and, at their request, provides Prehearing Investigation Reports which may include results of psychological, psychiatric and medical examinations; does probationary service and counseling for juvenile delinquents and their families, and plans and makes recommendations for treatment. Interprets treatment programs to adjudicated delinquents and their families. Prepares and supplies the committed juvenile's social history to the Diagnostic Center. Offers individual and/or group counseling to parents of juveniles who are in institutions and makes periodic contact with the juvenile and the juvenile's counselor assigned while he is in residence. Assists with juvenile's placement plans and coordinates the placement between the institution and community which includes making preparations and plans for continual rehabilitation through use of community resources. Supervises juvenile after release from institution until his discharge from Department custody. Provides individual and/or group counseling/treatment sessions. Prepares reports and makes recommendation concerning continued supervision of the juvenile, discharge from department supervision or whether the juvenile should be returned to an institution. Maintains records and prepares reports on all assigned cases. Attends in-service training and other professional conferences as required.

MINIMUM QUALIFICATIONS

Training and Experience: Graduation from an accredited college or university.

Special Knowledge, Skills and Abilities: Elementary knowledge and understanding of current social, economic, and psychological problems and of federal and state laws and regulations pertaining thereto. Elementary understanding of individual and group behavior, family patterns, community problems and resources. Ability to obtain and analyze information and use sound judgment. Ability to write concise and clear reports. Ability to form and maintain effective working relationships with disturbed or delinquent juveniles. Ability to supervise disturbed or delinquent juveniles in a counseling, yet authoritative relationship.

(Rev. 3-1-68)

Probation & Placement
Group

Code No. 9515

CLASS TITLE: Juvenile Counselor II

CHARACTERISTICS OF THE CLASS: Under supervision, performs individual and/or group counseling for juvenile delinquents in a community or at a departmental institution or similar facility; and does related work as required.

EXAMPLES OF DUTIES: At an operating level of competence, consolidates relationships with local courts through progressive consultation and advisory services and, at their request, provides Prehearing Investigation Reports which may include results of psychological, psychiatric, and medical examinations, probationary services and counseling for juvenile delinquents and their families, and plans and makes recommendations for treatment. Interprets the treatment programs to adjudicated delinquents and their families. With the use of information obtained from counseling sessions and with evaluation of case records, reports, and similar data, diagnoses problems and plans and implements a treatment program for the purpose of rehabilitation. Supervises juvenile after release from institution until his discharge from Department custody. Assists with juvenile's placement plans and coordinates the placement between the institution and community which includes making preparations and plans for continued rehabilitation through use of community resources. Prepares reports concerning the juvenile's adjustment and makes recommendations as to whether continued counseling is necessary, whether release from departmental supervision is indicated, or whether the juvenile should be returned to an institution. Attends seminars, workshops, or institutes as required. Maintains records and prepares reports on all assigned cases.

MINIMUM QUALIFICATIONS

Training and Experience: Graduate of an accredited college or university supplemented by one year of responsible experience in social work, counseling, the ministry, education, or recreation. A full year of graduate work in Social Work or another field may substitute for the experience.

Special Knowledge, Skills, and Abilities: Working knowledge of current social, economic, and psychological problems and of federal and state laws and regulations pertaining thereto. Operational understanding of individual and group behavior, family patterns, community problems, and appropriate use of all resources. Demonstrated ability to obtain information and apply the information with good judgment. Ability to write concise and clear reports. Demonstrated ability to form and maintain effective working relationships. High moral standards.



Probation & Placement
Group
Code No. 9519

CLASS TITLE: Juvenile Counselor III

CHARACTERISTICS OF THE CLASS: With a minimal amount of supervision, performs individual and/or group counseling for the more difficult delinquent, distrubed, or retarded juveniles in a community or at a departmental institution or similar facility; and does related work as required.

EXAMPLES OF DUTIES: At a high level of competence, provides consultation services to local courts and may provide juvenile counseling services on the more difficult juvenile cases either on probation or supervised placement status. On assignment, performs all phases of individual and/or group counseling treatment sessions in reference to the children with more serious behavioral problems, difficult family problems, or community situations requiring special skills and experience. Supervises juveniles until discharge from Department custody. Increasingly involves himself with the development of new community resources and uses established community resources with greater skill. Attends seminars, workshops, or institutes as required. Maintains records and prepares reports of all types on assigned cases.

MINIMUM QUALIFICATIONS

Training and Experience: Graduate of an accredited college or university supplemented by two years of responsible experience in social work, counseling, the ministry, education, or recreation. A full year of graduate work in Social Work or another field may substitute for a year of the required experience.

Special Knowledge, Skills, and Abilities: Competent knowledge of current social, economic and psychological problems and of federal and state laws and regulations pertaining thereto. Sound understanding of individual and group behavior, family patterns, community problems, and appropriate use of all resources. Demonstrated ability to obtain and analyze information and apply the information with good judgment. Ability to write concise and clear reports. Demonstrated ability to form and maintain effective working relationships. High moral standards.

Probation & Placement
Group

Code No. 9525

CLASS TITLE: Juvenile Counselor IV

CHARACTERISTICS OF THE CLASS: Under minimal supervision and at a professional social work level performs individual and/or group counseling for the more difficult delinquent, disturbed, or retarded juveniles in a community or at a departmental institution or similar facility; and does related work as required.

EXAMPLES OF DUTIES: At a professional level of competence, provides consulting services to local courts, probationary services, and/or juvenile counseling services on the more difficult juvenile cases during supervised placement. On assignment, performs all phases of individual and/or group counseling treatment sessions in reference to the children with more serious behavioral problems, difficult family problems or community situations requiring special skills and experience. Supervises juveniles until discharge from Department custody. Increasingly involves himself with the development of new community resources and uses established community resources with skill. Attends seminars, workshops, or institutes as required. Maintains records and prepares reports of all types on assigned cases.

MINIMUM QUALIFICATIONS

Training and Experience: A Master's Degree in Social Work with no experience; or a Master's Degree in another field supplemented by one year of experience in social work, counseling, the ministry, education, or recreation; or graduate of an accredited college or university supplemented by three years experience in social work, counseling, the ministry, education, or recreation.

Special Knowledge, Skills, and Abilities: Professional knowledge of current social, economic, and psychological problems and of federal and state laws and regulations pertaining thereto. Understanding of individual and group behavior, family patterns, community problems, and appropriate use of all resources. Demonstrated ability to obtain and analyze information and apply the information with good judgment. Ability to write concise and clear reports. Demonstrated ability to form and maintain effective working relationships. High moral standards.

(Rev. 5-16-72)



Probation & Placement
Group

Code No. 9529

CLASS TITLE: Juvenile Counselor V

CHARACTERISTICS OF THE CLASS: Under supervision, and at a professional level, serves as supervisor of a juvenile counselor unit in a region or at a departmental institution or similar facility; and does related work as required.

EXAMPLES OF DUTIES: Assigns, supervises, and evaluates, through individual conferences, staff meetings, and written reports, the work of subordinate juvenile counselors. May provide juvenile counseling services on a small number of delinquent cases, depending on the number of juvenile counselors under his immediate supervision. Responsible for the supervision and training of treatment staff giving particular assistance with the analysis of information and the formulation of treatment plans. Prepares performance evaluations. Meets with professional staff of the agency, staffs of other agencies, and responsible members of a community for the purpose of interpreting existing rehabilitation programs and resources, and developing new and expanded programs and resources. May serve as assistant to the head of a youth forest camp and, in Superintendent's absence, is responsible for all phases of camp operations.

MINIMUM QUALIFICATIONS

Training and Experience: A Master's Degree in Social Work plus two years experience in social work; or a Master's Degree in another field plus three years experience in social work, counseling, the ministry, education, or recreation; or graduate of an accredited college or university supplemented by four years experience in social work, counseling, the ministry, education, or recreation.

Special Knowledge, Skills, and Abilities: Considerable knowledge of individual and group counseling methods, principles, and techniques. Considerable knowledge of applicable federal and state laws and regulations. Considerable knowledge of current social and economic problems and resources. Analytical ability. Ability to establish and maintain effective working relationships with persons under supervision, clients, colleagues, and the public in general. Good judgment. Initiative and resourcefulness. High moral standards.

(Rev. 5-16-72)

Probation & Placement
Group

Code No. 9532

CLASS TITLE: Juvenile Counselor VI

CHARACTERISTICS OF THE CLASS: Under direction, assumes administrative, supervisory, and consultative responsibility for the operation of a juvenile delinquent rehabilitation program in an administrative geographic area of the state or supervises a treatment program in a Child Welfare residence; and does related work as required.

EXAMPLES OF DUTIES: Advises, consults, evaluates, supervises, and directs, through individual conferences, staff meetings, and written reports, the work of a number of juvenile counselors or social workers serving in the capacity of Unit Supervisor in different regions of the state. Interprets administrative policies and procedures, analyzes same, and makes recommendations for their improvement. Participates in the formulation of policies and procedures as they apply to the juvenile delinquency program. Participates in the planning and conduct of statewide staff development and in-service training programs, giving intensive supervision to juvenile counselor unit supervisors who are confronted with difficult problems or disorders requiring skilled therapeutic techniques. Prepares complex administrative reports. Speaks before clubs and other interested organizations on the juvenile delinquency program. Coordinates agency function and resources with those of other governmental and private jurisdictions. May supervise a student complement from a school of social work who is studying individual or group therapy treatment programs of the department.

MINIMUM QUALIFICATIONS

Training and Experience: A Master's Degree in Social Work plus three years experience in social work; or a Master's Degree in another field plus four years experience in social work, counseling, the ministry, education, or recreation; or graduate of an accredited college or university supplemented by five years experience in social work, counseling, the ministry, education, or recreation.

Special Knowledge, Skills, and Abilities: Thorough knowledge of individual and group counseling methods, principles, and techniques. Thorough knowledge of applicable federal and state laws and regulations. Thorough knowledge of social and economic problems and resources. Demonstrated ability to analyze and use sound judgment. Demonstrated ability to establish and maintain effective working relationships. Demonstrated supervisory ability. Initiative and resourcefulness. High moral standards.

(Rev. 5-16-72)



Teaching Group

Code No. 3209

CLASS TITLE: Vocational Teacher I

CHARACTERISTICS OF THE CLASS: Under supervision, teaches vocational classes in a specific field in a vocational school; and does other work as required.

EXAMPLES OF DUTIES: Plans and follows class work within prescribed limits. Assembles and prepares learning materials for special study. Gives instructions to pupils in both theory and practice in a specified field. Prepares and maintains records and reports on pupils' attainment and progress. Maintains order and discipline. Visits shops in industry to keep abreast of technical changes. Follows up on students to assist in placement, improves courses of instruction, and promotes public relations.

MINIMUM REQUIREMENTS

Training and Experience: Graduate of an accredited college or university with a degree in vocational or industrial education or related field. Related occupational or teaching experience or related vocational training may substitute for the required college on a year-for-year basis.

SPECIAL KNOWLEDGE, SKILLS, AND ABILITIES: Considerable knowledge of modern principles, practices, and materials in the specified trade or vocation. Working knowledge of school administration principles and practices. Ability to keep class records and make reports. Ability to deal effectively with pupils and the public. Good judgment. Impartiality and firmness. Ability to instruct others in the proper use of trade tools, materials and equipment.

(Rev. 8-1-73)

Teaching Group

Code No. 3210

CLASS TITLE: Vocational Teacher II

CHARACTERISTICS OF THE CLASS: Under general supervision, teaches vocational classes in a specified field in a vocational school; and does other work as required.

EXAMPLES OF DUTIES: Plans and outlines class work within broad prescribed limits. Assembles and prepares learning materials for special study. Teaches regular and/or specially organized classes in vocational areas. Gives instruction to pupils in both theory and practice in a specified field. Prepares and maintains records and reports on pupils' attainment and progress. Follows up on students to assist in placement, improves courses of instruction, and promotes public relations.

MINIMUM REQUIREMENTS

Training and Experience: Graduate of an accredited college or university with a degree in vocational or industrial education or a related field supplemented by one year of related occupational or teaching experience. Related occupational or teaching experience or related vocational training may substitute for the required college on a year-for-year basis.

SPECIAL KNOWLEDGE, SKILLS, AND ABILITIES: Thorough knowledge of modern principles, practices, methods, and materials for teaching a specific vocation or trade. Thorough knowledge of school administration principles and practices. Thorough knowledge of modern methods of testing pupils to evaluate progress. Teaching skill and the ability to instruct others in the proper use of trade tools, material, and equipment. Impartiality and firmness.

(Rev. 8-1-73)



Teaching Group

Code No. 3220

CLASS TITLE: Vocational Teacher III

CHARACTERISTICS OF THE CLASS: Under general direction, follows an approved course of study but is required to exercise considerable ingenuity and flexibility to adapt a program to fit the needs, abilities, and conditions of students in a vocational class in a specific field in a vocational school; and does related work as required.

EXAMPLES OF DUTIES: Plans and outlines courses of study within very broad prescribed limits. Prepares the necessary supplemental materials and examinations for conducting classes. Teaches regular or specially organized classes in vocational areas, and gives instruction in both theory and practice. Prepares and maintains records and reports on pupil attainment and progress. Follows up on students to assist in placement course improvement, and to promote public relations. Maintains discipline and order. Serves on special committees.

MINIMUM REQUIREMENTS

Training and Experience: Graduate of an accredited college or university with a degree in vocational or industrial education or a related field supplemented by three years of related occupational or teaching experience. Related occupational or teaching experience or related vocational training may substitute for the required college on a year-for-year basis up to a maximum of two years.

SPECIAL KNOWLEDGE, SKILLS, AND ABILITIES: Thorough knowledge of modern principles, practices, methods, and materials for teaching a specific vocation or trade. Thorough knowledge of school administration principles and practices. Thorough knowledge of modern methods of testing pupils to evaluate progress. Teaching skill and ability to instruct others in the proper use of trade tools, materials, and equipment. Impartiality and firmness.

(Rev. 8-1-73)

3.3 Educational Services

3.3.8 There shall be available sufficient, appropriately qualified educational personnel, and necessary supporting staff, to carry out the educational programs.

3.3.8.1 Delivery of educational services shall be the responsibility of a person who is eligible for:

3.3.8.1.1 Certification as a special educator of the mentally retarded;
3.3.8.1.2 The credential required for a comparable supervisory or administrative position in the community.

3.3.8.2 Teachers shall be provided aides or assistants, as needed.

3.3.8.3 The facility's educators shall adhere to the Code of Ethics of the Education Profession as published by the National Education Association and annotated for personnel working with exceptional children and youth by the Council for Exceptional Children.

3.3.9 Appropriate to the nature and size of the facility, there shall be an ongoing program for staff development specifically designed for educators.

3.3.9.1 Staff members shall be encouraged to participate actively in professional organizations related to their responsibilities.



3.10.10.4 Attendance at conferences;
3.10.10.5 Participation in interdisciplinary groups;
3.10.10.6 Informational exchanges with universities, teaching hospitals, community mental health and mental retardation centers, and other community resources.

3.11 Recreational Services

3.11.12.2 Recreation personnel shall be:

3.11.12.2.1 Assigned responsibilities in accordance with their qualifications;
3.11.12.2.2 Delegated authority commensurate with their responsibility;
3.11.12.2.3 Provided appropriate professional recreation supervision.

3.11.12.3 Personnel conducting activities in recreation program areas should possess the following minimum educational and experiential qualifications:

3.11.12.3.1 A bachelor's degree in recreation, or in a specialty area, such as art, music, or physical education; or
3.11.12.3.2 An associate degree in recreation and one year of experience in recreation; or
3.11.12.3.3 A high school diploma, or an equivalency certificate; and two years of experience in recreation, or one year of experience in recreation plus completion of comprehensive inservice training in recreation, or
3.11.12.3.4 Demonstrated proficiency and experience in conducting activities in one or more program areas.

3.11.12.4 Personnel performing recreation counseling or therapeutic recreation functions should possess the following minimum education and experiential qualifications, and should be eligible for registration with the National Therapeutic Recreation Society at the Therapeutic Recreation Specialist level:

3.11.12.4.1 A master's degree in therapeutic recreation and one year of experience in a recreation program serving disabled persons; or
3.11.12.4.2 A master's degree in recreation and two years of experience in a recreation program serving disabled persons; or
3.11.12.4.3 A bachelor's degree in recreation and three years of experience in a recreation program serving disabled persons; or

3.11.12.4.4 A combination of education and experience in recreation serving disabled persons that totals six years.

3.11.12.5 Education and consultation functions in recreation should be conducted by staff members, in accordance with their education, experience, and role in the recreation program.

3.13 Social Services

3.13.13 There shall be available sufficient, appropriately qualified staff and necessary supporting personnel to carry out the various social service activities.

3.13.13.1 The facility should have available to it a social worker who:

3.13.13.1.1 Has a master's or doctoral degree from an accredited school of social work;

3.13.13.1.2 Has had three years of post-master's experience in the field of social welfare;

3.13.13.1.3 Meets the educational and experiential qualifications for certification by the Academy of Certified Social Workers;

3.13.13.1.4 Is knowledgeable and experienced in mental retardation.

3.13.13.2 A social worker having the qualifications specified in Item 3.13.13.1 shall be designated as being responsible for maintaining standards of professional practice in the rendering of social services to the facility, and for staff development.

3.13.13.3 Social workers providing service to the facility shall:



3.13.13.3.1 Have a master's degree from an accredited school of social work; or

3.13.13.3.2 Meet the educational qualifications required for full membership in the National Association of Social Workers and shall have had three years of experience in the field of social welfare.

3.13.13.4 Social work assistants or aides employed by the facility shall work under the supervision of a social worker having the qualifications specified in Item 3.13.13.3.

3.13.13.5 Social service personnel, at all levels of experience and competence, shall be:

3.13.13.5.1 Assigned responsibilities in accordance with their qualifications;

3.13.13.5.2 Delegated authority commensurate with their responsibilities;

3.13.13.5.3 Provided appropriate professional social work supervision.

3.13.13.6 A full-time supervisor should be responsible for the direct supervision of not more than six staff members, plus related activities.

3.13.13.7 All social service personnel shall be familiar with, and adhere to, the Code of Ethics of the National Association of Social Workers.

3.15 Vocational Rehabilitation Services

3.15.8.8 Facilities conducting vocational training programs shall have vocational training personnel assigned, in such numbers and for such times as are necessary and appropriate to the situation, to supervise the training in each training area.

3.15.11 There shall be a clearly designed person or team responsible for seeing that the resident's vocational rehabilitation program is effectively carried out.

3.15.11.1 There shall be available to each resident in a vocational rehabilitation program a counselor who is responsible for seeing that the resident's vocational rehabilitation program is effectively carried out.

3.15.11.2 A vocational rehabilitation counselor shall:

3.15.11.2.1 Have a master's degree in rehabilitation counseling, or a master's degree in a related area plus training and skill in the vocational rehabilitation process; or

3.15.11.2.2 Have a bachelor's degree and work under the direct supervision of a person qualified as in 3.15.11.2.1.

3.15.11.3 Vocational rehabilitation personnel providing training to residents in vocational areas shall be:

3.15.11.3.1 Vocational instructors certified by the appropriate state agency; or

3.15.11.3.2 Tradesmen who have attained at least journeyman status.

3.15.12 Appropriate to the nature and size of the facility, provisions shall be made for vocational rehabilitation staff development, through such means as:

3.15.12.1 Inservice training;
3.15.12.2 Short-term workshops;
3.15.12.3 Seminars;
3.15.12.4 Attendance at conferences;
3.15.12.5 Visits to other facilities.

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